

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

IN THE MATTER OF THE AFFIDAVIT FOR PRESIDENTIAL CANDIDATE/ RUNNING  
MATE

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 52 AND 106(3) OF  
THE CONSTITUTION

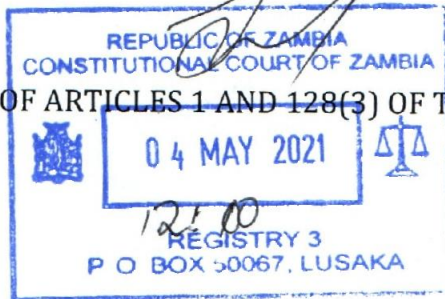
AND IN THE MATTER OF ARTICLES 1 AND 128(3) OF THE CONSTITUTION

Between:

JOHN SANGWA

AND

THE ELECTORAL COMMISSION OF ZAMBIA



PETITIONER

RESPONDENT

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PETITION

Pursuant to Order IV Rule 1 of the Constitutional Court Rules 2016

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THE PETITION of JOHN SANGWA of No. 35, Kudu Road, Kabulonga, Lusaka in the Lusaka Province of the Republic of Zambia, P. O. Box 36824, LUSAKA, email: [john@simezasangwa.com](mailto:john@simezasangwa.com) is as follows:

[1] The Petitioner is an Advocate of the Superior Courts for Zambia practising law in the firm of SIMEZA, SANGWA & ASSOCIATES.

[2] Article 3 of the Constitution has vests the right and imposes a duty on every person, including the Petitioner, to defend the Constitution and resist or prevent any person from overthrowing, suspending or illegally abrogating the Constitution.

[3] The Respondent is body created by Article 229 of the Constitution whose constitutional mandate is to:

- (a) 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.

[4] In line with Article 56 of the Constitution, the next general election will be held on Thursday 12<sup>th</sup> August 2021 and it is the function of the Respondent to conduct the said election.

[5] All those wishing to be nominated for election as President, Member of Parliament or Councillor, are required to comply with Article 52(1) of the Constitution, which provides:

52. (1) A candidate shall file that *candidate's nomination paper to a returning officer, supported by an affidavit stating that the candidate is qualified for nomination as President, Member of Parliament or councillor, in the manner, on the day, and at the time and place set by the Electoral Commission by regulation.* (Emphasis)

[6] After the amendment of the Constitution on 5<sup>th</sup> January 2016, the Respondent, in accordance with its constitutional mandate, did prescribe a number of documents for use during the election.

[7] Of interest to this Petition is the affidavit prescribed by the Respondent that is required to be completed by those wishing to be nominated for election as President of the Republic of Zambia, which is titled: "*Affidavit for Presidential Candidate/ Running Mate*".

[8] On Friday 30<sup>th</sup> April 2021, the Petitioner attended on the Respondent's Manager of Elections at the Respondent's Headquarter in Lusaka.

[9] The purpose of the meeting was to confirm whether there has been any amendment to the said affidavit for purposes of the nomination of the Presidential candidates for the General Election scheduled for Thursday 12<sup>th</sup> August 2021.

[10] The Petitioner was informed that the substance of the said affidavit has not changed.

[11] The said prescribed affidavit reads:

I, -----, a Zambian Citizen nominated to contest Presidential election/ as a running mate, do hereby make OATH/ solemnly affirm and state that:

1. I am a Zambian Citizen by birth/ descent and attach a certified copy of my green National Registration Card marked 1.
2. I have been ordinarily resident in Zambia and I reside at -----  
(Physical address, town, province)
3. I am a registered voter and a certified copy of my voter's card is attached and marked 2.
4. I am ----- years of age.
5. I am fluent in the official language.
6. I have obtained, as a minimum academic qualification, a Grade twelve certificate or its equivalent and attached is certified copy of my Grade twelve certificate/ equivalent marked 3.
7. I have paid all my personal taxes/ made arrangements satisfactory to the appropriate tax authority for the payment of the taxes. Attached hereto is a certified copy of the tax clearance certificate/ proof of arrangement of paying taxes marked 4.
8. I have declared my assets and liabilities and the statement of the assets and liabilities is attached and marked 5.
9. I qualified for nomination as a Presidential candidate and the disqualifications in Article 100(2) do not apply to me.
10. I swear this affidavit consciously believing the same to be true and correct to the best of my knowledge.

**[12]** Paragraphs 1 to 8 of the prescribed affidavit satisfy the provisions of Article 100(1) of the Constitution, while paragraph 9 of the affidavit fulfils Article 100(2) of the Constitution.

**[13]** In addition to Article 100 of the Constitution, Article 106(3) of the Constitution provides another instance where one may be disqualified from nomination as a Presidential candidate.

**[14]** The current version of the *Affidavit for Presidential Candidate/ Running Mate* prescribed by the Respondent does not mandate Presidential candidates to address what is provided for in Article 106(3) of the Constitution.

**[15]** By virtue of what is stated in paragraphs 3 to 14 above the Petitioner contends that the *Affidavit for Presidential Candidate/ Running Mate* does not meet the requirement of Article 52 of the Constitution because it does not require a candidate in order to qualify for nomination as a Presidential Candidate to state on oath the number of times the candidate has held office as President as required by Article 106(3) of the Constitution.

**[16]** Your Petitioner, therefore, prays that this Petition be allowed and that:

(a) the Respondent be commanded to amend the said affidavit to include another paragraph to comply with Article 106(3) of the Constitution, which must read:

*"I have not twice held office as President"*

Or

such other paragraph in the judgment of the Court shall satisfy Article 106(3) of the Constitution.

(b) the costs of and occasioned by this Petition be borne by the Respondent.

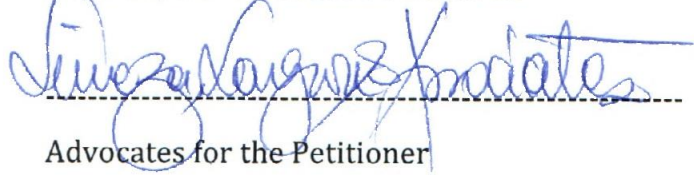
[17] AND Your Petitioner prays that the hearing of this Petition be expedited.

And Your Humble Petitioner shall forever pray.

Dated the 4<sup>th</sup> day of July 2021.

This Petition was settled by:

**SIMEZA, SANGWA & ASSOCIATES**



Advocates for the Petitioner

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To: **THE ELECTORAL COMMISSION OF ZAMBIA**

Electoral House

Haile Selassie Avenue

Longacres

LUSAKA

2021/CCZ/0021

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