

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

2026/CCZ/0012

IN THE MATTER OF: ARTICLES 1(1)(5), 2, 43(2)(a), 45(2), AND
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 ARTICLES 110(1)(3),
52(6)(A) AND 47(1)(2) OF THE CONSTITUTION
OF ZAMBIA, CHAPTER 1 OF THE LAWS OF
ZAMBIA ON THE WITHDRAWAL, STEPPING-
DOWN OR RESIGNATION OF A RUNNING-MATE
OR PRESIDENTIAL CANDIDATE AND ITS
EFFECT ON THE ELECTORAL PROCESS AND
MAJORITARIAN SYSTEM OF ELECTING A
PRESIDENT OF THE REPUBLIC OF ZAMBIA

BETWEEN:

ISAAC MWANZA

APPLICANT

AND

ELECTORAL COMMISSION OF ZAMBIA

1ST RESPONDENT

ATTORNEY GENERAL

2ND RESPONDENT

**CORAM: MUNALULA-PC, SHILIMI-DPC, MUSALUKE, CHISUNKA AND
MULIFE JJC, ON 31ST JULY, 2026.**

For the Applicant: In Person

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

For the 2nd Respondent: Not before Court

JUDGMENT

Mulife, JC, delivered the Judgment of the Court

Cases referred to:

1. Steven Katuka and Law Association of Zambia v Attorney General, Ngosa Simbyakula and 63 Others, 2016/CCZ/0010
2. Hakainde Hichilema and Another v Attorney General, 2016/CCZ/0033
3. Action Congress v INEC (2007) 12 NWLR (Pt. 1048) 220
4. Faleke v INEC (2016) LPELR – SCR. 648/2016
5. PDP v Degi-Eremienyo & Others (2020) LPER – 49734(SC)
6. Sishuwa Sishuwa (Dr) and Alfredy Chileshe Kanda v Nkandu Luo, Bright Choomba and Others, 2021/CCZ/0028/0032
7. Isaac Mwanza and the Consortium of Civil Society Organisations on Governance and Constitutionalism v Dolika Banda, Dr. Fred M'membe, Electoral Commission of Zambia and Attorney General, 2026/CCZ/008
8. Governance Elections Advocacy Research Services Initiative Zambia Limited v Attorney General and Electoral Commission of Zambia, 2022/CCZ/0020
9. Isaac Mwanza v Electoral Commission of Zambia and Attorney General, 2020/CCZ/0008
10. Mputa Ngalande v Attorney General, 2025/CCZ/0019

Legislation referred to:

The Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016
The Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 13 of 2025
The Constitution of Ghana
The Constitution Kenya
The Constitution of Malawi
The Constitution of Nigeria
Elections Act No. 24 of 2011 of Kenya
Presidential parliamentary and Local Governance Elections Act, 2023 of Malawi

Works referred to:

Final Report of the Technical Committee on Drafting the Zambian Constitution, 2013
Garner, B.A. (Ed). Black's Law Dictionary, Eighth Edition

INTRODUCTION

- [1] This judgment concerns an originating summons filed by Mr. Isaac Mwanza (the Applicant) on 14th July, 2026 pursuant to Articles 1(1), (5), 2, 43 (2) (a), 45(2) and 128 (1) (a) of the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 (Act No. 2 of 2016). It was accompanied by a certificate of

urgency, an affidavit in support sworn by the Applicant as well as list of authorities and skeleton arguments.

[2] The Electoral Commission of Zambia (ECZ) was initially cited as the sole Respondent to the originating summons. When the matter came up for scheduling on 15th July, 2026, the Applicant and counsel for the ECZ consented to the joinder of the Attorney General. Consequently, the ECZ was re-designated as the 1st Respondent.

[3] The originating summons seeks this Court's interpretation of the following questions:

- (i) **Whether Article 110(1)(3) as read together with Article 52(6)(a) of the Constitution, properly construed, require a presidential candidate to have a validly nominated Vice-Presidential running mate throughout the electoral process, and whether the withdrawal, resignation or stepping down of the running mate affects the continued validity of the presidential candidature.**
- (ii) **Whether under Article 47(1), 52(2) and (6), 57 and 110(1) and (3), read together with Article 45(2)(d) of the Constitution, where a duly nominated presidential candidate or vice-presidential running mate, withdraws, resigns or steps down before a polling day, the Electoral Commission of Zambia is constitutionally obliged to remove the candidate's or running mate's name from the ballot paper, and if the name remains thereon, whether any votes cast for that candidate or presidential ticket are valid, capable of being counted, and capable of producing legal electoral consequences in determining the election of a President by a majoritarian vote.**

THE APPLICANT'S CASE

- [4] The applicant's case is that in May, 2026, the 1st Respondent accepted nomination papers of fourteen presidential candidates together with those of their respective running mates for participation in the general election scheduled for 13th August, 2026 (the forthcoming election). Following the close of the nominations, one presidential candidate and two running mates to other presidential candidates purportedly withdrew from the forthcoming election.
- [5] Following those withdrawals, the 1st Respondent announced that the forthcoming election would proceed notwithstanding the withdrawal of the presidential candidate and two running mates. The 1st Respondent further stated that candidates whose nominations had been duly accepted could only be removed from ballot papers before the commencement of the printing of the ballot papers on 6th July, 2026. Once the printing process had commenced, the names of such candidates would remain on the ballot papers despite their withdrawal. Accordingly, any candidate wishing to withdraw from the election after the successful filing and acceptance of her or his nomination papers was supposed to do so before 6th July, 2026.

- [6] The Applicant contended that the foregoing events give rise to several questions of constitutional significance concerning the status of the presidential candidate who withdrew from the forthcoming election and the status of the two presidential candidates whose respective running mates also withdrew from the election.
- [7] The questions arising from the withdrawal of a presidential candidate from the election are threefold. First, can a presidential candidate validly withdraw her or his candidature after close of nominations? Second, if such a withdrawal is legally valid, should the candidate's name be removed from the ballot papers? Third, if it is no longer practicable to remove the candidate's name because the ballot papers have already been printed, should any votes cast in that candidate's favour be regarded as valid for the purpose of determining the election result? In particular, should such votes be included in calculating whether the winning candidate has satisfied the constitutional requirement of obtaining more than fifty percent of the valid votes cast in the presidential election?
- [8] With respect to the two presidential candidates whose respective running mates withdrew from the election, the Applicant questioned

whether their candidature remain constitutionally valid notwithstanding the withdrawal of their running mates.

[9] In his list of authorities and skeleton arguments, filed contemporaneously with the originating summons, the Applicant reiterated the foregoing factual background. He thereafter submitted that the constitutional provisions requiring interpretation in light of those facts are Articles 47(1) and 110(1)(3) of Act No. 2 of 2016 and Article 52(6)(a) of the Constitution of Zambia as amended by Act No. 13 of 2025 (Act No. 13 of 2025).

[10] The Applicant relies on **Steven Katuka and Law Association of Zambia v Attorney General, Ngosa Simbyakula and 63 Others**¹, for the proposition that constitutional provisions should, in the first instance, be accorded their ordinary meaning and that a purposive interpretation should only be adopted where the ordinary meaning would lead to an absurd result. The Applicant also relied on **Hakainde Hichilema and Another v Attorney General**² for the principle that the Constitution must be interpreted as a coherent whole, with each provision being construed in a manner that gives effect to, rather than defeats, the others.

[11] The Applicant further submitted that Article 110(1)(2) of Act No. 2 of 2016 makes the joint nomination and election of a presidential

candidate and her or his running mate a mandatory constitutional requirement. Consequently, a presidential candidate must have a duly nominated running mate from the time of filing of nomination papers until conclusion of the electoral process.

[12] The Applicant further contends that this Court find that withdrawal from the electoral contest is constitutionally permissible, it ought to hold that the withdrawal of either the presidential candidate or the running mate renders the candidature of the presidential candidate invalid. According to the Applicant, this conclusion follows the constitutional scheme governing presidential election, which contemplates the joint nomination and election of a presidential candidate and her or his running mate.

[13] The Applicant further relied on the Nigerian authorities of **Action Congress v INEC³; Faleke v INEC⁴, PDP v Degi-Eremienyo & Others⁵** According to the Applicant, those authorities establish the principle that the disqualification of the deputy governorship candidate renders the entire electoral ticket invalid on the basis that the nomination of the principal candidate and the deputy is joint and inseparable.

[14] Building on that proposition, the Applicant submitted that, where the candidature of a presidential candidate is rendered invalid by the

withdrawal of either the candidate or the running mate, Article 52(6)(a) of Act No. 13 of 2025, operates to disqualify the affected candidate from contesting the election.

- [15] Consequently, the Applicant argued that the candidate's name ought to be removed from the ballot papers. That where such removal is no longer practicable because the ballot papers have already been printed, any votes cast in favour of that candidate should be treated as invalid for purposes of Article 47 (1) of Act No. 2 of 2016 which require a presidential candidate to secure more than fifty percent of the valid votes cast. According to the Applicant, the expression "valid votes" refers to votes cast in favour of presidential candidates who are constitutionally eligible to contest the election and not disqualified presidential candidates.

THE 1ST RESPONDENT'S CASE

- [16] On 17th July, 2026, the 1st Respondent filed an affidavit in opposition to the originating summons sworn by its Chief Electoral Officer, Mr. Brown Kasaro. The affidavit in opposition was accompanied by a list of authorities and skeleton arguments.
- [17] In his affidavit, Mr. Kasaro deposed that the 1st Respondent received letters from Mr. Andyford Banda and Mr. Moses Mawere notifying it of their resignation or withdrawal as running mates to two

presidential candidates whose nominations had been duly accepted for the forthcoming election. He further deposed that those notifications were received after the 1st Respondent had already printed ballot papers for all the duly nominated presidential candidates and their respective running mates, including Mr. Andyford Banda and Mr. Moses Mawere.

[18] The 1st Respondent averred that there is neither a legal framework regulating the procedure for the resignation of a running mate, nor the consequential processes to be followed thereafter. It further contended that it has a constitutional duty to proceed with the conduct of the forthcoming election notwithstanding the withdrawal of a presidential candidate or a running mate.

[19] In its list of authorities and skeleton arguments, the 1st Respondent submitted that the Constitution does not make provision for the resignation of a running mate. It argued that Article 52 of Act No. 13 of 2025, being the constitutional provision governing nominations, only contemplates the resignation, disqualification or death of a duly nominated candidate and prescribes the consequences arising from such events.

[20] That 1st Respondent submitted that Article 52 of Act No. 13 of 2025 permits a duly nominated presidential candidate to resign from an

election and that upon such resignation, the candidate becomes disqualified from contesting the election. It further argued that where the candidate's name remains on the ballot paper because the resignation was communicated after the ballot papers had already been printed, any votes cast in favour of that candidate would not be considered.

[21] It is the 1st Respondent's submission that not being a candidate, a running mate cannot withdraw or resign after being nominated lest the purported resignation be rendered ineffective and the running mate will accordingly be retained on the ballot paper.

[22] To reinforce its submission that a running mate is not a candidate, the 1st Respondent referred us to the definitions of the two terms in Article 266 of Act No. 2 of 2016 and to this Court's holding in the cases of **Sishuwa Sishuwa (Dr) and Alfredy Chileshe Kanda v Nkandu Luo, Bright Choomba and Others⁶**, and **Isaac Mwanza and the Consortium of Civil Society Organisations on Governance and Constitutionalism v Dolika Banda, Dr. Fred M'membe, Electoral Commission of Zambia and Attorney General⁷**.

[23] The 1st Respondent submitted that the issue for determination is not whether a running mate may be disqualified from participating in the

election, but rather whether a running mate may resign or withdraw from an election after filing nomination papers.

CASE FOR THE 2ND RESPONDENT

[24] The 2nd Respondent filed a brief affidavit in opposition on 17th July, 2026 in which he deposed that the questions raised in the originating summons were ripe for determination by this Court. He further deposed that his interpretation of the questions was set out in his list of authorities and skeleton arguments.

[25] In his list of authorities and skeleton arguments filed on the same date, the 2nd Respondent concurred with the submissions of the 1st Respondent that a combined reading of Article 266 of Act No. 2 of 2016 particularly the definitions of the terms ‘candidate’ and ‘running mate’ together with the decision in **Sishuwa Sishuwa (Dr) and Alfredy Chileshe Kanda v Nkandu Luo, Bright Choomba and Others⁶**, demonstrates that a running mate has no constitutional basis upon which to resign from an election. According to the 2nd Respondent, the power to resign is conferred only upon a presidential candidate.

[26] Relying on Article 110 of Act No. 2 of 2016 and this Court’s decision in **Isaac Mwanza and the Consortium of Civil Society Organisations on Governance and Constitutionalism v Dolika**

Banda, Dr. Fred M'membe, Electoral Commission of Zambia and Attorney General⁷, the 2nd Respondent however submitted that, being an integral component of a presidential ticket, a running mate is derivatively subject to Article 52 of Act No. 13 of 2025 in relation to resignation from an election. The 2nd Respondent contended that such a resignation would not have the effect of invalidating or otherwise affecting the pending presidential election.

[27] The 2nd Respondent further submitted that a running mate is not a candidate within the meaning of the Constitution, the resignation or withdrawal of a running mate should not affect the participation of the presidential candidate in the election. In that regard, the presidential candidate should be permitted to nominate a replacement running mate with whom she or he would continue to contest the presidential election. According to the 2nd Respondent, this power of substitution is derived from Article 111(4)(5) of Act No. 2 of 2016 which empowers a President of the Republic to appoint a Vice-President where there is a vacancy in the office of Vice-President.

[28] The 2nd Respondent further urged this Court to draw guidance from its decision in **Governance Elections Advocacy Research Services Initiative Zambia Limited v Attorney General and**

Electoral Commission of Zambia⁸ and similarly hold that a presidential candidate or his running mate may not resign or withdraw from an election after the close of nominations.

THE APPLICANT'S REPLY

[29] In his reply filed into Court on 20th July, 2026, the Applicant essentially maintained his position advanced in his affidavit in support of the originating summons. He, however, added that he aligned himself with the 2nd Respondent's submission that urged this Court to extend the principle in **Governance Elections Advocacy Research Services Initiative Zambia Limited v Attorney General and Electoral Commission of Zambia**⁸ to the present proceedings. In particular, he submitted that a presidential candidate or her or his running mate cannot resign or withdraw from an election after the close of nominations.

[30] In his skeleton arguments filed on the same date, the Applicant submitted that it was contradictory for the 1st Respondent to, on the one hand, acknowledge that there is no law providing for the withdrawal or resignation of a presidential candidate or running mate and on the other hand, purport to prescribe an administrative deadline within which such withdrawals must be made. The

Applicant further argued that in any event, the deadline that was communicated by the 1st Respondent has no basis in law.

[31] The Applicant submitted that the decisions in **Sishuwa Sishuwa (Dr) and Alfredy Chileshe Kanda v Nkandu Luo, Bright Choomba and Others⁶** and **Isaac Mwanza and the Consortium of Civil Society Organisations on Governance and Constitutionalism v Dolika Banda, Dr. Fred M'membe, Electoral Commission of Zambia and Attorney General⁷**, relied upon by the Respondents were inapplicable to the present originating summons. According to the Applicant, the factual circumstances and reliefs sought in those matters were distinguishable from those arising in the present proceedings. He argued that, whereas the cited cases concerned allegations of breaches of constitutional provisions, the present originating summons concerns the interpretation of the Constitution.

[32] The Applicant therefore submitted that the more relevant authority was **Governance Elections Advocacy Research Services Initiative Zambia Limited v Attorney General and Electoral Commission of Zambia⁸**, as that matter concerned the exercise of this Court's constitutional interpretative jurisdiction.

[33] The Applicant reiterated that a presidential ticket cannot remain valid without a running mate at all material times during the electoral process as the constitutional scheme contemplates a joint ticket comprising a presidential candidate and her or his running mate. In support of this proposition, the Applicant cited the following excerpt from the **Final Report of the Technical Committee on Drafting the Zambian Constitution (2013)** at pages 300-301:

the rationale for the Article was that it was important to have a Vice – President who has the direct mandate of the people to act as president in the absence of the incumbent or assume the Office of President in the event of death or incapacitation of the incumbent...The Committee further observed that leaving the appointment of the Vice – President to the discretion of the President may result in the appointment of a person who was rejected by the electorate in earlier elections. The Committee, therefore, resolved to provide for a Vice – President who shall be elected as a running mate to a presidential candidate.

[34] The Applicant submitted that the absence of a constitutional provision expressly addressing the resignation or withdrawal of a running mate after the close of nominations should not be construed as permitting such a course of action. Further, it should not be interpreted as conferring authority upon the 1st Respondent to prescribe a deadline within which running mates may resign or withdraw from the electoral process.

[35] The Applicant argued that, had the framers of the Constitution intended to permit a running mate to resign or withdraw after the

close of nominations, they would have expressly provided for such a contingency. In support of this proposition, the Applicant relied on the case of **Isaac Mwanza v Electoral Commission of Zambia and Attorney General**⁹.

[36] The Applicant urged this Court to adopt the principle established in **Governance Elections Advocacy Research Services Initiative Zambia Limited v Attorney General and Electoral Commission of Zambia**⁸ and accordingly hold that a presidential candidate or his running mate cannot resign or withdraw from an election after the close of nominations. The Applicant submitted that the only resignation contemplated under Article 52(6)(a) of Act No. 13 of 2025, is a resignation from a political party.

[37] The Applicant further submitted that in the event the Court holds that a presidential candidate or running mate can resign or withdraw from an election, such individuals should be removed from the ballot papers since by Article 52(6)(a) of Act No. 13 of 2025, they are ineligible to contest the election.

[38] The Applicant contended that where the intention to replace a candidate in an election exists, it is expressly stated such as the position is in Article 102(2) of Act No. 2 of 2016 relating to a second ballot where a presidential candidate dies or resigns due to ill-health.

HEARING

[39] During the hearing on 31st July, 2026, the Applicant relied on his affidavits, list of authorities and skeleton arguments.

[40] The 1st Respondent also relied on the documents filed in Court.

INTERPRETATION

[41] We have considered the Applicant's originating summons, affidavit in support of originating summons as well as written arguments. We have also considered the Respondents' affidavits and written arguments.

[42] We begin by restating the principles of constitutional interpretation that shall guide our determination of the questions before us. Article 267(1) of Act No. 2 of 2016 directs this Court, in interpreting the Constitution, to do so in accordance with among others, the Bill of Rights and in a manner that promotes its purposes, values and principles of the Constitution and contributes to good governance.

[43] We now consider the first question namely:

- (i) **Whether Article 110(1)(3) as read together with Article 52(6)(a) of the Constitution, properly construed, require a presidential candidate to have a validly nominated Vice-Presidential running mate throughout the electoral process, and whether the withdrawal, resignation or stepping down of the running mate affects the continued validity of the presidential candidature.**

[44] In our view, this question comprises two limbs. The first limb concerns whether a presidential candidate must have a validly nominated running mate throughout the electoral process. The second limb as framed, presupposes that resignation or withdrawal of a running mate from an electoral process is legally permissible. It therefore, seeks a determination of the effect such a resignation or withdrawal would have on the candidature of the presidential candidate.

[45] For convenience, we begin by addressing the second limb of the question.

[46] The position of running mate was introduced into Zambia's electoral system by Act No. 2 of 2016. The rationale for its introduction is clearly articulated in the **Final Report of the Technical Committee on Drafting the Zambian Constitution, 2013**. Broadly stated, the position was established to guarantee continuity in the Executive by ensuring that the running mate, upon the election of the associated presidential candidate, assumes the office of Vice - President. The position was also intended to eliminate the need for a presidential by-election in the event of a vacancy in the office of President as the Vice - President would constitutionally succeed to the presidency for the remainder of the term.

[47] The Report explains the underlying rationale in the following terms at page 301:

The Committee observed that, as a corollary, providing for a running mate Vice -president who would assume the office of President in the event of death or incapacitation of the incumbent was a cost-saving measure, since it eliminates the holding of a presidential by-election.

[48] Accordingly, Article 110 of Act No. 2 of 2016 established the position of running mate who must possess the same qualifications as those prescribed for a presidential candidate. Upon the successful election of the presidential candidate, the running mate assumes the office of Vice-President.

[49] Article 110 of Act No. 2 of 2016 further contemplates that the presidential candidate and the running mate are elected on a single, joint ticket through a concurrent vote.

[50] For completeness, the relevant parts of Article 110 of Act No. 2 of 2016 are hereby reproduced:

110. (1) There shall be a Vice – President for the Republic who shall be the running mate to a presidential candidate in a presidential election.

(2) The qualifications and disqualifications applying to a presidential candidate apply to the person selected by the presidential candidate to be the running mate.

(3) An election to the office of Vice – President shall be conducted at the same time as that of an election to the office of President so that a vote cast for a presidential candidate is a vote cast for the running mate, and if the presidential candidate is elected, the running mate shall be considered to have been elected.

[51] The question whether a running mate can resign or withdraw from an election inevitably draws us to Article 52(6) of Act No. 13 of 2025. This is because Article 52(6) of Act No. 13 of 2025 is the provision in the Constitution that governs the subject of pre-election resignation or withdrawal relating to a presidential ticket.

[52] The full text of Article 52 (6) of Act No. 13 of 2025 is thus reproduced:

52.(6) Where a candidate –

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

[53] A reading of Article 52(6) of Act No. 13 of 2025 is that, it permits a candidate whose nomination papers have been duly accepted, to resign or withdraw from an election contest after the close of nominations.

[54] According to Article 266, a “candidate” is “a person contesting a presidential, parliamentary or local government election.” In the context of the present proceedings therefore, the term “candidate” as framed in Article 52(6) of Act No.13 of 2025, means a presidential candidate and not a running mate. This construction is consistent with our holdings in the cases of **Sishuwa Sishuwa (Dr) and Alfredy Chileshe Kanda v Nkandu Luo, Bright Choomba and**

Others⁶ and Isaac Mwanza and the Consortium of Civil Society Organisations on Governance and Constitutionalism v Dolika Banda, Dr. Fred M'membe, Electoral Commission of Zambia and Attorney General⁷.

- [55] Noticeably, Article 52(6) of Act No. 13 of 2025 does not prescribe a time limit within which a candidate must resign. Further, it sets out the consequences of the resignation or withdrawal namely, the election shall proceed as scheduled but without the participation of the person who has resigned or withdrawn.
- [56] The omission of a running mate in Article 52(6) of Act No. 13 of 2025 obviously raises a question whether a running mate can resign or withdraw from an election.
- [57] We have reviewed the electoral jurisprudence of some States which have similarly adopted the concept of running mate, for comparative purposes. Notably, the States of Ghana and Nigeria whose respective Constitutions, under Article 60 and Section 141, which have similar provisions to Article 52(6) of Act No. 13 of 2025, do not have caselaw resolving the implications of a running mate resigning from an election. Suffice it to add that the Nigerian cases of **Action Congress v INEC³; Faleke v INEC⁴, PDP v Degi-Eremienyo &**

Others⁵ cited by the Applicant, do not address the question of resignation of a running mate in that country.

[58] On the other hand, the States of Kenya and Malawi have resolved the eventuality through respective subsidiary legislation namely, section 15 of the **Elections Act No. 24 of 2011** and section 33(2) of the **Presidential, Parliamentary and Local Government Elections Act, 2023**, which expressly permits a running mate to resign and in turn empowers a presidential candidate to nominate a substitute running mate within a prescribed timeframe.

[59] In light of the foregoing, the question remains whether this Court is to read the term 'running mate' into the provisions of Article 52(6) of Act No. 13 of 2025.

[60] Such a course falls within the realm of the purposive interpretative approach and a holistic reading of all the constitutional provisions which have a bearing on the subject of resignation from a presidential ticket to which the position of running mate is an integral part. We are of the considered view that if a legislative omission is deliberate, it is not meant to be filled.

[61] In the present case, we find that the omission of a running mate from Article 52(6) of Act No. 13 of 2025 is deliberate rather than inadvertent and holding otherwise, would be reading into the

Constitution, words which the framers deliberately chose not to include.

[62] This finding is reinforced by the express provision of the option of resignation for a presidential candidate under Article 52(6) of Act No. 13 of 2025 and for a Vice- President under Article 111(4), of Act No. 2 of 2016. This express mention coupled with the omission of the running mate, is a clear indication that the framers of the Constitution did not intend to confer upon a running mate, the right to resign or withdraw from an election.

[63] This conclusion finds support in the Latin maxim *expressio unius est exclusion alterius*, which, according to **Black's Law Dictionary, Eighth Edition**, means the express inclusion of one thing implies the exclusion of another.

[64] We hasten to add that resignation or withdrawal from an election is a matter of constitutional significance which should be expressly provided for and not implied from a silence in the Constitution or inferred by implication. In the case of **Isaac Mwanza v Electoral Commission of Zambia and Attorney General**⁹, this Court was asked among others, to interpret Article 157(2)(b) of Act No. 2 of 2016. Though permitting a resignation, Article 157(2)(b) of Act No. 2 of 2016 is silent on whether or not a councillor can rescind the

resignation. The relevant question that arose in that case was therefore whether Article 157(2)(b) of Act No. 2 of 2016 impliedly permitted a councillor to rescind her or his resignation. In declining to read the option of rescission into the provision, this Court stated as follows at paragraph 44 of the judgment:

[44] The rescission of a councillor's decision to resign is a substantive issue and in the absence of express provision being made in the Constitution to that effect, we hold that a councillor has no option to rescind the decision to resign within the notice period. It is our view that if the intention of the framers of the Constitution was to allow a councillor who had resigned from office to rescind their decision within the 30-day period, they would have made express provision to that effect in the Constitution. This they did not do.

[65] This Court expressed similar views in the case of **Mputa Ngalande v Attorney General**¹⁰ at paragraph 59 that:

[59] Suspending a democratically elected council and replacing it with an administrator, is a serious act which we opine must be backed by the supreme law of the land, in the absence of clear constitutional authority, Parliament cannot, through ordinary legislation, confer such power...We are of the firm view that since the Constitution does not provide for suspension of a local authority/council, sections 56 and 57 of the LGA which empower the Minister to suspend the councils are inconsistent with the provisions of Article 152(2) and 156 of the Constitution

[66] Further in **Governance Elections Advocacy Research Services Initiative Zambia Limited v Attorney General and Electoral Commission of Zambia**⁸, we stated that:

6.13 It is evident to us from the plain language of section 31(2) of the Act...that the legislature...provided for the withdrawal of candidature for election as a Member of Parliament before the

expiry of the nomination period. An examination of the rest of the provisions of the Act on the subject of nominations for election as a Member of Parliament reveals that Parliament did not provide for the withdrawal of candidature for election as a Member of Parliament after the close of the period allowed for lodging nomination papers.

6.14 That being the case, and in the absence of express provision to that effect in the Act, the presupposition that a candidate for election as a member of Parliament can withdraw from election as a Member of Parliament in the period after the close of nominations but before the election date as suggested by the Applicant...is not supported by the Constitution, the Act or any other law. In other words, neither an independent candidate nor a political party sponsored candidate for election as a Member of Parliament is authorised by the Constitution or the Act to withdraw their nomination for election as a Member of Parliament after the expiry of the period appointed for lodging nomination papers in respect of a parliamentary election.

[67] In light of the foregoing, our considered view is that our constitutional framework does not permit a running mate to resign or withdraw from an election. Had the framers of the Constitution intended a running mate to possess the right to resign or withdraw from the electoral process, they could have said so in clear and unequivocal terms considering the constitutional significance and implication of the event. This answers the second limb of the first question.

[68] Turning to the first limb of the question, namely whether a presidential candidate must have a validly nominated running mate throughout the election process, our answer is in the affirmative. This requirement is evident from Article 110 of Act No. 2 of 2016 which establishes a presidential ticket as a joint venture comprising the presidential candidate and running mate. Article 110 of Act No.

2 of 2016 achieves this by requiring every presidential candidate to select a person who satisfies prescribed qualifications to serve as a running mate.

[69] As this Court held in **Isaac Mwanza and the Consortium of Civil Society Organisations on Governance and Constitutionalism v Dolika Banda, Dr. Fred M'membe, Electoral Commission of Zambia and Attorney General**⁽⁷⁾, the person so selected must be presented as the running mate during the presidential nomination process thereby forming part of the joint presidential ticket that is submitted to the electorate for election.

[70] Therefore, save for circumstances such as death, which are beyond the human control of the parties, the constitutional framework presupposes the existence of a validly nominated running mate from the filing of nomination papers through to the polling day.

[71] We now turn to the second question posed in the originating summons being:

Whether under Article 47(1), 52(2) and (6), 57 and 110(1) and (3), read together with Article 45(2)(d) of the Constitution, where a duly nominated presidential candidate or vice-presidential running mate, withdraws, resigns or steps down before a polling day, the Electoral Commission of Zambia is constitutionally obliged to remove the candidate's or running mate's name from the ballot paper, and if the name remains thereon, whether any votes cast for that candidate or presidential ticket are valid, capable of being counted, and capable of producing legal electoral consequences in determining the election of a President by a majoritarian vote.

- [72] We observe that this question similarly has two limbs. The first limb essentially seeks a determination whether the 1st Respondent is under an obligation to remove a candidate who has resigned or withdrawn from an election, from the ballot paper. Suffice it to state that the other part of this limb which relates to the running mate is rendered moot by our finding that a running mate cannot resign or withdraw from an election.
- [73] The second limb of the question seeks a determination of the legal status of votes cast in favour of a candidate who has resigned or withdrawn from the election but whose name remains on the ballot paper due to practical constraints.
- [74] Regarding the first limb of the question, we have demonstrated in our comprehensive consideration of the governing provision - Article 52(6) of Act No. 13 of 2025 - that a candidate who resigns or withdraws, is ineligible to contest the election. Consequently, the entire presidential ticket collapses. Under the circumstances, such candidate's name ought to be removed from the relevant ballot papers.
- [75] We however take judicial notice of the practical realities of the electoral process, namely that ballot papers are printed and

distributed in advance of the polling day. Consequently, where a resignation or withdrawal occurs after the ballot papers have been printed, it may be impracticable, to remove the person's name from the ballot papers. In such circumstances, the person's name may remain on the ballot papers as a matter of practical necessity. However, any votes cast in favour of that person shall not constitute valid votes for the purposes of Articles 47(1) and 101 (2) of Act No. 2 of 2016 which require the winner of the presidential contest to obtain more than fifty percent of the valid votes cast in the entire presidential race.

[76] This answers the second limb of the question.

CONCLUSION

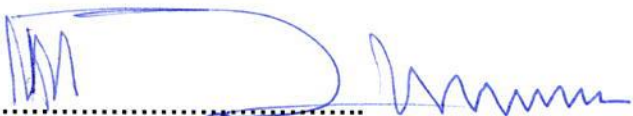
[77] In conclusion, our interpretation of the first question before us is that a running mate cannot resign or withdraw from an election. Further, absent an act of God such as death, the constitutional framework presupposes the existence of a validly nominated running mate from the filing of nomination papers through to the polling day.

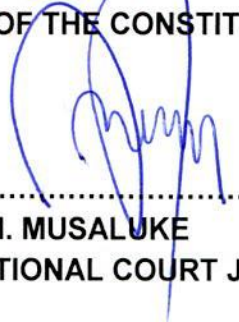
[78] Our interpretation of the second question is that where a candidate resigns or withdraws from an election before the printing of ballot papers, the 1st Respondent is required to remove that candidate's name from the ballot paper since she or he becomes ineligible to

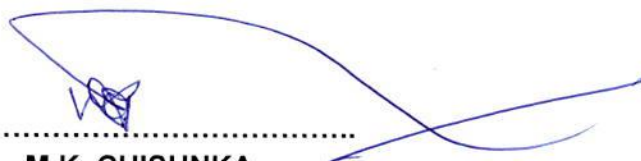
contest the election. However, where the resignation or withdrawal occurs after the printing of ballot papers, and removal is no longer practicable, the candidate's name may remain on the ballot paper though the votes cast in her or his favour will be invalid for purposes of Articles 47(1) and 101(2) of Act No. 2 of 2016.

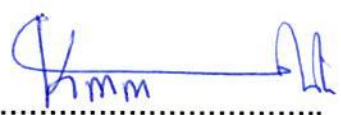
[79] Parties shall bear own costs.


.....
M.M MUNALULA (JSD)
PRESIDENT OF THE CONSTITUTIONAL COURT


.....
A.M SHILIMI
DEPUTY PRESIDENT OF THE CONSTITUTIONAL COURT


.....
M. MUSALUKE
CONSTITUTIONAL COURT JUDGE


.....
M.K. CHISUNKA
CONSTITUTIONAL COURT JUDGE


.....
K. MULIFE
CONSTITUTIONAL COURT JUDGE