

1. **Matilda Mutale V Emmanuel Munaile (Scz Judgment Number 14 Of 2007).**
2. **Gift Luyako Chilombo V Biton Manje Hamaleke Appeal No. 2 Of 2016,**

Legislation referred to

1. Electoral Process Act No. 35 of 2016

On 20th August 2021, the Petitioner filed a Petition challenging the election and declaration of the Respondent as Councilor for Kabelengeshi ward, Mkushi, Central Province of the Republic of Zambia. When the matter came up for hearing before us on 10th September, 2021, the date set by this Tribunal, the Petitioner did not attend but the Respondent appeared in person. Upon perusal of the petition, we observed that the Petition was not signed by the Petitioner. To that effect we decided to pronounce ourselves on the effects of failure by the Petitioner to sign his Petition hence necessitating this Ruling.

Failure to sign a petition by the Petitioner

Section 100 (3) of the Electoral Process Act No. 35 of 2016 is instructive on the signing of a Petition. It is couched in the following language;

“An election petition shall be signed by the petitioner or by all the petitioners, if more than one, and shall be presented not later than fourteen days after the date on which the result of the election to which it relates is duly declared”

We wish to point out here that this provision is couched in very clear and an unambiguous language. Consequently, it does not require us to overstretch our minds in

order to appreciate that the it is mandatory for a Petitioner to sign his petition. The converse is also true that if a Petitioner does not sign his Petition, then the petition is a nullity. In our reasoning we are fortified by the holding in the most celebrated case of **MATILDA MUTALE v EMMANUEL MUNAILE (SCZ JUDGMENT NUMBER 14 OF 2007)**. In that case, preliminary issues arose as to whether a petition filed into court and not signed by the appellant herself, could be said to be properly before court and whether or not the court could entertain the petition and indeed allow an amendment. On Appeal, the Supreme Court held *inter alia* that;

- 1) **A petition is a rare form of bringing proceedings and is used in cases where it is required by statute or rule. A petition is not a pleading.**
- 2) **A petitioner is obliged to sign the petition and where there is more than one petitioner, all the petitioners are obliged to sign the petition before presenting it to the Court not later than thirty days after the date on which the result of the election was declared.**

We must be quick to point out here that although this holding is based on section 96(3) of Electoral Act Number 12 of 2006 which has since been repealed by the Electoral Process Act No. 35 of 2016, the content and effect are the same with section 100(3). In other words, section 96(3) of the old Act has been repeated in the new Act and it is now section 100(3).

For the avoidance of doubt, we have called to aid the holding of the Constitutional Court in the case of. **GIFT LUYAKO CHILOMBO v BITON MANJE HAMALEKE Appeal No. 2**

of 2016, Judgment delivered by Justice Mulonda JC on 18th January, 2018. In that case the Constitutional Court was invited to determine whether the unsigned petition was properly before the Tribunal within the contemplation of section 100(3) of the Act Electoral Process Act No. 35 of 2016. Upon citing section 100(3), the Constitutional Court Pronounced itself at page 36 and 38 as follows;

“Having considered the provisions that guide the form of a petition to be filed with the Tribunal, we consider it important at this stage to state the principles governing the use of the word shall in legislative language in order to appreciate the true import of section 100(3) of the Act. In its ordinary usage, "shall" is a word of command and is normally given a compulsory meaning because it is intended to show obligation and is generally imperative or mandatory. It has a potential to exclude the idea of discretion and impose an obligation which would be enforceable particularly if it is in the public interest..... We are of the view that due to the mandatory nature of section 100(3) of the Act, the absence of the petitioner's signature on the petition was fatal.”

In the light of the provision cited and the above holdings, the failure by the Petitioner in this matter one Worried Mweene to sign his Petition makes this Petition to be incompetently before us. In other words, the Local Government election petition before us has not met the mandatory requirements of section 100(3) of the Electoral Process

Act of being signed by the Petitioner. There is under these circumstance, no petition capable of being heard by this Tribunal. The Petition is therefore accordingly dismissed.

DATED AT MKUSHI THIS 11TH DAY OF SEPTEMBER, 2021



HON. F. KAOMA
Tribunal Chairperson



M. B. MAIMBO
Member



N. M. SIMACHELA
Member