REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
23 NOV 2026
CIVIL REGISTRY
NDOLA HIGH COURT
P.O. BOX 70004, NDOLA

IN THE HIGH COURT FOR ZAMBIA **2026/HN/EP/005**
AT THE NDOLA DISTRICT REGISTRY
HOLDEN AT NDOLA
(CIVIL JURISDICTION)

IN THE MATTER OF	:	**AN ELECTION PETITION RELATING TO THE PARLIAMENTARY ELECTION FOR THE CHINGOLA CENTRAL CONSTITUENCY IN CHINGOLA DISTRICT**
IN THE MATTER OF	:	**ARTICLE 73 OF THE CONSTITUTION OF ZAMBIA AS AMENDED BY THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT, NO.2 OF 2016 AND THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT, 2025**
IN THE MATTER OF	:	**SECTIONS 96 AND 97 OF THE ELECTORAL PROCESS ACT, 2016 AS READ WITH THE ELECTORAL PROCESS (AMENDMENT) ACT, 2026**
IN THE MATTER OF	:	**RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026**

BETWEEN:

JOSEPH KAZHILA **PETITIONER**

AND

MICHELLE PHIRI **1st RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA **2nd RESPONDENT**
THE ATTORNEY GENERAL **3rd RESPONDENT**

Before Lady Justice B.G. Shonga this 23rd day of November, 2026

For the Petitioner: Mr. T. Shamakamba, Messrs. Shamakamba & Associates with & Ms. T. Kaemba Messrs. Ilunga & Co.
For the 1st Respondent: Mr. M. Nkunika, Messrs. Mandela & Partners Legal Practitioners with Ms. M. Mulenga, Messrs. Chibwe & Mawili Legal Practitioners
For the 2nd Respondent: Ms. M Muiya with Mr. M. Chisase, Messrs. Sepo Legal Practitioners
For the 3rd Respondent: Mrs. B.K. Chisanga with Ms. A. Chisenda, Attorney General's Chambers

---

JUDGMENT

Headnote

Election Petition — Parliamentary Election — Chingola Central Constituency — Compliance with presentation and pre-trial requirements under Rule 9 of the High Court (Election Petition) Rules, 2026 — Distinction between section 97(2)(a) EPA (corrupt or illegal practices attributable to candidate/agents) and section 97(2)(b) EPA (non-compliance by Electoral Commission substantially affecting result) — Petition validly presented but evidence insufficient to implicate Respondent.

Summary of Facts

The Petitioner, Joseph Kazhila, challenged the parliamentary election for Chingola Central Constituency in which the 1st Respondent, Michelle Phiri, was declared duly elected. He alleged that the election was marred by corrupt practices and by non-compliance with the Electoral Process Act. The Respondents denied the allegations, countering that there were no corrupt or illegal practices attributable to them and insisting that the election was conducted in accordance with the law.

Held

1. The petition was validly presented in compliance with Rule 9 of the High Court (Election Petition) Rules, 2026, thereby vesting jurisdiction in this Court.
2. The procedural framework governing election petitions is of critical significance and not a matter of mere formality, while minor lapses in formatting or technical presentation are not fatal, being procedural technicalities within the safeguard of Article 118(2)(e) of the Constitution.
3. By virtue of sections 6 and 18 of the Interpretation and General Provisions Act, Acts of Parliament and statutory instruments are judicially noticeable. Accordingly, the absence from the record of copies of such authorities does not, without more, constitute fatal non-compliance with Rule 9(3) of the High Court (Election Petition) Rules, 2026.
4. The distinction between section 97(2)(a) and section 97(2)(b) of the Electoral Process Act lies in the identity of the actor responsible for the breach. Section 97(2)(a) is concerned with corrupt or illegal practices attributable to the candidate or their agents, where materiality is tested by asking whether such misconduct prevented the majority of voters from electing the candidate of their choice. Section 97(2)(b), by contrast, addresses non-compliance with the provisions of the Act relating to the conduct of elections, where the responsibility lies with the Electoral Commission of Zambia and its officers, as assisted by the Zambia Police Service to enforce law and order, and the test is whether such non-compliance substantially affected the result.
5. Corrupt or illegal practices attributable to the candidate or her agents were not established under section 97(2)(a), and non-compliance with the provisions of the Act relating to the conduct of elections by the Electoral Commission of Zambia or by the Zambia Police was not demonstrated under section 97(2)(b).
6. In the absence of proved corrupt or illegal practices under section 97(2)(a) and there being no evidence of non-compliance with the provisions of the Act relating to the conduct of elections

under section 97(2)(b), the petitioner failed to discharge the burden of proof to the requisite standard.

7. The election and declaration of the 1st Respondent as duly elected Member of Parliament for Chingola Central Constituency upheld, and the petition is dismissed with costs.

Cases Referred to:

1. ***Henry Kapoko v. The People* (2016) Vol. 3. Z.R. 255. (CC)**
2. ***Sishuwa Sishuwa (Dr.) and Another v Nkandu Luo and Others (2021/CCZ/0028/0032. (CC)***
3. ***Bernard Kanengo v. Attorney General and Electoral Commission of Zambia (2022/CCZ/0024). (CC)***
4. ***Anderson Kambela Mazoka and Others v. Levy Patrick Mwanawasa and others (2005) Z.R. 138 (SC).***
5. ***Nkandu Luo and the Electoral Commission of Zambia v. Doreen Sefuke Mwamba and the Attorney General, Selected Judgment No. 51 of 2018. (CC)***
6. ***Chanda v. Lukonde, 2021/CCZ/A00. (CC)***
7. ***Bowman Lusambo v. Kanengo, 2023/CCZ/A002. (CC)***
8. ***Chrispin Siingwa v. Stanley Kakubo* 2016/CC/A28. *(CC)***
9. ***Luka Simumba v. Simon Patson Simwanza and Electoral Commission of Zambia, 2021/CCZ/A0024. (CC)***
10. ***Joseph Busenga v. Attorney General and 24 Others, 2021/CCZ/0049. (CC)***
11. ***Charles Nakasamu v. Kakoma, 2021/CCZ/A12. (CC)***
12. ***Tom Michelo v. Miles Sampa and the Electoral Commission of Zambia, 2021/CCZ/A035. (CC)***
13. ***Aaron Mulope v. Shakafuswa, 2021/CCZ/A0034. (CC)***
14. ***Abiud Kawangu v. Elijah Muchima 2017/CCZ/A008. (CC)***
15. ***Kufuka Kufuka v. Mundia Ndalamei, Appeal No. 15/2016. (CC)***

Legislation and Other Material Referred To:

1. ***The Constitution of Zambia, CAP 1 of the Laws of Zambia, as amended by the Constitution of Zambia (Amendment) Act, No.2 of 2016 and the Constitution of Zambia (Amendment) Act, No.13 of 2025: A.73 and A.118.***
2. ***The Electoral Process Act, 2016 (Act No. 35 of 2016), as read with the Electoral Process (Amendment) Act, 2026 (Act No. 12 of 2026): S. 96, 97***
3. ***The High Court (Election Petition) Rules, 2026 (Statutory Instrument No. 31 of 2026: R.9***
4. ***The Interpretation and General Provisions Act, CAP 2 of the Laws of Zambia: S. 35, s.6 & s. 18***

1.0 INTRODUCTION AND BACKGROUND

1.1 Zambia held general elections on 13th August 2026. Under ***the Constitution of Zambia, as amended by the Constitution of Zambia (Amendment) Act, 2016 and the Constitution of Zambia (Amendment) Act, 2025*** (hereinafter referred to as "the Constitution"), a general election comprises the Presidential, National Assembly and local government elections conducted on the same day.

1.2 Following those elections, on 27th August 2026, **Joseph Kazhila** (hereinafter "the Petitioner") lodged an election petition in the High Court for Zambia pursuant to ***Article 73(1) of the Constitution***. The petition invokes the jurisdiction of this Court under the ***Electoral Process Act, 2016***, as amended by the ***Electoral Process (Amendment) Act, 2026*** (hereinafter referred to as "the EPA"), and is governed procedurally by the ***High Court (Election Petition) Rules, 2026*** (hereinafter referred to as "the Rules").

1.3 ***Article 73(2) of the Constitution***, requires that an election petition be heard and determined within ninety days of its filing. By my calculation, the ninety-day period prescribed under ***Article 73(2)*** commenced on 28th August 2026, the day following the filing of the petition, and runs consecutively, inclusive of weekends and public holidays. I have applied the computation of time set out in ***section 35 of the Interpretation and General Provisions Act, CAP 2 of the Laws of Zambia***, and I accordingly conclude that this petition must be heard and determined no later than Wednesday, 25th November 2026, when the ninety-day period lapses at midnight.

1.4 The petition, presented under ***Section 96 of the Electoral Process Act, 2016,*** invites the Court to exercise the jurisdiction conferred by law to inquire into the validity

of the election and the appointment of Michele Phiri (hereinafter "the Respondent") as a Member of Parliament.

1.5 The petition reveals that the Petitioner was a candidate sponsored by the United Party for National Development (UPND). It further discloses that on 17th August 2026, the Returning Officer declared the 1st Respondent duly elected as Member of Parliament for Chingola Central Constituency, having secured 21,948 votes against the Petitioner's 10,782. It does not expressly state the political party or sponsor of the 1st Respondent, who is only described as having been declared duly elected.

1.6 The Petitioner alleges that the election was vitiated by false publications, which were corrupt and illegal practices exhibited by the Respondents or permitted through their agents, servants, and supporters.

1.7 By Answer filed on 2nd September 2026, the 1st Respondent denied that her election and declaration are liable to be nullified on any of the grounds pleaded in the petition. The 2nd Respondent, the Electoral Commission of Zambia, by Answer filed on 7th September 2026, asserted that the declaration of the 1st Respondent as duly elected Member of Parliament was made in accordance with the electoral laws, and denied the allegations of the Petitioner, contending that he be put to strict proof. The 3rd Respondent, the Attorney General, in its Answer filed on the same date, emphasized that the allegations contained in the petition are grave, that the burden of proof lies upon the Petitioner, and that he shall be put to strict proof.

1.8 For the allegations contained in the petition to suffice as the foundation of a successful challenge, ***section 97(2)(a) of the EPA*** requires this Court to consider, in the case of corrupt or illegal practices, whether such practices were

committed by the candidate, or with the knowledge and consent or approval of that candidate's election agent or polling agent, and whether a majority of voters in the constituency, district, or ward were, or may have been, thereby prevented from electing the candidate of their choice.

1.9 In the case of alleged non-compliance with the provisions of the EPA, ***section 97(2)(b)***, read together with ***section 97(4)***, directs the Court to examine whether acts or omissions in the conduct of the election by the Electoral Commission of Zambia or its officers substantially affected the result of the election.

1.10 For completeness, ***section 97(2)(c) of the EPA*** provides that an election shall be void if the candidate was, at the time of the election, a person not qualified or disqualified for election. This ground, however, has not been raised in the present petition, and the Court's inquiry will therefore be confined to the allegations of corrupt or illegal practices under ***section 97(2)(a)*** and non-compliance with the EPA under ***section 97(2)(b)***, as read with ***section 97(4)***.

1.11 The statutory thresholds prescribed in ***section 97*** of the EPA are substantive in nature and define what the Court must consider after hearing the petition on its merits. However, before the Court can reach that stage, it must first be satisfied that the petition has been presented in accordance with the prescribed pre-trial procedures and requirements. Compliance with these procedural steps is not a matter of convenience but of jurisdiction; it is only through adherence to them that the Court is properly empowered to inquire into the validity of the election.

1.12 Against this background, it is appropriate to set out the preamble, which affirms the central place of elections in our constitutional order and establishes the lens through which compliance with the presentation and pre-trial requirements must be scrutinized.

2.0 PREAMBLE

2.1 The law jealously guards the sanctity of an election. This is reflected in ***Section 97(1) of the EPA***, which provides in categorical terms that the election of a candidate as a Member of Parliament shall not be questioned except by way of an election petition presented in accordance with Part IX of the EPA.

2.2 This provision establishes the exclusive avenue through which the validity of a parliamentary election may be challenged. The presentation of the petition is therefore cardinal, and compliance with the prescribed manner of presentation is imperative. As earlier observed, it is only through compliance with these statutory requirements that the jurisdiction of this Court is properly invoked.

2.3 At the same time, I am mindful that ***Article 118(2)(e) of the Constitution*** enjoins courts to administer justice without undue regard to procedural technicalities. The Constitutional Court in ***Henry Kapoko v The People***[1] underscored that this principle does not annihilate procedural rules, but requires that they be applied with due regard to the circumstances of each case, so that substantive justice is not defeated by excessive formalism.

2.4 Accordingly, while the procedural framework governing election petitions is not a matter of mere formality but of critical significance, non-compliance with trivial or technical aspects of presentation should not, without more, be treated as fatal. The pre-trial procedures are intended to ensure timely disposition of petitions within prescribed timelines, and to create an environment that paves the way for a fair trial heard on the merits.

---

[1] (2016) Vol. 3 Z.R. 255 (CC)

2.5 It is within this balanced framework: strict compliance with substantive requirements, tempered by constitutional aversion to undue technicality, that this petition will be assessed.

3.0 PRESENTATION OF PETITION

3.1 In determining whether the petition has been validly presented, I have examined its compliance with the Rules. Rule 9 prescribes the requirements for presentation, ranging from the form of the petition to the accompanying documents, service, signature, and deposit of security for costs.

3.2 Having considered the petition in light of ***Rule 9(1) and 9(2),*** I find that it was filed in the prescribed Form III, accompanied by payment of the requisite fee, and that it discloses all particulars required under sub-rule (2): the Petitioner's identity and address, the constituency, the outcome and the date of declaration of results, the grounds relied upon, and the reliefs sought. The petition therefore complies with ***Rule 9(1) and 9(2)***.

3.3 Turning to ***Rule 9(3)***, which prescribes the suite of documents that shall accompany an election petition, the petition is accompanied by an affidavit verifying facts; skeleton arguments of five pages, which appear to be in font size 12 though not double-spaced; and a list of authorities indicating that copies were availed, all stamped 27th August 2026, the date of filing.

3.4 I recognize that ***Rule 9(3)*** requires skeleton arguments to be in font size 12 and double-spaced, and further obliges the Petitioner to furnish copies of the authorities cited. Upon examining the record, I find that the Petitioner has not complied with these requirements: the skeleton arguments are not double-spaced, and although the list of authorities suggests that copies were presented alongside the petition, they are not on the record.

3.5 These requirements are, in principle, mandatory. However, I have considered the character of the authorities in question. They comprise provisions of the Constitution, the EPA, the Rules, statutory instruments, and a reported judgment contained in the Zambia Law Reports. By virtue of ***section 6 of the Interpretation and General Provisions Act***, every Act is a public Act and shall be judicially noticed. Further, under **section 18** of the same Act, every statutory instrument published in the Gazette shall likewise be judicially noticed. As regards the reported authority cited, it is contained in the Zambia Law Reports and is therefore a published source readily available to the Court.

3.6 In these circumstances, the absence from the record of copies of authorities that are either matters of which the Court is required by law to take judicial notice or are otherwise readily accessible published authorities does not occasion prejudice to any party nor impede the Court's determination of the issues before it. I therefore regard the omission as a procedural irregularity insufficient, in the circumstances of this case, to affect the valid presentation of the petition.

3.7 To insist on strict compliance in these circumstances would not advance the cause of justice. ***Article 118(2)(e) of the Constitution*** is not intended to abrogate established principles, laws, or procedures, even where they may be characterized as technicalities. Its purpose is to avert situations in which manifest injustice would result from an unjustifiable insistence on a technical rule. My approach is fortified by this constitutional safeguard and by the ratiocination of the Constitutional Court in ***Kapoko v The People***, where Lady Justice Munalula JC, observed that courts must, in the peculiar circumstances of each case, determine whether what is in issue is a technicality, and if so, whether compliance with it would hinder the just determination of the matter.

3.8 Turning to the further requirements under ***Rule 9(3)***, which prescribe that a petition shall be accompanied by a list and description of documents together with a bundle, if any, the record discloses no such list or bundle filed contemporaneously. Applying the literal canon of interpretation, the phrase "if any" must be given its plain meaning: it acknowledges that a petitioner may prosecute an election petition with or without documentary evidence. Read purposively, the Rule requires that where a petitioner has documents upon which reliance is intended, they must be filed contemporaneously with the petition within the constitutional window of fourteen days. Where no documents exist, none are filed. What the Rule does not permit is silence at filing, followed by an attempt to introduce a bundle thereinafter. To sanction such a course would render the mandatory requirement of *"shall be accompanied by"* meaningless and allow a party to steal a march on the opponent, contrary to the overriding objective of the timely and fair determination of election petitions.

3.9 In light of the foregoing, I regarded the absence of a list, description, or bundle of documents at the time of filing as a deliberate election by the Petitioner not to rely on any documentary evidence.

3.10 I have equally assessed compliance with ***Rule 9(4)***, as read together with ***Rule 14***, which requires service of the petition upon the Respondents within five days of filing. Although no affidavit of service was placed on record, the 1st Respondent entered an answer on 2nd September 2026, well within five days of the petition's filing, thereby demonstrating that service was effected in time. The 2nd and 3rd Respondents have not raised any issue regarding service, and their participation in the proceedings further fortifies the inference that service was duly effected.

In the premises, I am satisfied that the Petitioner complied with the requirements of ***Rule 9(4)***, as read together with ***Rule 14***. Next, I note that the petition was duly signed by the Petitioner, and supported by payment of security for costs as required by ***Rules 9(5)*** and ***(6)***.

3.11 Having tested the petition against the requirements of ***Rule 9(1)*** through ***9(6)***, I am satisfied that it was validly presented. The petition discloses the particulars prescribed under sub-rule (2), is accompanied by the requisite documents under sub-rule (3), was duly served within the five-day timeline under Rule 14 as read with sub-rule (4) of Rule 9, bears the Petitioner's signature as required by sub-rule (5), and is supported by payment of security for costs under sub-rule (6). In the premises, I find that the petition complies with the procedural framework of Rule 9 in its entirety, has been validly presented, and that the Court is thereby properly vested with jurisdiction to proceed to consider the matter on the merits.

3.12 In reaching these conclusions, I have been guided by the canons of statutory interpretation as applied by the Constitutional Court. In ***Sishuwa Sishuwa (Dr.) and Another v Nkandu Luo and Others***[2], that Court affirmed that the correct approach is to adopt the plain meaning of words in a statute, departing from it only if such meaning leads to absurdity. Applying this principle, I have construed the requirements of ***Rule 9*** literally, giving effect to their mandatory language where jurisdictional compliance is at stake.

3.13 I am equally mindful that literalism must be tempered where it risks defeating substantive justice. In ***Bernard Kanengo v Attorney General and Electoral***

[2] 2021/CCZ/0028/0032

Commission of Zambia[3], the Constitutional Court emphasized that while the ordinary meaning of words must ordinarily be adopted, where such meaning leads to absurdity, the purposive approach must be applied. Guided by this principle, I have treated minor lapses in formatting and presentation under Rule 9 as technicalities insufficient to defeat jurisdiction. The purposive canon ensures that the procedural framework is applied in a manner that advances the constitutional objective of expeditious and fair resolution of election petitions, rather than allowing trivial defects to obstruct the merits of the case. This balanced approach ensures that the petition is tested against the discipline of the Rules as a whole, without undue technicality, and remains consistent with the constitutional command in ***Article 118(2)(e) of the Constitution***.

4.0 THE PETITIONER'S CASE

4.1 The petition sets out specific averments of electoral malpractice at identified polling stations and wards. These include allegations of vote-buying and distribution of food and drinks at Musenge Ward and Chabanyama Primary School Polling Station; intimidation of polling agents and irregular handling of ballot boxes at Chabanyama; and premature celebrations while voting was ongoing at Mujomba Community School in Kamuchanga Ward.

4.2 It is further averred that agents of the 1st Respondent obstructed and canvassed voters within 50 metres of polling stations, contrary to electoral law.

4.3 The reliefs sought by the Petitioner are that:

i. The election and declaration of the 1st Respondent as duly elected Member of Parliament for Chingola Central Constituency be declared null and void.

---

[3] 2022/CCZ/0024

ii. There be a reconciliation of all votes cast at the various polling stations with the ballot paper account forms for the receipt of ballots at those stations.

iii. The costs of and incidental to this petition be borne by the Respondents.

These prayers fall within the reliefs contemplated by section 99 of the EPA.

5.0 ISSUES FOR DETERMINATION

5.1 Arising from the petition, the answers filed by the three respondents, and the governing provisions of section 97 of the EPA, the following issues fall for determination:

5.1.1 In relation to the 1st Respondent:

i. Whether the 1st Respondent, by herself or through her agents, engaged in corrupt practices of bribery, vote-buying, or undue influence within the meaning of section 97(2)(a).

ii. Whether such practices, if proved, were committed with her knowledge, consent, or approval, and whether they prevented or may have prevented a majority of voters from electing a candidate of their choice.

5.1.2 In relation to the 2nd Respondent:

i. Whether the conduct of the election by the Commission or its officers was marked by acts or omissions amounting to non-compliance with the EPA or the Rules.

ii. Whether such non-compliance, if established, substantially affected the result of the election within the meaning of section 97(2)(b) and (4) of the EPA.

5.1.3 In relation to the 3rd Respondent:

i. Whether the allegations of electoral malpractice and irregularities are sufficiently grave and substantiated to warrant the intervention of the Court.

ii. Whether the Petitioner has discharged the burden of proof to the requisite standard in respect of the allegations pleaded.

5.2 Consequentially, the Court must determine whether the election and declaration of the 1st Respondent as duly elected Member of Parliament for Chingola Central Constituency should be nullified under section 97(1); whether a reconciliation of votes with ballot paper account forms is warranted; and what order should be made as to costs.

5.3 These questions provide the framework within which the evidence must be examined.

5.4 My attention now shifts to the evidence adduced at trial. It will be analysed against the framed issues to ascertain whether the Petitioner has established his case to the requisite standard.

6.0 ANALYSIS OF THE EVIDENCE

6.1 Trial commenced on 13th October 2026 and concluded on 19th October 2026. The Petitioner initially listed nine witnesses but abandoned one, leaving eight who testified in support of the petition.

6.2 The three Respondents elected not to call any witnesses of their own, but actively participated in the proceedings by subjecting the Petitioner's witnesses to cross-examination.

6.3 The first witness called on behalf of the Petitioner was Mr. Joseph Kazhila, the Petitioner himself. At the outset, the Respondents objected to the admission of portions of the Petitioner's witness statement on the ground that they sought to

introduce allegations of violence and irregularities at polling stations not specifically pleaded in the petition. Reliance was placed on ***Anderson Mazoka v. Levy Mwanawasa and Others***[4] **and** ***Nkandu Luo and the Electoral Commission of Zambia v. Doreen Sefuke Mwamba and the Attorney General, Selected Judgment No. 51 of 2018***[5], **and** ***Chanda v. Lukonde***[6], which affirm the principle that pleadings define the boundaries of the dispute and evidence cannot be led to expand them.

6.4 The Petitioner contended that the general averment referring to *"all wards in the constituency"* was wide enough to admit such evidence. I rejected this argument, holding that election petitions, being quasi-criminal in nature, demand precision. A general averment covering "all wards" is too vague to give fair notice of the specific allegations that the respondents must meet. To permit such pleading would open the door to petitions framed in sweeping terms, with particulars supplied later through witness statements or viva voce testimony, thereby undermining the discipline of accurate framing of petitions and prejudicing respondents. Accordingly, the objection was upheld. Paragraphs 4–13 of the Petitioner's witness statement, insofar as they introduced allegations of irregularities at polling stations not specifically set out in the petition, were struck out. The remainder were admitted.

6.5 This ruling illuminates the rationale for subsequent exclusions across other witnesses. The Court consistently guarded against general pleadings and confined the record to allegations properly pleaded.

---

[4] (2005) Z.R. 138 (SC)

[6] 2021/CCZ/A004

6.6 I pivot back to Mr. Kazhila's testimony. He identified his standing as candidate in the Chingola Central Constituency parliamentary election held on 13th August 2026, and confirmed that he cast his vote at Chikola High School polling station at approximately 06:00 hours on the morning of polling day. His testimony, pared down to the admissible portions following the striking out of paragraphs 4–13 of his witness statement, is confined to establishing his participation as both candidate and voter, and to articulating his apprehensions regarding intimidation and interference which, in his view, compromised the integrity of the electoral process.

6.7 In cross-examination, Mr. Kazhila affirmed that his petition contains allegations of corrupt and illegal practices attributed to the 1st Respondent, which he characterised as serious. He acknowledged that the burden lies upon him to prove them and indicated reliance on other witnesses. His testimony, therefore, situates the allegations squarely against the 1st Respondent, but does not itself provide substantive proof beyond his apprehensions.

6.8 It is also noted that his admissible testimony did not disclose any allegation of impropriety or failure of duty by the Electoral Commission. He did not attribute any conduct to ECZ officials in the admitted portions. Similarly, his evidence did not advance any allegation of misconduct by the police. No attribution was made to law enforcement officers in the admitted portions. It is against this backdrop that I assess Mr. Kazhila's testimony as foundational. His evidence situates him firmly within the contest, establishes his standing as candidate and voter, and underscores the seriousness of the allegations he levels against the 1st Respondent. It does not advance any allegation against the 2nd or 3rd Respondents. Its probative value lies in it defining the scope of the dispute and

the remedy pursued, rather than in proving the practices alleged. Though narrow, the evidence nonetheless provides the necessary foundation for the issues to be determined, namely, whether the alleged practices occurred, whether they are attributable to the Respondents, and whether they substantially affected the outcome of the election.

6.9 The second witness was Mr. Dominic Domingo Kapalu, District Chairperson for the UPND. His witness statement contained several allegations; however, pursuant to my earlier ruling, paragraphs 2–14 were excluded as falling outside the scope of the petition. The testimony admitted is confined to his description of the prevailing atmosphere at Chikola Secondary School on polling day. He stated that the environment was intimidating and violent, and that the presence of unruly youths created conditions which, in his view, discouraged ordinary voters from freely casting their ballots. He further observed that the atmosphere in the days following the election remained hostile and confrontational.

6.10 Under cross-examination, Mr. Kapalu conceded that he had no evidence directly connecting the 1st Respondent to the conditions he described. Further, his evidence did not disclose any impropriety or failure of duty by ECZ officials, nor did he attribute the atmosphere to the Commission.

6.11 In relation to the 3rd Respondent, he acknowledged that he did not identify any police officers to whom he reported, nor did he raise the matter with the conflict resolution committee. While he maintained that he drew the matter to the attention of the police, he did not attribute misconduct to them. In re-examination, he clarified that the events he referred to occurred on polling day after voting.

6.12 Accordingly, Mr. Kapalu's testimony is received as a personal account of the atmosphere at Chikola Secondary School. While vivid in its description of intimidation, it does not implicate the 1st Respondent, disclose impropriety by the Electoral Commission, or establish misconduct by the police.

6.13 The petitioner presented Mr. Nondo Wilson as the third witness. His witness statement had been filed on 9th October 2026. When counsel for the Petitioner sought to have the statement admitted as his evidence-in-chief, the Respondents objected on the ground that it sought to introduce matters beyond the parameters of the petition. Before a ruling could be rendered, counsel for the Petitioner elected to stand down the witness, who was not called back. The petitioner thereinafter proceeded to present Mr. Madaliso Banda as PW4

6.14 Mr. Madaliso Banda testified that on 13th August 2026, shortly after 14:00 hours, he accompanied his friend, Charles Simwizya, to Musenga Primary School where the latter had gone to vote. While waiting at the football pitch opposite the polling station, he observed two vehicles pass by: a white Toyota Pajero without registration plates and a blue Toyota Sienta. The Sienta later returned and parked near the pitch, bearing registration number AIF 9742. He stated that people were seen approaching and entering the vehicle, and that he recorded a video of these events on his phone, identifying among the occupants the aspiring councillor for Musenga Ward on the NRPUP ticket.

6.15 He further recounted that some of the occupants confronted him aggressively when they noticed he was recording, and a group pursued him. He was assisted by other persons present, who helped him escape. He observed that the incident attracted the attention of voters in the vicinity, some of whom appeared shaken.

6.16 In cross-examination, in relation to the 1st Respondent, Mr. Banda confirmed that his testimony related solely to Musenga Primary School, one of the 81 polling stations. He conceded that he did not see the 1st Respondent at the scene, did not observe her in the vehicle, and did not witness her giving instructions to any of the individuals involved. His testimony therefore does not implicate the 1st Respondent.

6.17 As for the 2nd Respondent, he acknowledged that police officers were present at Musenga but confirmed that he did not see them behave in a manner that prevented voters from casting their ballots. In re-examination, he reiterated that approximately four police officers were present. His testimony therefore does not establish misconduct or dereliction of duty by the police.

6.18 Taken together, Mr. Banda's testimony is confined to his personal observations at Musenga Primary School. His account describes an incident involving the aspiring councillor and associates, but does not attribute any conduct to the 1st Respondent, nor disclose impropriety by the 2nd Respondent or the 3rd Respondent, through the police. Its probative value lies only in illustrating the atmosphere at Musenga, subject to the limitations acknowledged in cross-examination.

6.19 Mr. Alex Kanema was introduced as the fifth witness for the Petitioner. His witness statement was admitted into evidence, save for references to the Petitioner's bundle of documents, which was disallowed, together with paragraphs 2–11, 16, 18 and 19 which were expunged for falling outside the scope of the petition.

6.20 In the admissible portions, Mr. Kanema testified that he arrived at the polling station at 05:00 hours, verified the ballot boxes and materials before voting

commenced, and later observed irregularities. He stated that Mr. Mwape, a former councillor and member of NRPUP, entered the polling station carrying small papers which he distributed to NRPUP agents and monitors, though Mr. Kanema did not know their contents. He further recounted that the aspiring councillor was speaking to prospective voters in the queues and to monitors, and that food was openly brought to ECZ staff by NRPUP sympathizers.

6.21 Mr. Kanema expressly conceded in cross-examination that he did not see the 1st Respondent at Musenga Primary School, did not observe her distributing papers or food, and did not witness her instructing the councillor or any other person. His testimony therefore does not implicate the 1st Respondent in any way.

6.22 During cross-examination, Mr. Kanema maintained that food was brought to ECZ staff by NRPUP sympathizers. However, he did not identify any particular official, nor did he provide corroborating evidence. The petition itself contained no allegation of impropriety against the Commission at Musenga Primary School, and this assertion arose only in his testimony. It therefore remains a general aspersion, outside the pleadings, and its probative value lies only in illustrating the atmosphere at the polling station, subject to the limitations acknowledged in cross-examination.

6.23 During further cross-examination, Mr. Kanema confirmed that he was able to cast his vote without hindrance. He offered no documentary, visual, or audio evidence to support his claim that police officers acted under instruction or failed in their duties. In the absence of such supporting proof, his testimony does not establish dereliction of duty on the part of the police. In re-examination, he reiterated that he was not prevented from casting his vote.

6.24 The sixth witness, Kennedy Sianga, relied on his statement, which was admitted after paragraphs 3 and 5–10 were expunged. The admissible portions therefore comprised paragraphs 1, 2, 4, 11 and 12.

6.25 Mr. Sianga stated that he attended Musenga Primary School A2 on 13 August 2026 as a polling agent. He recounted an incident in which Mr. Gift Chanda, the aspiring councillor for NRPUP, accused the UPND Coordinator of possessing two voter's cards, held him by the neck, and required police intervention. It was later established that the second card belonged to the Coordinator's daughter, who subsequently arrived to claim it. He confirmed the truth of his statement and belief in its accuracy.

6.26 During cross-examination, Mr. Sianga confirmed that he did not see the 1st Respondent at Musenga Primary School, nor did he hear or observe her instruct Mr. Chanda to be present. He further clarified that it was not Mr. Chanda who was accused of possessing two voter's cards, and that the matter was resolved once the UPND Coordinator's daughter's card was identified. His testimony therefore does not implicate the 1st Respondent.

6.27 In the admitted portions of his statement and in cross-examination, Mr. Sianga did not advance any allegation against the 2nd Respondent. His testimony therefore does not disclose impropriety on the part of ECZ officials. Furthermore, Mr. Sianga acknowledged that police officers intervened to separate Mr. Chanda and the UPND Coordinator when the confrontation arose. He did not testify that the police prevented voting or acted under instruction in a manner that compromised the poll. His evidence therefore does not disclose misconduct by the police. In re-examination Mr. Sianga reiterated that the issue concerning Mr. Chanda was resolved and that he was not prevented from voting.

6.28 The testimony of Martha Kabinda, the petitioner's seventh witness is directed to events at Lushishi Primary School in Kamuchanga Ward on polling day. She recounted that she encountered the aspiring councillor, Smart Kasonde, who solicited her vote and was actively campaigning on the material day. She described a crowd being addressed by a woman urging them to vote for Smart Kasonde and Mundubile in exchange for money and food, and stated that Smart himself was moving door to door, ferrying voters to the station. She further testified that the atmosphere created by his supporters was hostile and intimidating, causing some voters to fear for their safety and abstain from voting.

6.29 During cross-examination, Ms. Kabinda conceded that her statement did not contain any direct allegation against the 1st Respondent. She did not personally witness the 1st Respondent engaging in the conduct described, and acknowledged that her testimony was based on what she saw from groups she identified as NRPUP supporters and on information relayed to her by others.

6.30 This witness admitted that she had no documentary evidence to corroborate her account and that she did not know the 1st Respondent personally. She further accepted that she pretended to record the crowd at one point, though she insisted this was a tactical measure rather than a reflection on her credibility. Her testimony therefore does not implicate the 1st Respondent in any way.

6.31 With respect to the 2nd Respondent, her evidence did not disclose any impropriety or failure of duty by the Electoral Commission. She acknowledged that when she entered the polling station at about 08:00 hours, ECZ officials were present and the poll was being conducted. She did not allege that the Commission failed to administer the poll inside the station.

6.32 As regards the 3rd Respondent, this witness confirmed that police and law enforcement officers were present inside the polling station and were not preventing people from voting. She admitted that she did not call security directly, but rather reported to her colleague to do so. Her testimony therefore does not establish misconduct or dereliction of duty by the police.

6.33 The net effect is that her evidence, though detailed, remains confined to the conduct of candidate Smart Kasonde and his supporters outside the polling station. Its probative value lies in illustrating the atmosphere around Lushishi Primary School, but it does not advance the case against the Respondents beyond the general assertion that NRPUP supporters were campaigning on polling day.

6.34 The eighth witness, Mr. Kingsley Sinepa, testified regarding events at Mujomba Primary School where he served as a polling agent. He stated that only one polling agent from each political party was permitted inside the polling station at a time and described several irregularities which, in his view, occurred during the poll. These included a voter who cast a ballot while wearing a hat and facemask concealing his identity; comments and conduct by the presiding officer which he regarded as biased against UPND agents; police officers who allegedly dispersed persons from the vicinity of the polling station; and an incident in which the independent candidate arrived with supporters, celebrated while voting was ongoing, and allegedly addressed persons in the queue. In cross-examination, Mr. Sinepa conceded that the one-agent rule applied equally to all political parties, that he could not identify the masked voter or establish any political affiliation, that he could not identify any voter who was prevented from voting by the police, and that he possessed no proof of the identity of the

police officers complained of. He further confirmed that voting continued throughout the day and that persons were still arriving to vote in the afternoon.

6.35 The ninth witness, Mr. Kanyambi Teddy, testified concerning events at Chabanyama Primary School. He stated that he observed several vehicles in the vicinity of the polling station, including a Toyota Hilux driven by Mr. Richard Kazala, and that persons he identified as NRPUP supporters were displaying party symbols. He further testified that a dispute later arose among some of those present and that he overheard references to money allegedly left behind by Mr. Kazala. In cross-examination, however, he confirmed that he did not see the 1st Respondent personally displaying party symbols or distributing money, and that his evidence concerning her involvement was based largely on his observations of persons whom he associated with her campaign, including her husband. He further acknowledged that he successfully cast his vote and produced no proof that his complaints were reported to either ECZ or the police.

7.0 APPLICATION OF THE LAW

7.1 Having considered the testimony at trial, I now measure it against the governing statutory framework. The applicable law provides the lens through which the allegations must be tested, and it is only by applying these provisions that the Court can determine whether the conduct complained of meets the threshold for nullification.

7.2 I begin with the allegations directed against the 1st Respondent, which fall to be examined under ***section 97(2)(a) of the EPA***. In doing so, I must also have regard to the substantive offences defined in Part VIII of the said Act: ***section 81***, which proscribes bribery; ***section 84***, which prohibits the publication of false statements concerning candidates; and ***section 87***, which addresses illegal

practices relating to the poll, including canvassing, obstruction, and intimidation at or near polling stations. These provisions delineate the conduct which, if proved, may constitute corrupt or illegal practices within the meaning of ***section 97(2)(a)***.

7.3 ***Section 81*** proscribes the giving, offering, or promising of money, food, drink, or any other valuable consideration to induce a voter to vote or refrain from voting for a particular candidate. The Constitutional Court has made clear that even a single act of bribery, if attributable to the candidate or their duly appointed agent, may suffice to vitiate an election, provided it meets the threshold of ***section 97(2)(a)***. In ***Bowman Lusambo v Kanengo***[7] and ***Kabengele v Mutale***, the Court underscored that proof must be cogent and directly tied to the candidate or agent. In this case the petition alleged acts of vote-buying at Musenge Ward and Chabanyama Primary School, including the distribution of food, drinks, and money.

7.4 The testimony of Mr. Banda and Mr. Kanema confirmed the presence of vehicles and distribution of items, but both conceded they did not see the 1st Respondent present, nor did they observe her authorising the acts. The allegation concerning her husband at Chabanyama was pleaded, yet the admissible testimony did not establish a nexus between the 1st Respondent and the distribution of money. In this regard, I acknowledge that the Constitutional Court in ***Chrispin Siingwa v Stanley Kakubo***[8] cautioned against an expansive approach to electoral agency. The Court rejected the proposition that party officials or persons campaigning for a candidate automatically become that

---

[7] 2023/CCZ/A002

[8]

candidate's election agents, emphasizing that the Electoral Process Act and Regulations define election agency with specificity and that liability cannot be attributed on the basis of mere political association. The existence of the requisite relationship must itself be established by evidence.

7.5 Moreover, the Court held in ***Luka Simumba v Simon Patson Simwanza and Electoral Commission of Zambia***[9] and reaffirmed in ***Joseph Busenga v Attorney General and 24 Others***[10], liability cannot be imputed to a candidate for acts of other persons unless they are shown to he election agents or to have acted with the candidate's knowledge and consent. Thus, I opine that while the witnesses referred to the 1st Respondent's husband, a spousal relationship, without more, is not evidence of electoral agency. Agency must be proved; it cannot be presumed from marriage.

7.6 On the totality of the evidence, while the acts described fall within the statutory definition of bribery, they have not been proved against the 1st Respondent to the requisite standard.

7.7 With respect to publication, ***Section 84 of the EPA*** prohibits the publication of false statements concerning a candidate where such statements are calculated to affect the result of an election. The Constitutional Court has emphasised that allegations of false publication must be proved with cogent evidence, and liability attaches only where the falsehood is attributable to the candidate personally or to their duly appointed agent acting with knowledge and consent. In ***Joseph Busenga v Attorney General***, the Court underscored that electoral

[9] 2021/CCZ/A0024
[10] 2021/CCZ/0049

liability is personal and cannot be imposed merely because the impugned conduct was undertaken by persons politically associated with a candidate.

7.8 The petition alleged that the 1st Respondent, through her agents, engaged in false publication calculated to injure the Petitioner's standing. However, the Petitioner's own testimony did not disclose any specific false statement attributed to the 1st Respondent. Mr. Kapalu described a hostile atmosphere but conceded he had no evidence linking the Respondent to the conditions he described. Mr. Banda and Mr. Kanema recounted incidents at Musenge and Chabanyama, but neither testified to any false statement made or authorised by the Respondent. No documentary proof was produced, nor was any witness able to identify the Respondent or her agents as the source of the alleged falsehoods. In *Bowman Lusambo*, the Court cautioned that partisan testimony requires corroboration, and uncorroborated allegations cannot sustain a petition. On the record before me, the allegation of false publication under ***section 84*** has not been proved to the requisite standard.

7.9 As for the allegation of illegal practices, ***Section 87 of the EPA*** bars illegal practices at or near polling stations, including canvassing, obstruction of voters, intimidation of polling agents, and interference with the lawful conduct of the poll. Again, the Constitutional Court has unswervingly held that such practices must be shown to have been committed by the candidate personally or with the knowledge and consent or approval of the candidate's election or polling agent, and that they must be sufficiently widespread to have prevented or may have prevented the majority of voters from electing their preferred candidate. In ***Luka Simumba v Simon Patson Simwanza***, the Court reversed a finding where liability

had been imputed without proof of knowledge or consent and reaffirmed the need for strict proof before electoral sanctions may follow.

7.10 *In casu*, the petition also alleged intimidation of polling agents, refusal to seal ballot boxes, canvassing within 50 metres of polling stations, and obstruction of voters. However, the Petitioner's admissible testimony did not substantiate these allegations with direct proof. Mr. Kapalu described intimidation at Chikola Secondary School but conceded he had no evidence linking the Respondent to the atmosphere he described. Mr. Banda and Mr. Kanema recounted incidents at Musenge and Chabanyama but acknowledged they did not see the Respondent present, nor did they observe her directing or authorising the conduct. No witness identified the Returning Officer or police officer as acting under her instructions, and no documentary evidence was produced to corroborate the claims. On the totality of the record, while the acts described fall within the statutory definition of illegal practices under ***section 87***, they have not been proved against the 1st Respondent to the requisite standard.

7.11 Taken together, the strands under ***sections 81, 84 and 87*** reveal allegations that, though serious, were not supported by cogent evidence tying them to the 1st Respondent personally, or to her duly appointed agents acting with her knowledge and consent. The jurisprudence of the Constitutional Court requires such a link, and without it, the threshold of ***section 97(2)(a)*** is not met. Accordingly, the allegations of corrupt practices, false publication, and illegal practices relating to the poll have not been proved to the requisite standard against the 1st Respondent.

7.12 It follows that the first limb of the statutory enquiry does not establish attribution to the 1st Respondent or her duly appointed agents. The Court,

therefore, finds that she is not wanting: no corrupt practice, illegal practice, or other misconduct has been committed in connection with the election by the 1st Respondent, nor with her knowledge, consent, or approval, or that of her election or polling agent. As a result, there is no occasion to escalate the inquiry to the second limb, whether the majority of voters were or may have been prevented from electing their candidate of choice. That question arises only once the foundational requirement of attribution is satisfied. Since it is not, the enquiry against the 1st Respondent is thereby concluded. The allegations against the 1st Respondent fail.

7.13 The allegations directed against the 2nd Respondent concern the conduct of the election itself. These fall to be examined under ***section 97(2)(b) of the EPA***, as read with ***section 97(4)***. ***Section 97(2)(b)*** provides that an election may be voided where there has been non-compliance with the provisions of the Act relating to the conduct of elections, and it appears to the Court that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result. ***Section 97(4)*** tempers this by stipulating that an election shall not be declared void by reason of any act or omission of an election officer in breach of duty if the election was conducted "*substantially in accordance*" with the EPA and the act or omission did not affect the result.

7.14 The structure is therefore sequential: first, the Court must determine whether the election was conducted substantially in accordance with the Act; second, if insubstantial conformity is found, the Court must then consider whether such non-compliance affected the result. Both conditions must be satisfied before nullification may ensue.

7.15 It is important to underscore the distinction between ***section 97(2)(b)*** and ***section 97(2)(a) of the EPA***. The latter focuses on corrupt or illegal practices attributable to the candidate or their agents, where materiality is significant and is tested by asking whether the misconduct prevented the majority of voters from electing their candidate of choice. By contrast, ***section 97(2)(b)*** sets a different threshold. The test is, first, whether the election was conducted substantially in conformity with the Electoral Process Act; and second, if not, whether the non-compliance affected the result. The focus here is on substantial conformity with the statutory framework, not on the majority-prevention test.

7.16 In maintaining fidelity to the plain-language method of statutory interpretation, as guided by the Constitutional Court in ***Sishuwa (Dr.) v Nkandu Luo***, I apply the words of the statute as they stand, for it is evident that their ordinary meaning does not produce absurdity. ***Section 97(2)(a)*** and ***section 97(2)(b)*** are differently framed, and the distinction must be preserved.

7.17 Having drawn the distinction between ***section 97(2)(a)*** and ***section 97(2)(b)***, I now turn to the allegations against the 2nd Respondent. In doing so, I draw from the principle articulated in ***Charles Nakasamu v Kakoma***[11], where the Constitutional Court acknowledged a breach of duty by the election officer but held that the election was, nonetheless, conducted substantially in conformity with the EPA. The Court emphasised that where there has been substantial compliance, annulment cannot be grounded on ***section 97(2)(b)***.

7.18 Likewise, in ***Tom Michelo v Miles Sampa and the Electoral Commission of Zambia***[12], the Court reaffirmed that not every flaw in the conduct of an election

[11] 2021/CCZ/A12
[12] 2021/CCZ/A035

attracts annulment; only departures proved with cogent evidence to have undermined substantial conformity and affected the result fall within the ambit of ***section 97(2)(b) as read with section 97 (4)***.

7.19 I am mindful that in ***Aaron Mulope v Shakafuswa***[13] the Constitutional Court affirmed and underscored the principle that pleadings play a vital role in defining the issues in contention in election petitions. Pleadings set the boundaries of the dispute and confine the evidence to what has been specifically alleged. In applying the law to the allegations against the 2nd Respondent, I therefore begin with the pleadings.

7.20 The petition expressly alleged that the Returning Officer, Mr. Sitali, refused to seal the ballot boxes at Chabanyama Primary School. Beyond this, the allegations directed to the 2nd Respondent were general in character. The petition averred that the Commission failed to ensure that voting was conducted in a free and fair environment. The particulars of vote-buying, intimidation, violence, and threats were pleaded against the 1st Respondent and her agents. The allegations against the 2nd Respondent were therefore confined to assertions of omission in oversight, rather than specific acts of non-compliance by its officers.

7.21 In terms of evidence, Mr. Kazhila's admissible testimony did not disclose any impropriety by the Commission. Mr. Kapalu's account of intimidation at Chikola Secondary School did not implicate ECZ officers. Mr. Banda, Mr. Kanema, Mr. Sianga, and Ms. Kabinda each described incidents involving councillor candidates or supporters, but expressly conceded that they did not observe ECZ officials acting improperly or failing in their duties. The

[13] 2021/CCZ/A034

testimony, therefore, did not establish non-compliance by the 2nd Respondent. There is a glaring omission in the evidence adduced.

7.22 With respect to the refusal by the Returning Officer, Mr. Sitali, to seal the ballot boxes at Chabanyama Primary School, no witness was called to testify to this allegation. It, therefore, remains unproven.

7.23 As for the general allegation of failure to facilitate an environment for the conduct of a free and fair election, the evidence did not disclose any omission or dereliction of duty on the part of the Commission or its officers. While several witnesses described incidents involving candidates, councillors, supporters, or members of the public, none identified a failure by ECZ officials to administer the poll in accordance with the EPA. The allegation of institutional non-compliance therefore remains unproven.

7.24 Applying the principles in ***Charles Nakasamu v Kakoma*** and ***Tom Michelo v Miles Sampa***, the evidence before this Court does not disclose non-compliance by the 2nd Respondent. The sole express allegation of refusal to seal ballot boxes was not supported by testimony. The general allegations of omission are likewise unsupported by cogent proof. I am therefore persuaded that the election was conducted substantially in accordance with the provisions of the EPA. In the absence of proof of insubstantial conformity, the enquiry does not proceed to the second limb, whether the non-compliance affected the result. Accordingly, I find that the threshold under ***section 97(2)(b)***, read with ***section 97(4)***, has not been met. The allegations against the 2nd Respondent equally fail.

7.25 Before considering the allegations against the 3rd Respondent, it is necessary to recall the object of this petition. The Petitioner seeks a declaration that the election and return of the 1st Respondent as Member of Parliament for Chingola

Central Constituency be nullified, together with a reconciliation of all votes cast against the ballot paper account forms. For nullification, the alleged infractions must fall within one of the three grounds prescribed in ***section 97(2) of the EPA***. These are, in summary: (a) corrupt or illegal practice, or other misconduct by the candidate or the candidate's agent with the candidate's knowledge and consent, which materially affect the result; (b) substantial non-compliance with the provisions of the Act which affected the result; and (c) non-qualification or disqualification of the candidate at the time of the election

7.26 I now consider the allegations directed against the State, the 3rd Respondent. As earlier observed, the grounds for nullification are prescribed in ***section 97(2) of the EPA***. Since the police are neither candidates nor agents of candidates, any alleged misconduct must be assessed under section 97(2)(b), which concerns substantial non-compliance with the provisions of the Act. This aligns with the statutory duty of the Zambia Police Service under ***section 4(6) of the EPA***, which mandates the enforcement of law and order at polling stations and the prosecution of offences committed in contravention of the Act. The proper test, therefore, is whether the police failed to comply with the Electoral Process Act, particularly their mandate under ***section 4(6)*** in so far as it relates to the conduct of elections, and if so, whether such dereliction materially affected the result. If no dereliction is established, the case against the 3rd Respondent must fail.

7.27 This brings me to the averments in the petition. It was charged that police officers at Chabanyama School Polling Station gave symbols to voters while on duty, and that they intimidated polling agents and staff. It was further alleged, in general terms, that law enforcement failed to ensure a free and fair

environment, thereby permitting vote-buying, intimidation, violence, and threats.

7.28 Turning to the evidence, none of the Petitioner's witnesses ascribed misconduct to the police in the admissible portions of their testimony. Mr. Kazhila did not disclose any impropriety by law enforcement. Mr. Kapalu acknowledged that he did not identify any police officers to whom he reported, nor did he attribute misconduct to them. Mr. Banda confirmed that police officers were present at Musenga but did not behave in a manner that prevented voting. Mr. Kanema offered no documentary or visual proof of police dereliction. Mr. Sianga testified that police intervened to separate parties in a confrontation, and did not prevent voting. Ms. Kabinda likewise confirmed that police were present inside the polling station and were not preventing people from voting.

7.29 Likewise, neither Mr. Sinepa nor Mr. Teddy materially advances the case against the 3rd Respondent. Mr. Sinepa's complaint concerning police conduct rested on unidentified officers and was unsupported by evidence that any voter was prevented from voting. Indeed, he confirmed that voting proceeded throughout the day. Mr. Teddy's testimony was principally directed at the conduct of persons whom he associated with the 1st Respondent's campaign and not at any act or omission of the police. He likewise acknowledged that he voted without hindrance. Consequently, their testimony does not establish dereliction of duty by the Zambia Police Service, nor does it disclose noncompliance with the EPA capable of affecting the result of the election.

7.30 The cumulative result is that, although the petition pleaded allegations of intimidation and dereliction by police officers, the evidence did not sustain them. On the contrary, the testimony consistently acknowledged that police

were present and, where mentioned, acted to restore order rather than to obstruct the poll.

7.31 Measured against ***section 97(2)(b)***, read together with ***section 97(4)***, and ***section 4(6) of the Electoral Process Act*** the record discloses no failure by the Zambia Police Service to comply with the Electoral Process Act in relation to the conduct of the election. Indeed, beyond the specific duty under ***section 4(6)***, no other non-compliance with the Act, in so far as it relates to the conduct of elections, was demonstrated. In the absence of proof of such non-compliance, the enquiry does not advance to whether the result was materially affected. The threshold under ***section 97(2)(b)*** has therefore not been met, and the allegations against the 3rd Respondent fail.

8.0 DETERMINATION

8.1 At this juncture, I must point out that the findings across all Respondents converge with clarity. The allegations directed at the 1st Respondent did not establish corrupt or illegal practice by the 1st Respondent or her agents. The claims against the 2nd Respondent failed to demonstrate substantial non-compliance with the EPA in the administration of the poll. The charges against the 3rd Respondent likewise did not disclose any breach of duty under ***section 4(6)***, nor any other non-compliance with the Act in relation to the conduct of elections.

8.2 It is necessary at this stage to highlight the burden and standard of proof. The Constitutional Court has made it clear, most notably in ***Abiud Kawangu v Elijah Muchima***[14], that the burden of proof lies squarely upon the Petitioner to establish the allegations pleaded against the Respondents. The Court further affirmed,

[14] Appeal No. 8/2017

consistent with its earlier pronouncement in ***Kufuka Kufuka v Mundia Ndalamei***[15], that the standard of proof in election petitions is higher than the balance of probabilities applied in ordinary civil cases, but lower than the criminal standard of beyond reasonable doubt. Allegations must therefore be proved to a fairly high degree of convincing clarity.

8.3 Election petitions demand more than the ordinary balance of probabilities; they call for strict, cogent, and compelling proof, though still shy of the criminal threshold of beyond reasonable doubt. In this case, the Petitioner has not even attained the simple civil balance. Considering that the evidentiary burden has not been borne to the requisite standard, I find that the threshold under ***section 97(2)*** remains unmet on all grounds, in respect of each Respondent.

8.4 In consequence, none of the pleaded grounds under **section 97(2)** have been satisfied, and the petition does not surmount the statutory threshold for nullification. Accordingly, I decline to grant the first relief sought and the election and declaration of the 1st Respondent as duly elected Member of Parliament for Chingola Central Constituency is upheld. Put simply, the specific request for a declaration that the election and return of the 1st Respondent as duly elected Member of Parliament for Chingola Central Constituency is, in its entirety, dismissed.

8.5 Flowing from that determination, I address the second relief sought, being the request for reconciliation of all votes cast at the various polling stations with the ballot paper account forms. My reading of the EPA establishes that it does not confer on the Court any express mandate to order reconciliation of ballot paper accounts after results have been declared as a remedy in an election petition.

---

[15] Appeal No. 15/2016

Even if such a power were to be implied, in the present case no evidentiary foundation has been laid to justify its exercise. The prayer for reconciliation is therefore declined.

8.6 Accordingly, I dismiss the petition, with costs to be borne by the Petitioner. Costs shall be taxed in default of agreement.

Delivered in Open Court at Ndola this 23rd day of November 2026.

B.G. SHONGA

JUDGE

