THE PRESIDENTIAL PETITION JUDGEMENT IN THE SUPREME COURT OF ZAMBIA
SCZ/EP/01/02/03//2002 HOLDEN AT LUSAKA (Constitutional Jurisdiction)

IN THE MATTER OF AN ELECTION PETITION And IN THE MATTER OF an application under Article 41 (2) of the Constitution of Zambia
And

IN THE MATTER OF Regulation 15 made pursuant to the Electoral Act, 1991
And

IN THE MATTER OF the Presidential Elections held in Zambia between the 27th and 31st December 2001

BETWEEN: ANDERSON KAMBELA MAZOKA	1ST PETITIONER
AND	
LT GENERAL CHRISTON SIFAPI TEMBO	2ND PETITIONER
AND	
GODFREY KENNETH MIYANDA	3RD PETITIONER
AND	
LEVY PATRICK MWANAWASA	1ST RESPONDENT
AND	
THE ELECTORAL COMMISSION	2ND RESPONDENT
AND	
THE ATTORNEY GENERAL	3RD RESPONDENT

CORAM: Sakala, CJ, Lewanika, DCJ, Chirwa, Chibesakunda, Mambilima, Chitengi and Silomba, JJS.

On various dates between 22nd July 2002 and 30th November 2004 and 16th February 2005.

For the 1st Petitioner: Prof. M.P. Mvunga, SC., of Mvunga Associates
Mr. S. Sikota, of Central Chambers
Mr. J. Mwiimbu, of Jack Mwiimbu and Company

For the 2nd Petitioner: Mr. C.K. Banda, SC., of Chifumu Banda and Associates
Mr. E. Mwansa, of Ernest Mwansa and Associates.

For the 3rd Petitioner: In Person.

For the 1st Respondent: Dr. J.B. Sakala, SC., of J.B. Sakala and Company
Mr. S.M. Malama, of Jacques and Partners
Mr. M.M. Mundashi, of Mulenga Mundashi and Company

For the 2nd Respondent and the 3rd Respondent: Hon. George Kunda, SC., Attorney-General
Mr. J. Jalasi, Principal State Advocate
Mr. D. Sichinga, Acting Chief State Advocate

J U D G M E N T

Sakala, CJ, delivered the judgment of the court.

Cases referred to:

(1) Northman Vs Barnet Council (1978)) 1 ALL ER 1243 and page 1246
(2) Pyx Granile Co. Limited Vs Ministry of Housing and Local Government (1960) AC. 260 at 286
(3) Akashambatwa Mbikusita Lewanika and Others Vs Frederick Jacob Titus Chiluba SCZ Judgment No. 14 of 1998
(4) Miyanda Vs Handahu (1993 – 1994) Z.R. 187,

(5) Miyanda Vs Attorney General (1985) Z.R. 185
(6) Abel Banda Vs The People (1986) Z.R. 105
(7) Re The nomination paper of A.C. Ngoma and the Federal Electoral Act (1958) NLR 974,
(8) The Controverter Election for the Electoral District of Two Mountains (1912) 47 C.S.C. 183
(9) Charan Lal Sahu Vs Giani Zail Singh and Another (1985) LRC 31
(10) The Attorney General and the MMD vs Akashambatwa Mbikusita Lewanika and four others (1993/1994) ZR 164.
(11) Mwamba and Another Vs The Attorney-General of Zambia (1993) 3 LRC 16
(12) Sussex Peerage Case 1843 – 1845 (65RR) 11 at Page 51
(13) Seaford Court Estates Limited Vs Asher (1949) 2KB 481 at 499.
(14) Yonnah Shimonde and Freight and Liners -Vs- Meridien BIAO Bank (Z) Limited SCZ Judgment No. 7 of 1999.
(15) Mlewa Vs. Wghtman. (1995) Z.R. 171
(16) Bater Vs. Bater, (No. 2) (1950) 2 ALL ER 458
(17) Zulu Vs. Avondale Housing Project Ltd. [1982] Z.R. 172
(18) Mwelwa Vs. The People [1975] Z.R. 166
(19) Khalid Mohamed Vs. the Attorney General (1982) Z.R. 49
(20) Christopher Lubasi Mundia Vs Sentor Motor limited (1992) ZR 66 at page 70
(21) London Passenger Transport Board Vs Moscrop (1942) SC 332 at 347 (22)
(22) Zambia Electricity Supplies Cooperation Vs Redline Limited (1990/92) Z.R. 170
(23) Carver Foel Jere Vs. DVR/SGT Shamayuwa and Attorney General (1978) Z.R. 204
(24) Re Robinson Settlement, Grant Vs. Hobbs [1978] 1Ch.D.728 (25)
(25) Kearny Company Limited Vs. Agip (Zambia Ltd Asphalt and Tamarc (1985) Z.R. 7

Legislation referred to:
Constitution of Zambia, Cap.1: Articles: 34,35,38 (1) (2) (3), 41 (1) (2), 75 (2)
Electoral Act, Cap. 13: Sections: 2, 8, 9 (1), 17,18 (2), 20 27 (1)
Electoral (Amendment) Act, No. 23 of 1996: Section 9 (3)
Interpretation and General Provisions Act, Cap. 2, Section 10, 20 (3)
Electoral (Presidential Elections) Regulations: Reg. 17.
Supreme Court rules, Cap. 25: Rule 72A
Election Petition Rules, Cap. 13: Rule 4 (1)
Electoral (General) Regulations Reg. 3, 22 and 23
Electoral (Conduct) Regulations of 1996:7 (I) (l)

The trial and the determination of this Consolidated Presidential Election Petition of 2002 has seemingly taken a long period to complete and justifiably so, the delay caused a lot of anxiety in the nation and others. Yet, the number of the actual days, when the court sat and heard witnesses, arguments and submissions in support of various interlocutory applications, does not reflect the long duration the Petition has taken. The Court sat for 89 days in all to hear evidence, arguments and submissions. But in terms of duration, the Petition commenced in January 2002 and judgment is being delivered today, a period of three years and one month from the dates the separate Petitions were filed. The circumstances, some of which were procedural, leading to the protracted trial, were, in most instances, unavoidable and beyond the control of the court. In fact, the court was all along desirous to complete the matter as quickly as possible. To put the record straight, it is necessary to allude to some of the circumstances leading to this protracted trial. There are three Petitioners and three Respondents in this Petition. While the 3rd Petitioner appeared in person, the other two Petitioners were represented. On the part of the 1st and the 2nd Petitioners, there were initially seven Counsel of record, while there were also seven Counsels on the part of the Respondents. During the examination of witnesses, each of the Counsel had, at times, to put questions to the witnesses. The three Petitioners originally filed separate Petitions. The 1st Petitioner filed his original Petition on 15th January 2002, while the 2nd Petitioner filed his original Petition on 16th January 2002. The 3rd Petitioner, who represented himself, filed his original Petition on 17th January 2002 and subsequently; he filed an Amended Petition on 17th March 2002.

The filing of these Petitions was followed by various interlocutory applications and rulings before single Judges of this court. These are on record. The Respondents, too, initially filed separate Answers to each of the separate Petitions. The 1st Respondent filed his Answer to the 1st and the 2nd Petitioners' Petitions on 14th May 2002, while the 1st Respondent's Answer to the 3rd Petitioners' Petition was filed on 18th July 2002. The 2nd and the 3rd Respondents filed a joint Answer to the 1st and the 2nd Petitioners' Petitions on 4th June 2002. After close of pleadings, the matter was set down for hearing for 22nd July 2002. On that day, interlocutory matters, which are also on record, were raised. The hearing of witnesses could not start on that day. The matter was adjourned to 23rd July 2002. After, again, disposing of some interlocutory matters on that day, the hearing of evidence could not proceed. The matter was adjourned to 16th September 2002. On the same 23rd July, it transpired that the earlier Order for Directions issued by the court, in relation to pleadings, had not been fully complied with. Consequently, a fresh Order for Directions had to be issued.

This fresh Order was in the following terms; that the Petitioners file their Amended Consolidated Petition by 31st July 2002; that the Amended Consolidated Answer be filed by 12th August 2002; that the Reply, if any, be filed by 22nd August 2002; that Discovery and Inspection be completed by 2nd September 2002; that the Bundle of Documents and Pleadings be filed by 9th September 2002; and that the hearing of the Amended Consolidated Petition be commenced on 16th September 2002. In the course of hearing the Petition, it transpired that this fresh Order was also not fully complied with in that Discovery and Inspection seemed not to have been done. As a result of this failure to fully comply with the Order of Discovery and Inspection, fresh documents continued to surface in the midst of hearing a witness resulting in further arguments and rulings. All in all, the exchange of pleadings took about nine months. The hearing of evidence from witnesses commenced on 16th September 2002. The 3rd Petitioner closed his case on 6th October 2003, while the 1st and the 2nd Petitioners closed their case on 10th October 2003, after all the Petitioners had called a total of 76 witnesses. Although it took 57 days to hear evidence, arguments and submissions on behalf of the three Petitioners, there were in between the hearings 20 long adjournments for a variety of reasons. Some of the reasons were difficulties encountered by the parties in securing the attendance of witnesses, Counsel seeking instructions from their respective clients and also the courts' work schedule. There was also the problem of securing suitable hearing dates convenient to all the parties as well as the court.

The hearing of the evidence on behalf of the Respondents commenced on 10th November 2003. They closed their case on 6th October 2004, after hearing evidence from 80 witnesses. The hearing of the Respondents' case took 32 days with 11 long adjournments in between the hearings. After the close of the Respondents' case, the court invited written submissions from the parties. The Petitioners were to file their written submissions by 29th October 2004. But the 1st and the 2nd Petitioners filed their written submissions on 4th November 2004. The 3rd Petitioner filed his written submissions on 19th November 2004, instead of 29th October 2004 as directed by the court. The Respondents were directed to file their responses to the Petitioners' written submissions by 21st November 2004. Instead, the 1st Respondent filed his written submissions on 25th November 2004, while the 2nd and the 3rd Respondents filed their written submissions on 26th November 2004. Thus, again the dates directed by the court were not followed thereby contributing to the long period the Petition has taken. As a consequence of not following the directed dates, the Petitioners, who had been directed to file their written replies, if any, by 26th November 2004, to enable the Court to sit on 30th November 2004 for oral submissions, were unable to file their replies by 26th November 2004. The Court, however, sat on 30th November 2004. But the Petitioners insisted on their right to file written replies. The court granted them the application to file their replies by 7th December 2004. On the same 30th November 2004, the court reserved judgment to a date after the written replies by the Petitioners had been filed and the date for delivery of judgment was to be communicated to the parties. This is the history of this Consolidated Petition leading to this unprecedented long period it has taken. We have deliberately delved into this detailed history of this Petition in order to bring out two points. The first point is that the events leading to the long period it has

taken to complete this matter were unavoidable and in the interest of justice. The second point is that elections, be it Presidential or Parliamentary, by their nature of demanding a quick resolution, ought not and must not follow the course of the existing clogged court system which has very slow wheels of resolution because of the strict requirement of adherence to rules of pleadings, practice and procedure.

Matters pertaining to elections must be determined very expeditiously lest they be rendered an academic exercise at the end. During the hearing of this Petition, on a number of occasions, the court passionately appealed to the parties to expedite the bringing of witnesses to court. The court also expressed its serious concerns at the slow pace the Petition had been proceeding. At one stage, the court was even told by Counsel that "it can take as long as it takes". Indeed, the long history of the trial of this Petition cannot be said that it was the court's intention that it goes on *ad infinitum* as suggested in some quarters. Issues of bereavements, which were some of the issues leading to long adjournments, were matters beyond anyone's control. The long period it has taken the court to conclude this matter is very much regretted. It has taken two months and eight days to render this judgment after the Petitioners filed their replies. This was on account of the complexity of the case, and the novel constitutional issue based on the special jurisdiction of this court given to it by the Constitution. The court had to examine the issue of jurisdiction carefully as it was raised and argued for the first time. We shall deal with the issue of jurisdiction and other related matters later in this judgment. It was also necessary for the court to do a thorough research in the matter. Apart from that, the court had to study the evidence of all the 156 witnesses contained in 11 box files of typed transcripts of evidence. The typed evidence alone runs into 7,180 pages. The court had also to study over 500 pages of written submissions by the parties and study the authorities referred to it. We are indebted to Counsel on both sides and the 3rd Petitioner for the detailed learned written submissions. In addition to all that has been said, in the course of hearing the Petition, the court had to contend itself with the schedule of other cases in Lusaka, Kabwe and Ndola. Having explained the long journey the Petition has taken, we now turn to deal first with the preliminary issues of jurisdiction and/or remedies, as raised in the written arguments and submissions on behalf of the 2nd and the 3rd Respondents. The 3rd Petitioner also raised an issue of conflict of interest on the part of the learned Attorney General, suggesting that he had no locus standi in this matter. Before we deal with the preliminary issues, we must allude to the provisions of the Constitution under which the Petition was brought. The Petition was made pursuant to Article 41 (2) of the Constitution of Zambia. This Article reads: "(2) Any question that may arise as to whether – (a) Any provision of this Constitution or any law relating to election of a President has been complied with, (b) Any person has been validly elected as President under Article 34; Shall be referred to and determined by the full bench of the Supreme Court." The first and most cardinal preliminary issue is the one raised by the Respondents with regard to the jurisdiction of this Court to hear and determine this Petition. But when arguing the point, it was argued together with the issue of remedies. The Respondents consider the issue of jurisdiction to be very critical in that they first raised it through a Notice of Motion filed in this court on 13th November, 2002, pursuant to Order 14A, as read with Order 33, rules 3 and 7, of the Rules of the Supreme Court, 1999 Edition. In our Ruling of 19th November 2002, we said that this Petition could not be properly determined through the Motion that was before us because the issues raised in the Notice of Motion went to the very root of the Petition. Consequently, we declined to entertain the motion and advised the parties to raise the issue in their submissions at the conclusion of the hearing of the Petition. It would appear that the Petitioners anticipated that the Respondents would again raise the issue of jurisdiction in their submissions and consequently, the Petitioners made submissions on the issue of jurisdiction to the extent that the Respondents were relegated to the position of replying. The 1st and the 2nd Petitioners referred us to Article 41(1)(2) of the Constitution and submitted that these provisions are not ambiguous in terms of content and construction pertaining to the determination and validity of the election of the President in Zambia. They argued that the role of the court in a Presidential Election Petition is to resolve disputes between different parties of the society so that society does not degenerate into anarchy, otherwise parties to Presidential Elections would have, as their only recourse, to take their grievances to the streets. They submitted that this court has the jurisdiction to determine the matter on

merit. It is the 1st and the 2nd Petitioners' further submission that the Supreme Court of Zambia is endowed with the final authority to determine and interpret the laws of the land. One of the authorities to which they referred us is the case of Northman Vs Barnet Council (1) at page 1246 in which Lord Denning stated, inter alia, "The literal method is now completely out of date. It has been replaced by the approach, which Lord Diplock described as purposive approach……

In all cases now in the interpretation of statutes we adopt such a construction as will promote the general legislative purpose underlying the provision. It is no longer necessary for the Judges to wring their hands and say: "There is nothing we can do about it." Whenever the strict interpretation of the statute gives rise to an absurd and unjust situation the Judges can and should use their good sense to remedy it by reading words in, if necessary so as to do what Parliament would have done, had they had the situation in mind." This decision was confirmed by the House of Lords in (1979) 1 ALL ER Page 142. The 3rd Petitioner also submitted extensively on the issue of jurisdiction of this court to determine these Petitions and cited to us several authorities in support of his submissions. He stated that there is a presumption against the ouster of the jurisdiction of courts. According to the 3rd Petitioner, it would be contrary to public policy to oust the jurisdiction of the full bench of this court in view of Article 41(2) of the Constitution whose purpose and effect is to grant special and/or exclusive jurisdiction to the court to hear and determine Presidential Election Petitions. For this submission, the 3rd Petitioner referred us to various authorities, one of which was Lord Simonds' statement in the case of Pyx Granile Co. Limited Vs Ministry of Housing and Local Government (2) where he said, when considering whether a statute had excluded the right of a subject to have recourse to courts of law, that: - "It is a principle not by any means to be whittled down that the subject's recourse to Her Majesty's Courts for the determination of his rights is not to be excluded except by clear words."

The 3rd Petitioner submitted further that under Article 41(2) of the Constitution, this court has at the end of the hearing, to determine whether the 1st Respondent or any other person was duly elected as President of Zambia. He also stated that as a participant in the last Presidential Elections, he was claiming his rights as guaranteed in the Constitution of Zambia and that those rights be enforced or applied to him (sic). According to the 3rd Petitioner, these constitutional rights cannot be abridged by law or waived by any official. Finally, the 3rd Petitioner submitted that it would be a judicial scandal of the century if, after three years of hearing the Petition, the court, in frustration, failed to give a remedy after finding the 1st Respondent guilty. On behalf of the 1st Respondent, it was submitted that there was no law under which this election may be nullified. We were referred to our earlier decision in the case of Akashambatwa Mbikusita Lewanika and Others Vs Frederick Jacob Titus Chiluba (3) in which we stated, inter alia, that: - "

Since a Presidential Election is conducted under the practices and procedures set out by or under the Electoral Act, Cap 13 of the Laws of Zambia (1995) edition, this court had determined quite early in the proceedings that guidance would be sought from that Act on many of the issues that arose, for example, the grant of indemnities to witnesses. In the same vein, we had to look to the Act and the Regulations when considering the issues of bribery and corruption; irregularities; and the flaws. We also had to borrow from the principles as set out in Section 18 of Cap 13 which reads…"

Counsel also referred us to Article 41 of the Constitution, which empowers this Court to determine whether any person has been validly elected as President and/or whether any provision of the Constitution or any law relating to the election of the President has been complied with. In short, Counsel for the 1st Respondent concedes that this court has power to hear and determine a Presidential Election Petition.

However, Counsel argued that under Article 38 of the Constitution, a vacancy in the office of the President can only occur when: - (a) A sitting President dies; or (b) resigns; or (c) is impeached; or (d) is incapacitated; or (e) the National Assembly is dissolved. In view of this, Counsel submitted that there is a yawning lacuna as to what happens when the court nullifies the election of a President in that the law does not provide for the occurrence of a

vacancy and a remedy as a result of such nullification. In this regard, it was argued that Section 18 of the Electoral Act couldn't be relied upon because on a proper construction of Section 18 of the Electoral Act, which falls under Part VI and which avoids the election of a candidate to the National Assembly, does not apply to a Presidential candidate. It was further argued that while by virtue of Regulation 17, Electoral (Presidential Elections) Regulations, Part IV of the Electoral (General) Regulations, which creates electoral offences under which an election may be nullified, apply to Presidential elections, this Regulation does not and cannot amend the principal Act because it is a subsidiary legislation. It was the 1st Respondent's position that Section 18 of the Act, therefore, does not apply to a Presidential Election. In the view of the 1st Respondent, this court cannot fill in the lacunae created by Article 41 of the Constitution by reading into the Electoral Act matters, which have not been provided for. It was argued that the intention of the legislature was very clear, which is that Part VI of the Electoral Act was not intended to cover Presidential Elections. It was submitted that if this were the case, the legislature would have said so in Act 23 of 1996, which amended Part 111 dealing with Presidential Elections.

To buttress this submission, the 1st Respondent referred us to our decision in the case of Miyanda Vs Handahu (4) where we said: - "It is not what the legislature meant to say or what their supposed intentions were with which the Court should be concerned; the Court's duty is to find out the expressed intention of the legislature. When the language is plain and there is nothing to suggest that any words are used in a technical sense or that the context requires a departure from the fundamental rule, there would be no occasion to depart from the ordinary and literal meaning and it would be inadmissible to read into the terms anything else on grounds such as of policy, expediency, justice or political exigency, motive of the framers and the like……"

On the prayers in the Petition, the 1st Respondent submitted that the orders being sought by the Petitioners are in the nature of declarations. It was argued that while it is conceded that this court can grant a declaration, the question the 1st Respondent poses is: In view of the Constitutional lacuna, how far can any such declaration made by the court be effective, useful and beneficial to the country and the people of Zambia? Relying on the case of Miyanda Vs Attorney General (5) the 1st Respondent submitted that a declaration, being a discretionary remedy, can only be made on proper principles and considerations and will not be made when it will serve no useful purpose. It is the 1st Respondent's position that should the court make the orders, it has to accept that it will be involved in the enforcement of the said orders and gives direction as to what will happen after nullification of the Presidential Election. Consequently, the 1st Respondent invited this court to hold that in view of the lacunae in the law, the success of this Petition will be of an academic value only.

Submitting on behalf of the 2nd and the 3rd Respondents, the learned Attorney-General stated that the issue of jurisdiction was fundamental. He echoed the submissions on behalf of the 1st Respondent that the constitutional provisions are deficient and have serious lacunae. He pointed out that the law does not prescribe any grounds upon which the election of a President may be annulled. According to him, the office of President cannot become vacant as a result of an Election Petition. He also referred us to Article 41(2) of the Constitution and submitted that this provision is vague in that it does not stipulate what particular provision of the Constitution or any law should be contravened so as to lead to the nullification of a Presidential Election and the grounds upon which the Supreme Court should rely to determine whether a President has been validly elected. The learned Attorney-General also referred us to the case of Akashambatwa Mbikusita Lewanika Vs Fredrick Jacob Chiluba (supra) and submitted that in this case, the propriety of resorting to Section 18 of the Electoral Act, in resolving issues raised in election Petitions originated under Article 41(2) of the Constitution, was not raised and not fully argued. He was of the view that had these arguments in relation to Section 18 been raised, this court could have decided otherwise on the use of this Section in Presidential Election Petitions. He urged us to depart from the approach that we adopted in the Akashambatwa Mbikusita Lewanika Vs Fredrick Titus Jacob Chiluba case by not relying on the grounds prescribed in Section 18 of the Electoral Act.

The learned Attorney-General urged us to overrule this decision, arguing that there are sufficient reasons for us to do so. For this submission, he referred us to the case of Abel Banda Vs The People (6) in which this court held, inter alia, that in order to have certainty in the law, the Supreme Court should stand by its past decisions even if these are erroneous unless there is a sufficiently strong reason requiring that such decisions should be overruled. He went on to state that the court relied on Section 18 of the Electoral Act because the Constitution and the Electoral Act do not provide specific grounds for nullifying a Presidential Election. On the submissions by the Petitioners that this court can seal gaps and lacunae in the law and grant the remedies sought, should the strict interpretation of the statutes lead to an absurd and/or unjust situation; the learned Attorney-General submitted that the authorities relied on by the Petitioners do not apply to the interpretation of electoral statutes.

According to the learned Attorney-General, decided cases are to the effect that electoral legislation should be construed strictly and that courts should not rewrite or read new provisions into such legislation. He referred us to the case of Re The nomination paper of A.C. Ngoma and the Federal Electoral Act (7) where the court quoted from the Canadian Case of The Controverted Election for the Electoral District of Two Mountains (8) in which Davies J stated that: - “In construing the Section of such an important Public Act as the one under consideration, I think that while we should be careful, on the one hand, not to allow merely technical or formal objects to prevail so as to defeat the manifest purpose and intention of the Act, on the other, we should not attempt to re write the Act or to strain the clear, precise language of its Sections so as to render them innocuous.”

The learned Attorney-General also extensively quoted from the Indian case of Charan Lal Sahu Vs Giani Zail Singh and Another (9) in which Chandrachud, C.J. threw out a challenge to the election of the President on the ground that he was not a suitable candidate. The enabling legislation, in that case, did prescribe the grounds upon which the election of a candidate could be declared void and suitability was not one of such grounds. The court was of the view that the ballot box was to be the sole judge of the suitability of the candidate. The learned Attorney-General further submitted that while Section 18 of the Act only covered Parliamentary Election Petitions, Sections 8 and 9 of the Electoral Act governed Presidential Election Petitions. According to the learned Attorney General, Section 9 of the Act is as vague as Article 41(2) of the Constitution in that it does not prescribe grounds for nullifying a Presidential Election. He went on to state that in view of this, this court should revisit it’s decision in the Akashambatwa Mbikusita Lewanika Vs Chiluba case to the extent that the court sought guidance from Section 18 of the Electoral Act. In his further submissions, the learned Attorney-General stated that neither the Constitution nor the Electoral Act prescribe remedies which may be granted to a Petitioner in a Presidential Election Petition. The statutes merely empower the Court to determine whether; (a) any provision of the Constitution or law relating to election of the President has been complied with; and/or (b) any person has been validly elected as President under Article 34.

The learned Attorney-General pointed out that under this law, the starting point is the Constitution itself. He went on to state that the only provision of the Constitution relating to the election of the President is Article 34. This Article prescribes among others, the qualification of candidates in a Presidential Election; when a Presidential Election would be held; and how the Presidential poll would be conducted. He stated that the court also has to consider other laws apart from the Constitution and consider whether they have been complied with. According to the learned Attorney-General, these other laws are Part III of the Electoral Act, and the Electoral (General) Regulations as extended by the Electoral (Presidential Elections) Regulations. He submitted that these provisions are in contrast to Section 20 of the Electoral Act, which clearly prescribes the remedies that may be granted in a Parliamentary Election Petition. The learned Attorney-General submitted that if it was proved, at the end of this Petition, that there was non compliance with the laws, there is no provision either in the Constitution or the Electoral Act under which this court would grant the remedies sought. He stated that the Constitution does not provide for a vacancy in the office of President arising from nullification of a Presidential Election.

According to the learned Attorney-General, it was not the intention of the legislature that an incumbent President should vacate office pursuant to an Election Petition. He found support for this submission in Articles 35 and 38 of the Constitution, which prescribe instances when the office of President can become constitutionally vacant.

The learned Attorney-General also raised the issue of the limitation period under Section 27(1) of the Electoral Act which provides that Parliamentary Election Petitions should be determined within 180 days of the presentation of the Petition to the High Court. He stated that there is no similar provision applicable to a Presidential Petition. The learned Attorney-General submitted that should this court hold that provisions relating to Parliamentary Election Petitions should be applied in determining Presidential Election Petitions, then Section 27(1) of the Electoral Act should also apply. To support his submission, the learned Attorney-General relied on the case of Re The Nomination Paper of A.C. Ngoma and the Federal Act (supra) which, according to him, expounded the principle that courts must ensure that the provisions of Electoral Acts are properly complied with. He submitted that the idea behind prescribing the period of 180 days was to cure the mischief of delaying Petitions for long periods until they become an academic exercise. He submitted further that this period is mandatory and should be complied with. He stated that since the Petition in this case went well beyond the 180 days period, we should dismiss it for want of prosecution. According to the learned Attorney-General, there was inordinate delay in prosecuting the action and that passing judgment now would be catastrophic and disruptive to the nation. He also stated that such nullification would bring into question, the agreements and appointments made by the 1st Respondent. He submitted that the correct status of the matter is that it is illegally before the court, having exceeded the prescribed period by two and half years.

In reply, the 1st and the 2nd Petitioners made an extensive joint submission, the sum and substance of which is that the Respondents raised the issue of jurisdiction too late in the day. They pointed out that by the time the Respondents raised the issue of jurisdiction the pleadings had been closed and some witnesses had even given evidence. Further, the 1st and the 2nd Petitioners said that a preliminary issue should be raised at the first available opportunity before pleadings from the side raising the preliminary issue. In short, the 1st and the 2nd Petitioners are saying that the Respondents cannot raise the issue of jurisdiction after submitting to the jurisdiction of the court. Citing Article 41(2) of the Constitution, the 1st and the 2nd Petitioners submitted that this court has the jurisdiction to determine a Presidential Election Petition. Quoting the definition of the word "determination" from Blacks Law Dictionary 6th Edition and the Concise Oxford Thesaurus compiled by Betty Patrick 1995, the 1st and the 2nd Petitioners submitted that the word determination in Article 41(2) of the Constitution means decision, conclusion, judgment, verdict, opinion, decree, solution, result, arbitration, settlement, diagnosis or prognosis. It was argued that to determine a case is to decide, resolve, conclude, end, terminate or finish an argument. The 1st and the 2nd Petitioners say the court must therefore determine this Petition. It was emphasized that the jurisdiction of the Supreme Court to hear a Presidential Election Petition is not only provided for by Article 41(2) of the Constitution but also by Section 9(3) of Act Number 23 of 1996 which provides that: -

"Any question by any person which may arise as to whether any provision of the Constitution or any law relating to nomination or election of President has been complied with shall be referred by the Returning Officer or by such person to the full bench of the Supreme Court within 14 days of the person elected as President being sworn-in in accordance with Clause 9 of Article 34 of the Constitution."

The 1st and the 2nd Petitioners then drew the court's attention to the fact that in the 1996 Presidential Election Petition, the Supreme Court conclusively determined the Petition regarding the validity of the election of Frederick Jacob Titus Chiluba. In this case, the 1st and the 2nd Petitioners argued, the Supreme Court has jurisdiction to determine the validity of the election of the 1st Respondent. On the argument that there is a lacuna in the law in that the Constitution does not prescribe the grounds upon which the election of a President may be annulled, the submission on behalf of the 1st and the 2nd Petitioners is that the Supreme Court had, in the 1996 Presidential Election Petition against Frederick Jacob Titus Chiluba, already ruled that Section 18 of the Electoral Act applies.

It was argued that the holding by the Supreme Court in case of Lewanika versus Chiluba that Section 18 of the Electoral Act also applied to Presidential Election Petitions was consistent with the preamble to the Electoral Act which says that the provisions relate, inter alia, to the election to the office of the President. It was argued further that by virtue of Regulation 17 of the Electoral (Presidential Elections) Regulations, Part IV of the Electoral (General) Regulations apply with necessary modifications to the election of a President. Further, it was submitted that by Statutory Instrument Number 17 of 2002, the Supreme Court Rules were amended so as to introduce Rule 72A which states that: "The provisions of the Election Petition Rules under the Electoral Act shall apply with necessary modifications to Presidential Petitions." It was also argued that since the Election Petition Rules that apply to Parliamentary Election Petitions also apply to Presidential Election Petitions, it follows that Rule 4(1) of the Election Petition Rules also applies to the Presidential Election Petitions. Rule 4(1) provides that "The Petitioner shall state the right of the Petitioner to petition under Section 18 of the Act." It was then argued that it was for this reason that in the Frederick Jacob Titus Chiluba Presidential Petition the Supreme Court said: - "Since a Presidential Election is conducted under the practices and procedures set out by or under the Electoral Act, Cap 13 of the Laws of Zambia (1985 edition), this Court had determined quite early in the proceedings that guidance would be sought from that Act on many of the issues that arose, for example, the grant of indemnities to witnesses. In the same vein, we had to look at the Act and the regulations when considering the issues of bribery and corruption irregularities and the flaws. We also had to borrow from the principles set out in Section 18 of Cap 13 which reads…" According to the 1st and the 2nd Petitioners, the issue of applicability of the Electoral Act and the Regulations made there under has, therefore, been long settled by this court after due attention and consideration. It was further submitted that the argument by the Respondents that the interpretation of Regulation 17 and Section 18 of the Electoral Act and Articles 34 and 41 of the Constitution that a Presidential Election cannot be annulled, does not fall within the terms of the phrase in Article 41(2) that: "Any question, which may arise as to whether - (a) Any provision of this Constitution or any law relating to the election of a President has been complied with or (b) any person has been validly elected as President under Article 34 (c) shall be referred to and determine by the full bench of the Supreme Court." It was argued that the interpretation the Respondents put on the rules and the constitutional provisions does not accord with the natural and ordinary meaning of the words in the phrase quoted above; nor with the clear purpose of Articles 34 and 41 of the Constitution. It was argued further that the interpretation does not comply with the guarantees that statutes and the Constitution shall be interpreted in a manner which will give life to the intention of Parliament provided by the Supreme Court in the case of The Attorney-General and the MMD vs Akashambatwa Mbikusita Lewanika and four Others (10).

It was the submission of the 1st and the 2nd Petitioners that the Respondents have cited no authority to support the interpretation they seek to place on Articles 34 and 41 of the Constitution and Regulation 17 and Section 18 of the Electoral Act. On the argument on lapse of 180 days within which to complete the hearing and determination of the Petition, it was submitted that this court ruled on that issue in 1996 when it said that the provision in the law that Election Petitions must be completed within 180 days should not be interpreted as an endorsement that an election Petition begun in good time must be stopped and thrown out because the nature of the case takes it beyond the 180 days limit. It was argued that in fact, numerous Election Petitions take more than 180 days and the court should take judicial notice of that fact. On the submissions that the nullification of the election would bring into question the agreements and appointments made by the 1st Respondent, it was submitted, on behalf of the 1st and the 2nd Petitioners, that on the authority of Noris case, which was adopted by this court in Mwamba and Another Vs The Attorney-General of Zambia(11) the agreements and appointments made by the 1st Respondent will remain valid notwithstanding that his election has been nullified. As to the possibility of chaos, it was submitted that like in the Ukraine, nullification of the election of the 1st Respondent will not be catastrophic but will lead to peace. On a rather personal note, it was also argued that the 1st and the 3rd Respondents should not talk about lacunae in the law now because the 1st Respondent was once a Solicitor-General

and at one time leader of the House and the 3rd Respondent is the learned Attorney-General. They stated that the 1st Respondent and the learned Attorney-General should therefore, have seen those lacunae and made the necessary amendments to the law. It was submitted that if there are lacunae in the law, then the learned Attorney-General is taking advantage of his own default or inefficiency. And by pleading the lacunae, the learned Attorney-General is failing to protect the rights of the aggrieved parties in the election process. On the argument by the 2nd and the 3rd Respondents that the election of the 1st Respondent cannot be invalidated by a mere violation of Election Regulations, it was submitted that in Zambia, violation of Electoral Regulations can lead to the nullification of a Presidential Election. On the case of Charan Lal Sahu, relied on by the 2nd and the 3rd Respondents, it was submitted that, that case is irrelevant as the issue at hand is not one of suitability of the 1st Respondent but the validity of his election. On what would happen in the event of the election of the President being annulled, it was submitted that by virtue of Sub Article 2 of Article 38 of the Constitution, the Vice President or in his absence a member of the cabinet elected by the cabinet shall perform the functions of the President in accordance with Article 34 until a new President assumes office. According to the 1st and the 2nd Petitioners, the word “whenever” in Sub Article 2 of Article 38 is contrasted with Sub Article (1) of Article 38 which talks about specific incidents.

Therefore, it was argued, Sub Article (2) of Article 38 will apply regardless of the manner the President vacates office and covers all unforeseen circumstances. It was argued that these unforeseen circumstances include nullification of the President’s election under Article 41 of the Constitution. Relying on Section 10 of the Interpretation and General Provisions Act, it was argued and submitted that Sub Articles (1) and (2) of Article 38 should be taken notice of separately in that Sub Article (1) provides for the time within which an election should be held when a vacancy occurs, whereas Sub Article (2) provides that whoever shall act as President will continue until the next elections are held. Further, it was argued that these Sub Articles are distinct and provide for different scenarios. In his reply to the Respondents’ submissions, the 3rd Petitioner repeated his earlier submissions on jurisdiction. He pointed out that by virtue of the Akashambatwa Mbikusita Lewanika case (supra), the application of Section 18 of the Electoral Act to a Presidential Election Petition is the correct legal position. He said that any uncertainty has been resolved by the promulgation of Statutory Instruments. He pointed out that Regulation 17 of the Electoral (Presidential Elections) Regulations makes Part IV of the Electoral (General) Regulations applicable with necessary modifications to an election of a President as they apply to and in respect of elections of members of the National Assembly. On the application of the other Electoral Regulations to Presidential Elections, the 3rd Petitioner echoed the submissions of the 1st and the 2nd Petitioners. Further, the 3rd Petitioner echoed the submissions by the 1st and the 2nd Petitioners on what should happen after nullification of the Presidential election. The 3rd Petitioner submitted extensively on the issue of 180 days limitation and cited several authorities but the import of the 3rd Petitioner’s submissions is that the issue of limitation has been raised too late and that in any case there is already a precedent by this court where an Election Petition has taken more than 180 days to dispose of.

The 3rd Petitioner also submitted on conflict of interest in so far as the learned Attorney-General’s appearance in these proceedings is concerned. However, we do not think that these submissions go to the issue of jurisdiction raised by the Respondents. Therefore, we do not intend to go into the submissions related to conflict of interest. We are, however, satisfied that there is no conflict of interest in the present Petition. We have given our anxious consideration to the submissions by the parties on the issue of jurisdiction. It is common cause that the only provision under which a Presidential Election Petition can come before the Supreme Court is Article 41 of the Constitution. As we understand the submissions and the arguments, the critical issue being canvassed by the Respondents is that while this court has the power to hear and determine any question which may arise as to whether a person has been validly elected as President or indeed, whether the provisions of the Constitution or any other law relating to the election of a President has been complied with, this court has no jurisdiction to grant the remedies

which the Petitioners are seeking in this Petition. Article 41(2) of the Constitution provides as follows –

> "41(1) Any question which may arise as to whether: - (a) any provision of this Constitution or any law relating to election of a President has been complied with; (b) any person has been validly elected as President under Article 34; shall be referred to and determined by the full bench of the Supreme Court."

The question is; what mandate has this provision given to this court? It is trite law that the primary rule of interpretation is that words should be given their ordinary grammatical and natural meaning. It is only if there is ambiguity in the natural meaning of the words and the intention of the legislature cannot be ascertained from the words used by the legislature that recourse can be had to the other principles of interpretation. Tindal C.J. in the old English case of Sussex Peerage(12) lends credence to this view when he said that: - "If words of a statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary sense." Indeed, as Lord Denning observed in the case of Seafood Court Estates Limited Vs Asher(13): - "A Judge must not alter that of which it (a statute) is woven, but he can and should iron out the creases." Looking at the words used in Article 41(2) of the Constitution, it is clear to us that this court has been clothed with the mandate to determine whether any person has been validly elected as President and/or whether any provisions of the Constitution or any law relating to the election of a President has been complied with.

The Concise Oxford Dictionary, 9th Edition, at Page 368 defines "determine" to mean: - (a) find out or establish precisely; (b) decide or settle; (c) be a decisive factor in regard to; (d) make or cause a person to make a decision; (e) bring or come to an end; and (f) fix or define the position of. We have no doubt in our minds that the meaning of the word "determine" in the context it is used in Article 41(2) calls upon this Court to find out or establish precisely or decide whether a person was validly elected as President of Zambia and/or whether the applicable laws were followed. Clearly, therefore, Article 41(2) of the Constitution confers this court with the jurisdiction to decide whether a person has been validly elected as President. As such, the submissions by the Petitioners that this Court has jurisdiction to hear and determine this Petition are well grounded. Indeed, even Counsel for the 1st Respondent conceded that this court has jurisdiction to hear and determine the election of a President. Their only quarrel was that there is no legal provision under which we can nullify the election of a President. In trying to show that this court has no power to annul the election of the President and grant the remedies sought, the Respondents took us through the provisions of the Electoral Act and the relevant Regulations made thereunder and the Constitution, arguing that there is no express provision stipulating the grounds upon which an election of the President may be nullified and specifying the remedies to be granted in the event of such nullification. It has been argued by the Respondents, that while by virtue of Regulation 17 of the Electoral (Presidential Elections) Regulations, Part IV of the Electoral (General) Regulations applies to Presidential Elections Petitions, Section 18 of the Electoral Act, which voids an election of a candidate to the National Assembly on the grounds stipulated therein, does not apply to Presidential Election Petitions.

The Respondents pointed out that there has been no amendment to the Electoral Act for Section 18 to apply to Presidential Election Petitions. It has been argued that Regulation 17 cannot therefore purport to amend Section 18 as the Petitioners have argued. We agree with these submissions because Regulation 17 specifically refers to Part IV of the Electoral (General) Regulations. We agree that subsidiary legislation cannot amend provisions of the principal legislation: Yonnah Shimonde and Freight and Liners -Vs- Meridien BIAO Bank (Z)(14). In the event, all the submissions by the Petitioners to that effect are not tenable. Part IV of the Electoral (General) Regulations provides for corrupt and illegal practices and election offences, which in fact are offences for which a candidate may be liable. It is clear to us that the intention of Regulation 17 of the Electoral (Presidential Elections) Regulations was to apply the corrupt, illegal practices and other election offences to a Presidential candidate. Section 18 of the Electoral Act, however,

empowers the High Court to void the Election of a candidate as a Member of the National Assembly on the grounds stipulated therein. Our understanding of this provision is that anyone who intends to impugn the election of a candidate to the National Assembly must invoke the jurisdiction of the High Court under Section 18(1) of the Electoral Act and the election of such candidate shall only be declared void on proof of any of the grounds specified in Sub Section 2.

However, under Article 41(2) of the Constitution, the election of a President can be challenged on any question, either of law relating to the election of a President or the validity of the election itself. In trying the question alleged, this court is at large to look at the conduct of the Presidential election itself or indeed the compliance of the provisions of the applicable law. Should the court be satisfied, on any proven facts, that a candidate was not validly elected or indeed that the relevant laws were not complied with, so as to negate the legitimacy of the election, it will void such an election. In our view, Section 18 of the Electoral Act does not directly apply to Presidential Election Petitions. To argue otherwise would be to limit the wide Provisions of Article 41(2) of the Constitution under which this court is at large to consider any grounds in resolving questions referred to it. Any question relating to the legitimacy of a Presidential Election, including corruption, bribery, non-compliance with the relevant law etc. can be considered under Article 41(2) of the Constitution. Our use of the word “borrow” in relation to Section 18 of the Electoral Act, in the Lewanika Vs Chiluba judgment, should be understood in this context. The issue of jurisdiction was not raised and fully argued in that case. Had the issue been fully argued in the Chiluba case, we would, no doubt, have given the full meaning and extent of Article 41(2) of the Constitution. In any event, the arguments by the Respondents if taken to their logical conclusion suggest that a Presidential Election cannot be challenged at all and that Article 41(2) of the Constitution is of no consequence. This, in our view, could not have been the intention of the framers of our Constitution.

The Respondents also submitted that in the event that we hold that Section 18 of the Electoral Act applies to Presidential Election Petitions, we should also hold that Section 27(1) of the Electoral Act, which prescribes the time limit of 180 days within which to determine an Election Petition, should also apply to a Presidential Election Petition. We have found that Section 18 of the Electoral Act does not directly apply to Presidential Election Petitions. We have found no law, which suggests that Section 27(1) of the Electoral Act applies to Presidential Election Petitions. Though for different reasons, we uphold the Petitioners’ submissions that the 180 days limitation does not apply. On the other hand, even if Section 27(1) would be applicable, strict adherence to it, would lead to a number of illogicalities and absurdities in both Parliamentary and Presidential Elections, in that regardless of any reason, a Petition which exceeds 180 days must cease or collapse in midstream without any determination. This, in our view, would be most unsatisfactory. Perhaps, this explains why the Section is silent on what should happen when a Petition has exceeded 180 days.

We take note that in practice most Parliamentary Election Petitions and even the last Presidential Election Petition exceeded 180 days. Another argument advanced by the Respondents is that the law does not provide for a vacancy in the office of the President consequent upon nullification of the election of the holder of the office of President. We do not find much force in these arguments because in view of what we have said, the corollary to the finding by the court that the holder of the office of President was not validly elected, or that his election cannot be upheld by reason of non compliance with the laws relating to the election of a President, is that there will be a vacancy in the office of the President. In short, we find Article 41(2) of the Constitution to be comprehensive and to have envisaged a vacancy in the office of the President in the event that his election is nullified. As to how such a vacancy will be filled, it goes without saying that it will be through an election since there are no any other constitutional means for any one to ascend to the office of the President. In such an event, the court will have to order a fresh Presidential poll to be conducted in a specified time. The provisions of the Constitution in Article 38(1) are that a vacancy created in terms of that Sub Article shall be filled within 90 days. And we do not see the court departing from the spirit of this Article in the event that a fresh Presidential poll is ordered.

There have been arguments and submissions from the parties as to the constitutional arrangement in the event that the election of a sitting President is nullified. Without going into the details of the arguments and submissions, we find Sub Articles (2) and (3) of Article 38 of the Constitution to be sufficient. It is our opinion that these provisions stand alone and independent of Sub Article (1) of Article 38 of the Constitution, as argued by the Petitioners. We have reached this conclusion because Sub Article (2) of Article 38 does not refer to a vacancy that may be created pursuant to Sub Article (1) of Article 38 of the Constitution. Sub Article (2) of Article 38 starts with the words: "Whenever the office of the President becomes vacant." The Concise Oxford Dictionary, 9th Edition, on Page 1595, gives the natural meaning of the word "whenever" as "at whatever time; on whatever occasion etc." In the event, we hold that Sub Article (2) of Article 38 of the Constitution applies to a vacancy in the office of President, however caused. The arguments by the Respondents that Sub Article (2) of Article 38 of the Constitution will only operate when there is a vacancy created by Sub Article (1) of Article 38 is, therefore, untenable because it fails to take into account the election of a President, which has been declared invalid under Article 41(2) of the Constitution. The arguments by the Respondents if taken to their logical conclusion would lead to an absurd situation. If, for example a Presidential candidate would have been found to have cheated on age or citizenship thereby contravening Article 34 of the Constitution, it cannot be validly argued that such a situation would not create a vacancy in the office of the President. Article 38 of the Constitution should not be interpreted in isolation but in light of all the other relevant provisions in the Constitution, one of which is Article 34.

It is not within the spirit of the Constitution, as the arguments by the Respondents suggest, that when the incumbent President's election has been nullified there should be an interregnum, with no one to take care of the affairs of the state, thereby leading to the chaos the Respondents fear. In conclusion, we hold, on the preliminary issue of jurisdiction, that this court has the jurisdiction to hear and determine this Petition and if proven, grant the remedies sought. Another related preliminary issue raised by the 2nd and the 3rd Respondents, in their joint written submission, was for us to determine when one becomes a candidate in a Presidential Election. Their contention is that a person becomes a Presidential candidate only upon nomination as per the definition of candidate in Section 2 of the Electoral Act. Section 2 reads as follows: - "Candidate means any person nominated as a candidate for an election." The 2nd and the 3rd Respondents further contended that in terms of Section 2, a candidate is a person who goes through the prescribed process of nomination for an election and has filed nomination papers to qualify as a candidate. The 2nd and the 3rd Respondents also contended that in relation to Section 18(2) of the Electoral Act, which, inter alia, deals with electoral offences and mal-practices, for which an election may be annulled, can only apply to a Presidential candidate after he or she has lodged his or her nomination papers. In consequence thereof, it was the view of the two Respondents that all Presidential candidates were only answerable for illegal and corrupt practices committed after they lodged their nominations on the 1st December, 2001 and not otherwise.

The two Respondents have also drawn our attention to the definition of candidate in Statutory Instrument No. 108 of 1991, dealing with Electoral (General) Regulations and Statutory Instrument No. 109 of 1991, which deals with Electoral (Presidential Elections) Regulations and which, in their view, have expanded the definition of the term candidate. The Electoral (General) Regulations (S.I. No. 108 of 1991) define candidate as follows: - "Candidate means a person who, in relation to an election, has lodged or intends to lodge his nomination papers." And the Electoral (Presidential Elections) Regulations (S.I. No. 109 of 1991) define a candidate as follows: - (a) in relation to any period before the close of the period appointed under regulation 3 for receiving nomination in an election, any person intending to stand for election in such election; and (b) in relation to any period after the close of the period under regulation 3 for receiving nominations in an election, any person validly nominated as a candidate in such election. It was contended by the 2nd and the 3rd Respondents that these two definitions of candidate in the Regulations are at variance with the definition in Section 2 of the Electoral Act in that the Regulations purport to include persons who intend to stand for elections.

The two Respondents contended that the added meaning given to the term candidate in the two Regulations is contrary to Section 20(2) of the Interpretation and General Provisions Act, Chapter 2, of our Laws, which provides that: - “Terms and expressions used in Statutory Instruments shall have the same meaning as in the written law under which the Statutory Instrument was made.” The two Respondents also referred us to our decision in the case of Yonnah Shimonde and Freight and Liners – Vs - Meridien BIAO Bank (Z) Limited SCZ Judgment No. 7 of 1999 in which we subordinated a Statutory Instrument to the enabling Act in the following words:- “In choosing to apply a rate of interest upon a judgment debt based on the current bank rates at the time, the learned Commissioner relied on Statutory Instrument No. 174 of 1990 which amended the rate of interest specified at the time in the High Court Rules. However, that Statutory Instrument in fact flew in the teeth of the Judgments Act, which prevailed over the subordinate legislation and which decreed 6% of the rate of interest on a money judgment. The decisions of this Court, such as Bank of Zambia - Vs – Anderson, SCZ Judgment No. 13 of 1993 and Attorney-General – Vs – Mooka Mubiana, appeal No, 38 of 1993, made it very clear that the provisions of an Act of Parliament could not be ignored or over-ridden by a mere Statutory Instrument. See Section 20(4) of the Interpretation and General Provisions Act, chapter 2. The Judgments Act has since been amended and it accords with what the Statutory Instrument had proposed. However, the fact still is that at the time of the judgment herein, it was not lawful to award more than 6%.” On the basis of the Interpretation and General Provisions Act and our reasoning in the Shimonde case, the 2nd and the 3rd Respondents submitted that the definition of candidate should be restricted to those persons who have actually filed nomination papers; that only when candidates are nominated in terms of the Electoral Act are they answerable for their conduct as candidates. The other issue that was canvassed in the written submissions, and which has a bearing on the meaning given to candidate was in respect of the nomination process as provided for in the Electoral (Presidential Elections) Regulations under Statutory Instrument No. 109 of 1991.

The Respondents quoted Regulation 5 in full, but what is of relevance to their subsequent argument is Regulation 5(2)(a) which provides as follows: - “5(2) A nomination paper shall- (a) state the political party of which the candidate is a member or by which he is sponsored and the symbol that the candidate proposes to use.” In terms of the foregoing Regulation, the 2nd and the 3rd Respondents contended that political parties merely sponsor candidates; that a person does not become a candidate at the time that he or she is selected or elected by a political party; but that he or she becomes a candidate after going through the nomination process. Consequently, the position of the two Respondents, which forms the gist of their submissions, is that the evidence led by the Petitioners relating to the events, which occurred before the filing of the nomination papers, is irrelevant and should, therefore, be excluded. We note that the 1st and the 2nd Petitioners did not, in their reply, address the issue as to when one becomes a candidate. On the other hand, the 3rd Petitioner, although not directly replying on this issue, condemned the learned Attorney-General for not playing his role of defending the public interest for which purpose he was joined to the proceedings or indeed for which he holds office. According to the 3rd Petitioner, the learned Attorney-General exhibited a conflict of interest between his office and his personal relationship with the 1st Respondent by raising the issue of when one becomes a candidate. We have considered the submission of the 2nd and the 3rd Respondents with regard to the question of candidate in a Presidential Election. The question we have been asked to answer is: when does a person become a candidate in a Presidential Election? Since we are dealing with a Presidential Election Petition, we find that the genesis of a candidate, his or her nomination and qualification to run for the office of President must be in Article 34(3) of the Constitution. The relevant part of this Article provides: - “34(3) A person shall be qualified to be a candidate for election as President if: - (d) he is a member of, or is sponsored by, a political party”. Section 9(1) of the Electoral Act, which falls under PART III dealing with Presidential Elections, makes provision, inter alia, for the filing of nomination papers in the following terms:- “9(1) A candidate for election as President shall, on such day, at such time and at such place as may be determined by the Commission, deliver to the Returning Officer- (a) the candidate’s nomination paper;”

Regulation 5(2) of the Electoral (Presidential Elections) Regulations provides, inter alia, as follows: - “5(2) A nomination paper shall:- (a) state the political party