AMENDED ONCE WITH LEAVE OF COURT

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/039**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF:	**ARTICLE 73 (1) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016 OF THE LAWS OF ZAMBIA**
IN THE MATTER OF:	**SECTIONS 72, 76, 87, 97, 98, 99, 100 AND 108 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA**
IN THE MATTER OF:	**RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF:	**AN ELECTION PETITION RELATING TO THE CHILUBI CONSTITUENCY PARLIAMENTARY ELECTION**

BETWEEN:

SIMON MUSONDA MUWA **PETITIONER**

AND

MATHIAS CHITEMBO **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

REPUBLIC OF ZAMBIA HIGH COURT OF ZAMBIA 07 SEP 2026 PRINCIPAL REGISTRY P.O. BOX 50067, LUSAKA

AMENDED ELECTION PETITION
(Chilubi Constituency)

The Petition of **SIMON MUSONDA MUWA**, a Zambian National who ordinarily resides at Plot No. 360, Linda Road, Bonaventure, Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, and for purposes of this Petition, whose address for service is as above **SHOWETH THAT:**

1. Your Petitioner was a candidate at the Parliamentary Election for Chilubi Constituency, in the Northern Province of the Republic of Zambia, under the sponsorship of the Citizens First Political Party (hereinafter referred to as "**CF**"), and accordingly has standing to present this Petition pursuant to Section 98(c) of the Electoral Process Act No. 35 of 2016 ("the Act").

2. The 1st Respondent was a candidate at the Parliamentary Election for Chilubi Constituency, in the Northern Province of the Republic of Zambia, who was

sponsored under the ticket of the United Party for National Development (hereinafter referred to as **"UPND"**)

3. The 2nd Respondent is a statutory body established under Article 229 of the Constitution of Zambia as amended by Act No. 2 of 2016, who is mandated to manage and conduct elections at presidential, parliamentary, and local government levels.

4. And your Petitioner states that the election was held on the 13th day of August 2026. when **SIMON MUSONDA MUWA** and **CHITEMBO MEPHIAS** were candidates and the Returning Officer on 15th August 2026 returned **CHITEMBO MEPHIAS** as being duly elected as Member of Parliament for Chilubi Constituency.

FACTS IN SUPPORT OF GROUNDS RELIED ON

5. Your Petitioner states that the election to which this Petition relates was held on the 13th day of August, 2026, when your Petitioner, standing under CF, and, among others, the 1st Respondent, standing under the UPND, were candidates, and John Longwe, the returning officer for Chilubi Constituency, having received and tallied the results from all 93 of 93 polling stations in the constituency in accordance with Sections 71 and 72(1) ascertained that out of a total of 32,418 votes cast, your Petitioner polled 2,760 votes, the 1st Respondent polled 10,429 votes, the remaining candidates polled a total of 17,769 votes between them, and that 1,460 ballot papers were rejected as invalid.

6. Your Petitioner states that the said total number of votes tabulated by the returning officer and indicated on the Declaration of Result (Form GEN 20b) do not match the total number of votes actually cast and a declaration upon arriving at a sum total of the votes polled by each individual candidate in addition to the total rejected votes.

7. Your Petitioner will further aver that equally in the Presidential and Local Government elections held on the 13th of August, 2026 the said John Longwe on

15th August 2026, being the returning officer for Chilubi District (Constituency), wrongly calculated and declared the total number of votes cast, as such declared total did not tally with the votes polled by each individual candidate in addition to the total rejected votes.

8. Your Petitioner will aver at trial that the elections in Chilubi District (Constituency) were characterised by low voter turnout.

9. As a result of the low voter turn-out and the lack of observation monitors at the various polling stations, cadres of the UPND party unlawfully placed pre-marked ballots into the ballot boxes at the polling stations.

10. During the vote counting process at the respective polling stations the polling agents of Your Petitioner were not presented with copies of the Gen20 forms outlining the number of votes casts and the votes polled by each respective candidate.

11. Your Petitioner shall further aver that during the vote counting process of the elections held in Chilubi District, there were several acts of violence perpetrated by cadres of the UPND with the full knowledge of the 1st Respondent, and the servants and/or agent of the 2nd Respondent.

GROUNDS RELIED ON

12. Your Petitioner will further aver that the Declaration by the 2nd Respondent that the 1st Respondent had been duly elected as Member of Parliament for Chilubi Constituency was an illegal practice, irregular and unlawful in that:

    i. the 1st Respondent through his cadres in adding pre marked ballots to the ballot box was contrary to Section 87 of the Electoral Process Act No. 35 of 2016;
    ii. that the polling agents of the Petitioner were not granted access to the Gen20 forms at the various polling stations;
    iii. The ballots contained in the various ballot boxes do not reflect the number of ballots actually cast by individual voters who were entitled to vote at the election; and
    iv. The votes announced at various polling stations unlawfully added votes to the 1st Respondent's vote count which were not cast in the election;

v. That up to the time of filling this Petition the agents of Your Petitioner at the 93 polling stations were never granted an opportunity to confirm any Gen20 form even after the same was requested for multiple times;

vi. That the District Commissioner for Chilubi District openly campaigned with state resources and also offered the electorate sums of money if the vote for the UPND candidate;

vii. That a group of people were caught on camera and a video was circulated of the 2nd Respondent's polling staff pre-marking ballot papers;

viii. That there was no public announcement at the totalling centre by the returning officer as the victory of the 1st Respondent was only known by your petitioner after a Gen20 form was circulating on social media;

ix. That the suspension of counting of votes by the 2nd Respondent also affected Chilubi Constituency which suspended all counting of vote for over 24 hours even after the 2nd Respondent uplifted the suspension; and

x. That the results for the three tears (Presidential, Parliamentary and Council Chairperson show discrepancies in the numbers. The total votes received for presidential are 32, 488 Parlimentary are 32, 418 and Council Chairperson is 32, 391.

13. Your Petitioner avers that if the aforesaid illegal actions were not perpetrated the 1st Respondent would have not been declared the dully elected Member of parliament for Chilubi Constituency

14. That all polling station's numbers are not a true reflection of the will of the people as no Gen20 forms have ever been presented to confirm the same.

15. Your Petitioner avers that 1st Respondent's victory does not mirror the true will of the people of Chilubi Constituency.

WHEREOF your Petitioner PRAYS for a determination and declarations that:

i. The purported declaration naming the 1st Respondent as duly elected Member of Parliament for Chilubi Constituency, be declared void and of no legal effect;

ii. The costs of and occasioned by this Petition be borne by the Respondents; and

iii. Any other or further relief this Honourable Court may deem fit.

Dated at Lusaka this _____ day of _____ 2026.

_____
THE PETITIONER

Prepared by: _____
Messrs. Joseph Chirwa and Company
Plot 10426 Manda Hill Road
Olympia Park
P.O. Box 37342
Email: admin@chirwa@law.com
LUSAKA
ADVOCATES FOR THE PETITIONER

To: Mathias Chitembo
LUSAKA

The Electoral Commission of Zambia
Elections House, Haile Selassie Avenue,
P.O. Box 50274
LUSAKA

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REPUBLIC OF ZAMBIA HIGH COURT OF ZAMBIA 07 SEP 2026 PRINCIPAL REGISTRY P.O. BOX 50067, LUSAKA.

AMENDED LIST OF AUTHORITIES AND COPIES

MAY IT PLEASE THIS HONOURABLE COURT; These are your Petitioner's Skeleton Arguments and List of Authorities in Support of the Affidavit Verifying Facts;

LIST OF AUTHORITIES

STATUTES:

1. **Constitution of Zambia Act No.2 of 2016**
2. **The Electoral Process Act No. 35 of 2016**
3. **The High Court (Election Petition) Rules, 2026**

CASES

1. **Mutotwe Kafwaya V Chasaya Katongo, Justine Chongo and Electoral Commission of Zambia – 2021/CCZ/A0020**

Dated the _____ day of _____ 2026.

Prepared by: _____

Messrs. Joseph Chirwa and Company
Plot 10426 Manda Hill Road
Olympia Park
P.O. Box 37342
Email: admin@chirwa@law.com
LUSAKA
ADVOCATES FOR THE PETITIONER

GOVERNMENT OF ZAMBIA

ACT

No. 2 of 2016

Date of Assent: 5th January, 2016

An Act to amend the Constitution of Zambia.

[5th January, 2016

ENACTED by the Parliament of Zambia. Enactment

1. This Act may be cited as the Constitution of Zambia (Amendment) Act, 2016, and shall be read as one with the Constitution of Zambia, in this Act referred to as the Constitution. Short title

Cap. 1

2. The Constitution is amended by the repeal of the Preamble and the substitution therefor of the following: Repeal and replacement of Preamble

PREAMBLE

WE, THE PEOPLE OF ZAMBIA:

ACKNOWLEDGE the supremacy of God Almighty;

DECLARE the Republic a Christian Nation while upholding a person's right to freedom of conscience, belief or religion;

UPHOLD the human rights and fundamental freedoms of every person;

COMMIT ourselves to upholding the principles of democracy and good governance;

RESOLVE to ensure that our values relating to family, morality, patriotism and justice are maintained and all functions of the State are performed in our common interest;

CONFIRM the equal worth of women and men and their right to freely participate in, determine and build a sustainable political, legal, economic and social order;

Single copies of this Act may be obtained from the Government Printer P.O. Box 30136, 10101 Lusaka. Price K220.00

Petition of election of Member of Parliament

73. (1) A person may file an election petition with the High Court to challenge the election of a Member of Parliament.

(2) An election petition shall be heard within ninety days of the filing of the petition.

(3) A person may appeal against the decision of the High Court to the Constitutional Court.

(4) A Member of Parliament whose election is petitioned shall hold the seat in the National Assembly pending the determination of the election petition.

Leader of Government Business and Leader of Opposition

74. (1) The President shall appoint the Vice-President to be the Leader of Government Business in the National Assembly.

(2) The opposition political party with the largest number of seats in the National Assembly shall elect a Leader of the Opposition from amongst the Members of Parliament who are from the opposition.

Proceedings of National Assembly

Sittings of National Assembly

75. (1) The Speaker shall, within thirty days after a general election, by notice in the *Gazette,* appoint a date for the first sitting of the National Assembly for that term.

(2) There shall be at least three sittings of the National Assembly in a session of Parliament which shall be held at such times and on such days as the Speaker appoints.

(3) Notwithstanding clause (2), the President, or two-thirds of the Members of Parliament, may, in writing, request the Speaker to summon a sitting of the National Assembly, as prescribed.

Freedom of speech, powers, privileges and immunities

76. (1) A Member of Parliament has freedom of speech and debate in the National Assembly and that freedom shall not be ousted or questioned in a court or tribunal.

(2) A Member of Parliament shall have the powers, privileges and immunities, as prescribed.

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 31 OF 2026

The Electoral Process Act
(Laws, Volume 1, Cap. 13)

The High Court (Election Petition) Rules, 2026

Arrangement of Rules

PART I
PRELIMINARY PROVISIONS

Rule

1. Title
2. Interpretation
3. Practice and procedure

PART II
NOMINATION PETITIONS

4. Petition to challenge nomination of candidate for election as Member of Parliament
5. Answer to nomination petition
6. Trial of nomination petition
7. Decision of Court on nomination
8. Appeal against decision of Court on nomination petition

PART III
ELECTION PETITIONS

9. Petition to challenge election of Member Parliament
10. Answer to election petition
11. Trial of election petition
12. Conclusion of trial of election petition
13. Appeal against decision of Court on election petition

Copies of this Statutory Instrument can be obtained from the Government Printer, P.O. Box 30136, 10101 Lusaka. Price K36.00 each.

Trial of nomination petition

6. (1) A nomination petition shall be heard and determined by the Court, in open Court, within twenty-one days from the date of filing the nomination petition.

(2) On the trial of a nomination petition, a verbatim record of all evidence given orally in the trial shall be taken and transcripts of the record shall, at the conclusion of the proceedings, be delivered to the Commission by the Registrar.

Decision of Court on nomination petition

7. (1) The Court shall, at the conclusion of the trial, give the Court's decision and—

(a) give reasons for the decision; or

(b) reserve the reasons for the Court's decision to a later date.

(2) The Court shall, where the Court reserves its reasons for a decision under subrule (1)*(b)* —

(a) give a summary of the decision; and

(b) the date on which the Court shall give its reasons for the decision, which date shall not exceed twenty one days from he last date of the hearing.

Appeal against decision of Court on nomination petition

8. An appeal shall not lie against the decision of the Court in respect of a nomination petition.

PART III

Election Petitions

Petition to challenge election of Member of Parliament

9. (1) A person who intends to challenge the election of a Member of Parliament shall file an election petition in Form III set out in the First Schedule on payment of a fee set out in the Second Schedule.

(2) An election petition referred to under subrule (1) shall disclose the—

(a) name and address of a petitioner or the petitioner's legal practitioner, if any;

(b) constituency in which an election being challenged was held;

(c) outcome or results of an election being challenged;

(d) date of declaration of the results of an election being challenged;

(e) grounds relied on; and

(f) relief sought by a petitioner.

(3) An election petition referred to under subrule (1) shall be accompanied by—

(a) an affidavit verifying facts;

(b) skeleton arguments of not more than fifteen pages, in font size 12 and with double spacing;

(c) a list of authorities and copies of those authorities;

(d) a list and description of documents to be relied on, if any; and

(e) a bundle of documents, if any.

(4) An election petition shall be served on a respondent in accordance with rule 14.

(5) Subject to the Act, an election petition shall be personally signed by a petitioner or by all the petitioners, if the petitioners are more than one.

(6) Subject to the Act, a petitioner shall, within five days of filing an election petition, deposit security for costs not exceeding eight thousand fee units as the Court may order.

(7) Where a petitioner fails to deposit security for costs in accordance with subrule (6), a Court shall not hear and determine an election petition or any other proceedings relating to that election petition.

Answer to election petition

10. (1) A respondent may, within five days of receipt of an election petition referred to under rule 9, file an answer in Form II set out in the First Schedule on payment of a fee set out in the Second Schedule.

(2) An answer referred to under subrule (1) shall be accompanied by—

(a) an affidavit in opposition;

(b) skeleton arguments of not more than fifteen pages, in font size 12 and with double spacing;

(c) a list of authorities and copies of those authorities;

(d) a list and description of documents to be relied on, if any; and

(e) a bundle of documents, if any.

(3) A respondent who does not file an answer to an election petition under this rule shall not participate in the proceedings of the election petition.

THE ELECTORAL PROCESS ACT, 2016

ARRANGEMNET OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title
2. Interpretation
3. Principles of electoral system and process
4. Administration, enforcement and prosecution
5. Delegation of powers and duties by Commission
6. Delegation of powers and duties by Chief Electoral Officer

PART II

REGISTRATION OF VOTERS AND REGISTER

7. Continuous voter registration
8. Qualification for registration as voters
9. Disqualification from registration as voter
10. De-registration of Voter
11. Notification by registration officer
12. Suspension of registration of voters
13. Provisional Register of Voters
14. Register of voters
15. Application to change registration details
16. Amendments to Register of Voters
17. Objections concerning details in provisional register of voters
18. Publication of register of Voters
19. Inspection of register of Voters
20. Cut off dates for registration of Voters and Register of Voters

PART III

POLLING DISTRICTS AND BOUNDARIES

21. Establishment of polling districts
22. Criteria for determining polling district boundaries
23. Inspection and copies of maps of polling district
24. Establishment of polling station
25. Division of area of councils into wards
26. 26. Election in newly created Council
27. Relocation of polling station in emergencies

Single copies of this Act may be obtained from the Government Printer, P.O. Box 30136, 10101 Lusaka, Price K144.00 each.

(4) When the presiding officer has complied with subsection (3), the presiding officer shall—

(a) seal in separate ballot boxes each of the items mentioned in subsection (l) and the written record of any objections; and

(b) deliver the form, completed in terms of subsection (l), and the sealed ballot boxes to the returning officer.

Announcement and declaration of results by returning officer

72. (1) Upon receipt of the items mentioned in section *seventy-one*, a returning officer shall tally the results of the votes received from the polling station in the constituency, district and ward and shall—

(a) announce the results of the votes for the presidential and mayoral or council chairperson elections; and

(b) declare the results for the National Assembly and Ward election.

(2) The returning officer shall submit the results referred to in subsection (1) (a) and (b) to the Commission.

Announcement and declaration of results in Presidential election

73. (1) The Returning Officer shall tally, announce and declare the result of a presidential election as soon as they are received.

(2) The Returning Officer shall announce and declare the result of a presidential election without having received the results of all polling stations if—

(a) to wait for the receipt of the result from every polling station would unduly and unreasonably delay the determination and declaration of the result of that election; and

(b) the outstanding results are not likely to materially influence the overall result of that election.

Electronic transmission of results

74. The Commission may use electronic means to transmit results from polling stations.

Revoting at polling station

75. (1) If ballot papers used in an election at a polling station are lost, destroyed or unlawfully removed before the votes cast at the polling station have been counted and announced, the Commission shall allow a revote at that polling station.

(2) A revote at a polling station shall be—

(a) conducted on a date that would fall within the period referred to in section *twenty-eight;*

(b) publicised in the media so as to ensure wide publicity of the date determined for the revote; and

(c) conducted in accordance with a procedure prescribed by the Commission.

Correction of mistakes

76. The Commission may correct a mistake committed by an electoral officer in the tabulation of results within seven days after the declaration of the results.

PART VII

OBSERVERS, MONITORS AND VOTER EDUCATION

Accreditation of observers and monitors

77. (1) A juristic person may apply to the Commission, in the prescribed manner, for accreditation to observe or monitor an election.

(2) The Commission may require any information it may consider necessary in support of an application under subsection (1).

(3) The Commission shall, where it decides to to accredit an applicant—

(a) issue the applicant with a certificate of accreditation in the applicant's name, stating the period and other conditions of accreditation; and

(b) enter the applicant's name in the register of persons accredited as observers and monitors.

(4) The Commission may accredit an applicant, without the payment of a fee, to observe or monitor an election after considering the application and any other information provided by the applicant, and whether—

(a) the accreditation of the applicant shall promote conditions conducive to a free and fair election; and

(b) the persons appointed by the applicant shall—

(i) observe the election impartially and independently of any registered party or candidate contesting that election;

(ii) be competent and professional in observing the election; and

(iii) subscribe to a code governing observers and monitors issued by the Commission under this Act.

(5) The Commission shall, where it decides not to accredit the applicant, inform the applicant accordingly, in writing, and give the reasons for its decision.

(6) If a person accredited as an observer or monitor fails to comply, to a material extent, with the conditions of the accreditation, the Commission may cancel that accreditation and, in writing, notify the person concerned of the cancellation and state the reasons for such cancellation.

(7) Any person may inspect the register and copies of the certificates of persons accredited as observers and monitors.

(8) The register and copies of the certificate shall be kept at the Commission's head office.

(9) The Chief Elections Officer shall provide a certified copy of, or extract from, the register or a certificate to any person upon payment of the prescribed fee.

(10) A person representing an accredited observer or monitor shall abide by the Code.

(11) A person representing an accredited observer or monitor who is found guilty of violating any election law shall be disqualified from observing or monitoring an election.

(12) A register of juristic persons and institutions accredited as observers or monitors and copies of the certificates of the observers and monitors shall be kept at the Commission's head office.

(13) In this section "juristic person" includes an institution and organisation registered under the Non-Governmental Organisations Act, 2009.

Act No. 16 of 2009

Powers and duties of accredited observers and monitors

78. (1) An accredited observer or monitor may, in relation to an election for which that observer or monitor is accredited, observe the proceedings concerning voting, the counting of votes and the announcement and declaration of the election results.

(2) Whilst observing an election, a person appointed by an accredited observer or monitor shall wear the prescribed identification indicating that the person is representing an accredited observer or monitor.

(3) A person appointed by an accredited observer or monitor shall comply with any order issued by an election officer or a police officer acting on the instructions of an election officer.

Provision of voter education generally

79. (1) Any natural or juristic person may provide voter education for an election.

(2) Any natural or juristic person providing voter education shall do so in a manner that—

(a) is impartial and independent of any registered party or candidate contesting an election; and

(b) shall promote conditions conducive to free and fair elections.

Voter education

80. Despite section *eight,* the Commission shall provide voter education for an election.

PART VIII

Elections Offences

Bribery

81. (1) A person shall not, either directly or indirectly, by oneself or with any other person corruptly—

(a) give, lend, procure, offer, promise or agree to give, lend, procure or offer, any money to a voter or to any other person on behalf of a voter or for the benefit of a voter in order to induce that voter to vote or refrain from voting or corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election;

(b) give, lend or procure, offer, promise or agree to give, lend, procure, offer or promise, any money to a voter or for the benefit of a voter or to any other person or on behalf of that person on behalf of any voter or to or for any other person for acting or joining in any procession or demonstration before, during or after any election;

(c) make any gift, loan, offer, promise, procurement or agreement to or for the benefit of any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election;

(d) upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procure or engage, promise or endeavour to procure, the return of any candidate at any election or the vote of any voter at any election;

(e) advance or pay or cause to be advanced or paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or partially expended in bribery at any election;

(f) before or during any election, receive or contract for any money or loan for oneself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election;

(g) after any election, receive any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election; or

(h) convey or transfer or be concerned with the conveyance or transfer of any property, or pay or be concerned with the payment of any money, to any person for the purpose of enabling that person to be registered as a voter, thereby to influence that person's vote at any future election, or pay to or be concerned with the payment of any money on account of any voter for the purpose of inducing that person to vote or refrain from voting.

(2) A person who contravenes any provision of subsection (1) commits an offence.

(3) Nothing in this Act shall be construed as applying to any money paid or agreed to be paid for, or on account of, any expenditure *bona fide* and lawfully incurred in respect of the conduct or management of an election.

Impersonation

82. (1) A person shall not—

(a) at any election, apply for a ballot paper in the name of some other person, living or dead, or of a fictitious person;

(b) having voted once at any election, apply again at the same election for a ballot paper;

(c) vote at any election knowing that the person is not entitled to vote at that election or induce or procure any person to vote at any election knowing that person is not entitled to vote at that election;

(d) apply to be registered as a voter in the name of any other person, whether living, dead or fictitious; or

(e) impersonate—

(i) a representative of a registered political party;

(ii) a candidate in an election;

(iii) a member, employee or officer of the Commission; or

(iv) a person appointed by an accredited observer, or monitor.

(2) A person who contravenes any provision of subsection (1) commits an offence.

Undue influence

83. (1) A person shall not directly or indirectly, by oneself or through any other person—

(a) make use of or threaten to make use of any force, violence or restraint upon any other person;

(b) inflict or threaten to inflict by oneself or by any other person, or by any supernatural or non-natural means,or pretended supernatural or non-natural means, any physical, psychological, mental or spiritual injury, damage, harm or loss upon or against any person;

(c) do or threaten to do anything to the disadvantage of any person in order to induce or compel any person—

(i) to register or not to register as a voter;

(ii) to vote or not to vote;

(iii) to vote or not to vote for any registered political party or candidate;

(iv) to support or not to support any political registered party or candidate; or

(v) to attend and participate in, or not to attend and participate in, any political meeting, march, demonstration or other political event;

(d) interfere with the independence or impartiality of the Commission, any member, employee or officer of the Commission;

(e) prejudice any person because of any past, present or anticipated performance of a function under this Act;

(f) advantage, or promise to advantage, a person in exchange for that person not performing a function under this Act; or

(g) unlawfully prevent the holding of any political meeting, march, demonstration or other political event.

(2) Subject to the other provisions of this Act, a person shall not prevent another person from exercising a right conferred by this Act.

(3) A person, knowing that another person is not entitled to be registered as a voter, shall not—

(a) persuade that other person that, that other person is entitled to be registered as a voter; or

(b) represent to anyone else that the person is entitled to be registered as a voter.

(4) A person, knowing that another person is not entitled to vote shall not—

(a) assist, compel or persuade that other person to vote; or

(b) represent to anyone else that the other person is entitled to vote.

(5) A person who contravenes any of the provisions of subsections (l) to (4) commits an offence.

(6) A person who, by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the vote of any voter or thereby compels, induces or prevails upon any voter either to give or to refrain from giving the person's vote at any election, commits an offence.

Illegal practice of publishing false statements in respect of candidates

84. (1) A person shall not, before or during an election, publish a false statement of the illness, death or withdrawal from election of a candidate at that election for the purpose of promoting or procuring the election of another candidate, knowing that statement to be false or not believing it to be true.

(2) A person who, contravenes subsection (1) commits an illegal practice, unless that person had reasonable grounds for believing, and did believe, the statement to be true.

Illegal practice in respect of nomination of candidates

85. (1) A person shall not—

(a) forge or fraudulently destroy any written authority of a candidate or nomination paper; or

(b) deliver to a returning officer any written authority of a candidate or nomination paper or affidavit knowing the same to be forged.

(2) A person who knowingly makes a false statement relating to that person's nomination in that person's nomination paper or affidavit commits an offence.

Illegal practices in respect of public meetings

86. A person shall not, at a lawful public meeting held in connection with the election of any person between the day of the publication of a notice appointing a nomination day and the day on which the result of the election is published, act or incite others to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is called.

Illegal practices relating to the poll

87. (1) A person shall not—

(a) forge, counterfeit or fraudulently deface or fraudulently destroy any ballot paper or the official mark on any ballot paper;

(b) without authority supply any ballot paper to any person;

(c) without authority put into any ballot box any ballot paper which that person is not authorised by law to put in;

(d) sell or offer to sell any ballot paper or voter's card to any person or purchase or offer to purchase any ballot paper or voter's card from any person;

(e) not being a person entitled under this Act to be in possession of a ballot paper or voter's card, have any such ballot paper or voter's card in that person's possession;

(f) without authority destroy, take, open or otherwise interfere with any ballot box or packet of ballot papers in use or intended to be used for the purpose of an election;

(g) without authority print or make any ballot paper or what purports to be or is capable of being used as a ballot paper or any identity document at an election;

(h) manufacture, construct, have in that person's possession, supply, or use for the purpose of an election, or cause to be manufactured constructed, supplied or used for the purposes of any election any appliance, device or mechanism by which a ballot paper may be extracted or manipulated after having been deposited in a ballot box in the course of polling at any polling station; or

(i) at an election obstruct a voter either at the polling station or on that voter's way thereto or therefrom.

Penalty for illegal practices

88. A person who engages in an illegal practice commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Other election offences

89. (1) A person shall not—

(a) within a period prescribed for the receipt of nominations, under this Act, loiter in any public place within four hundred metres from the entrance to a nomination centre;

(b) having been required to leave a nomination office, fail to leave such nomination office or the precincts thereof;

(c) put into any ballot box anything other than the ballot paper which that person is authorised by law to put therein;

(d) without due authority take out of the polling station any ballot paper or be found in possession of any ballot paper outside a polling station;

(e) on any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred metres from the entrance to such polling station

(i) canvass for votes;

(ii) solicit the vote of any person;

(iii) induce any person not to vote; or

(iv) induce any person not to vote for a particular candidate;

(f) on any polling day loiter in any public place within four hundred metres from the entrance to any polling station;

(g) on any polling day exhibit in any public or private place within one hundred metres from the entrance to any polling station any notice or sign, other than an official notice or sign authorised by an election officer under this Act, relating to the election;

(h) not being a presiding officer, an election officer, candidate, an election agent or a polling agent in the course of their functions within a polling station, make any record showing that any particular person has voted in an election;

(i) without lawful authority, destroy, mutilate, deface or remove any notice which is exhibited in accordance with this Act or under any regulations issued under this Act, or any document made available for inspection under this Act and any such regulations;

(j) wilfully obstruct or interfere with a returning officer, presiding officer, or election officer in the execution of their duties;

(k) make a false answer to any question put to that person by a presiding officer or an election officer under this Act;

(l) have any communication with a voter while such voter is in the precincts of a polling station for the purpose of voting;

(m) fail to comply with any requirement or direction to leave a polling station or the precincts thereof; or

(n) being a candidate use a symbol in the course of an election other than the symbol registered with the Chief Electoral Officer in accordance with this Act and any regulations thereunder or, in the case of any other person, associate any candidate with, any symbol in the course of an election other than the candidate's registered symbol.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Property in certain election material

90. In a prosecution for an offence in relation to a nomination paper, ballot box or ballot paper, the property in such nomination paper, ballot box, as well as the property in the counterfoil of any ballot paper, shall be vested in the Commission at that election.

Secrecy and penalty for breach of secrecy

91. (1) A person in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at such station and shall not communicate, except for some purpose authorised by law, to any person, any information as to the name or number on the Register of Voters of any voter who has or has not applied for a ballot paper or voted at such polling station, or as to the official mark or official seal at such polling station.

(2) A person other than a presiding officer or polling assistant in exercise of the presiding officer or polling assistants' functions under this Act shall not, obtain or attempt to obtain in a polling station information as to the candidate for whom any person in such polling station is about to vote or has voted or communicate at any time, to any person, any information obtained in a polling station as to the candidate for whom any person in such polling station is about to vote or has voted, or as to the number on the ballot paper issued to any person at such polling station.

(3) A person in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting and shall not ascertain at the counting the number on any ballot paper or communicate any information obtained at the counting as to the manner in which any vote is given by any particular ballot paper.

(4) A person who contravenes any of the provisions of this section commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Offences by election officers

92. An election officer who wilfully fails to perform the functions of that office under this Act commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Offences by printers and publishers

93. (1) A bill, placard, poster, pamphlet, circular or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and of the publisher.

(2) A person who prints, publishes or posts, or causes to be printed, published or posted any matter referred to in subsection (1), which does not bear upon the face thereof such name and address of the printer or publisher commits an offence.

(3) The proprietor and publisher of every newspaper shall cause the word advertisement to be printed as a headline to each article or paragraph appearing in that person's newspaper containing electoral matter, the insertion of which is or is to be paid for, and any proprietor or publisher who fails to comply with this provision commits an offence.

(4) For the purposes of this section—

(a) any process for producing copies of a document, other than by copying it by hand, shall be deemed to be printing, and the expression "printed" shall be construed accordingly; and

(b) "electoral matter" shall be deemed to include all matters which, on the face of them, are intended or calculated to affect the result of an election.

Obstruction of officer

94. (1) A person shall not—

(a) wilfully delay or obstruct an officer in the carrying out of that officer's duties and powers under this Act; or

(b) assault an officer in the lawful exercise of that officers duties and power under this Act.

(2) A person who contravenes a provision of subsection (1), commits an offence and is liable, upon conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

Attempts to commit offence

95. A person who attempts to commit an offence under this Part commits an offence and is liable upon conviction to the penalty specified for that offence.

PART IX

ELECTION PETITIONS

Application to members and officers of Parliament

96. (1) A question which may arise as to whether—

(a) a person has been validly appointed or nominated as a Member of Parliament;

(b) the seat of an elected or nominated Member of Parliament, mayor, council chairperson or councillor, has become vacant, other than a question arising from the election of a candidate as a Member of the Parliament; or

(c) a petition may be heard and determined by the High Court or tribunal upon application made by—

(i) any person to whom the question relates; or

(ii) the AttorneyGeneral;

may be determined by the High Court or a tribunal, as the case may be.

(2) A person who makes an application to the High Court or a tribunal under subsection (1), has the right to appear and be represented before the High Court or tribunal.

(3) Subject to any rules of court or tribunal, the powers, practice and procedure of the High Court or a tribunal in respect of the trial of an election petition under this Part shall apply, with the necessary modifications, to the hearing and determination of such applications.

Avoidance of elections

97. (1) An election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall not be questioned except by an election petition presented under this Part.

(2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be, that—

(a) a corrupt practice, illegal practice or other misconduct has been committed in connection with the election—

(i) by a candidate; or

(ii) with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and

the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred;

(b) subject to the provisions of subsection (4), there has been non-compliance with the provisions of this Act relating to the conduct of elections, and it appears to the High Court or tribunal that the election was not conducted in accordance with the principles laid down in such provision and that such non-compliance affected the result of the election; or

(c) the candidate was at the time of the election a person not qualified or a person disqualified for election.

(3) Despite the provisions of subsection (2), where, upon the trial of an election petition, the High Court or a tribunal finds that a corrupt practice or illegal practice has been committed by, or with the knowledge and consent or approval of, any agent of the candidate whose election is the subject of such election petition, and the High Court or a tribunal further finds that such candidate has proved that—

(a) a corrupt practice or illegal practice was not committed by the candidate personally or by that candidate's election agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent;

(b) such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and

(c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent;

the High Court or a tribunal shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void.

(4) An election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court or a tribunal that the election was so conducted as to be substantially in accordance with the provisions of this Act, and that such act or omission did not affect the result of that election.

Presentation of election petition

98. An election petition may be presented to the High Court or a tribunal by one or more of the following persons:

(a) a person who lawfully voted or had a right to vote at the election to which the election petition relates;

(b) a person claiming to have had a right to be nominated as a candidate or elected at the election to which the election petition relates;

(c) a person claiming to have been a candidate at the election to which the election petition relates; and

(d) the AttorneyGeneral.

Relief which may be claimed in election petition

99. Any of the following reliefs may be claimed in an election petition:

(a) a declaration that the election was void; or

(b) a declaration that any candidate was duly elected.

Form and procedure for presentation of election petition

100. (1) An election petition shall be in such form as the Chief Justice may by rules prescribe.

(2) An election petition shall be presented—

(a) in the case of an election of a candidate as a Member of Parliament, to the Principal Registry or District Registry of the High Court by lodging it with the Registrar in accordance with this Act; or

(b) in the case of an election of a candidate as a mayor, council chairperson or councillor, to the appropriate tribunal by lodging it with the designated person.

(3) 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.

(4) Where an election petition is presented under this section—

(a) in the case of an election petition presented in respect of an election of a candidate as a Member of Parliament, the Registrar shall, in writing, inform the Speaker of the National Assembly and the Commission of such presentation; and

(b) in the case of an election petition presented in respect of the eleetion of a candidate as a mayor, council chairperson or councillor, the designated person shall, in writing, inform the Commission of the presentation.

Duty of Registrar and designated person to make out list of election petition

101. (1) Subject to the provisions of subsection (2), the Registrar and the designated person shall make out a list of all election petitions presented under this Act, placing them on such list in the order in which they are presented, and the Registrar or the designated person, as the case may be, shall keep at the Registrars office or the designated person's office a eopy of the list which shall be open for inspection by any person making application for inspection thereof.

(2) An election petition shall, unless the High Court or a tribunal orders otherwise, be tried in the order in which it stands on the list made out by the Registrar or designated person under subsection (1), but where more election petitions than one are presented in respect of the same election, the election petitions shall be bracketed together and shall be dealt with as one petition, standing, unless the

High Court or a tribunal orders otherwise, in the list in the place where the last of the election petitions would have stood if it had been the only election petition presented in respect of that election.

Rules of practice and procedure, security for costs etc

102. (1) Subject to the other provisions of this Act, the Chief Justice may make rules regulating generally the practice and procedure of the High Court and tribunals with respect to the presentation and trial of election petitions, including rules as to the time within which any requirement of the rules is to be complied with and as to the costs of and incidental to the presentation and trial of the election petitions and as to the fees to be charged in respect of proceedings therein, and generally as regard to any other matter relating thereto as the Chief Justice may consider necessary or desirable.

(2) After the presentation of an election petition, a petitioner to it shall give such security for costs, not exceeding in amount the sum of eight thousand fee units, as the High Court or a tribunal may order, and such security shall be given within the time and in the manner and form as the Chief Justice may prescribe by rules under this section or, in the absence of the rules, as the High Court or a tribunal may order.

(3) Where, after the presentation of an election petition, no security for costs is given as required by or under this section, no further proceedings shall be heard on that election petition.

Withdrawal of election petition

103. (1) A petitioner shall not withdraw an election petition without the leave of the High Court or a tribunal.

(2) An application for leave to withdraw an election petition shall not be made until notice of intention to withdraw the election petition has been given in such manner as the Chief Justice may prescribe.

(3) Where an election petition is presented by two or more petitioners, an application to withdraw the election petition shall not be made except with the consent of all the petitioners to it.

(4) The High Court or a tribunal may, upon an application for leave to withdraw an election petition, make such order as to costs as it may consider just.

Substitution of new petitioners

104. (1) Upon the hearing of an application under section *one hundred and three* for leave to withdraw an election petition, any person who might have been a petitioner in respect of the election to which that election petition relates may, despite the provisions of

section *one hundred*, apply to the High Court or tribunal to be substituted for the petitioner applying to withdraw, and the High Court or a tribunal may, if it grants leave to the petitioner to withdraw, order that person (hereinafter referred to as "the substituted petitioner") to be substituted for the petitioner.

(2) Subject to the other provisions of this section, the substituted petitioner shall, as nearly as may be, stand in the same position, and be subject to the same liabilities, under this Act as the petitioner for whom a substitution was made (hereinafter referred to as "the original petitioner").

(3) Where the High Court or a tribunal makes an order under subsection (1), it may direct that the security for costs given by the original petitioner shall remain as security for any costs caused thereafter by the substituted petitioner upon the trial of the election petition, and may direct that, to the extent of the amount of the security, the original petitioner shall be liable to pay the costs of the substituted petitioner.

(4) Unless the High Court or tribunal gives directions as in subsection (3), section *one hundred and three* (1) and (2) shall apply to the substituted petitioner as they apply in relation to a petitioner presenting an election petition.

Abatement of election petitions

105. (1) If a sole petitioner or the survivor of several petitioners dies, then subject to the provisions of this section, no further proceedings shall be heard upon the election petition.

(2) The death of a petitioner shall not affect that petitioner's liability for the payment of costs previously incurred.

(3) On the abatement of an election petition under subsection (1), any person who might have been a petitioner in respect of the election to which that election petition relates may, despite section *one hundred and one* apply to the High Court or tribunal to be substituted as a petitioner in place of the deceased petitioner and the High Court or a tribunal may, if it thinks fit, order that such person be substituted accordingly.

(4) Where the High Court or a tribunal makes an order under this section for the substitution of a person in place of a deceased petitioner such person shall, as nearly as may be, stand in the same position, and be subject to the same liabilities, under this Act as the

deceased petitioner would have been but for the death, and section *one hundred and three* (1) and (2) shall apply to the person as they apply in relation to a petitioner presenting an election petition.

Trial of election petitions

106. (1) An election petition shall be tried and determined by the High Court or a tribunal in open court—

(a) in the case of the election of a candidate as a Mayor, council chairperson or Councillor, within thirty days from the date of filing an election petition; and

(b) in the case of the election of a candidate as a Member of Parliament, within ninety days from the date of filing an election petition.

(2) Where an election petition is not tried and determined within the period specified in subsection (1) due to a failure by the petitioner to actively prosecute the petition, the High Court or a tribunal shall dismiss the petition for want of prosecution.

(3) The High Court or a tribunal may adjourn the trial of an election petition from time to time and from place to place.

(4) Subject to the provisions of this Act, the High Court may in respect of the trial of an election petition, exercise such powers within its civil jurisdiction as it may deem appropriate.

(5) On the trial of an election petition, a verbatim record of all evidence given orally in the trial shall be taken and transcripts of the record shall, at the conclusion of the proceedings, be delivered to the Commission by the Registrar or designated person, as the case may be.

Witnesses

107. (1) On the trial of an election petition, the High Court or a tribunal may—

(a) order a person who appears to the High Court or a tribunal to have been concerned in the election to attend as a witness at the trial; and

(b) examine any witness or any person who is present at the trial although such witness or person is not called as a witness by any party to the proceedings, except that after the examination by the High Court or a tribunal of a witness or person, the witness or person may be cross examined by or on behalf of the petitioner or the respondent.

(2) A person who is called as a witness at the trial of an election petition shall not be excused from answering any question relating to any offence connected with an election on the ground that the answer thereto may tend to incriminate that person, or on the ground of privilege.

(3) Despite subsection (2), a witness who answers to the satisfaction of the High Court or a tribunal every question which is required to be answered under subsection (2), and the answers to which may tend to incriminate that witness, shall not be liable to prosecution for any offence committed by that witness in connection with the election and in respect of which that witness is examined and the witness shall be entitled to receive a certificate of indemnity under the hand of the Registrar or designated person as the case may be, stating that the witness is freed and discharged from liability to prosecution for that offence.

(4) Despite subsection (2), an answer by a witness to a question before the High Court or tribunal under subsection (2) shall not, except in the case of any criminal proceedings for giving false evidence in respect of the evidence, be admissible in any proceedings, civil or criminal, in evidence against that witness.

(5) Where a person has received a certificate of indemnity under subsection (3), and any legal proceedings are at any time brought against that person for any offence to which the certificate relates, the court having conduct of the case shall, on proof of the certificate of indemnity, stay the proceedings and may award to that person such costs as that person may have been put to in the proceedings.

(6) All reasonable expenses incurred by any person in attending at or appearing before the High Court or a tribunal to give evidence as a witness at the trial of an election petition shall be allowed to that person according to the scale of allowances and expenses appropriate in civil proceedings before the High Court.

Conclusion of trial of election petition

108. (1) At the conclusion of the trial of an election petition, the High Court or a tribunal shall determine whether the respondent, or any other, and which, person, was duly elected, or whether the election to which the election petition relates was void, and the Registrar or designated person shall, as soon as is practicable, submit a copy of such determination to—

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

2021/CCZ/A0020

IN THE MATTER OF: ARTICLE 47(2), 54, 68, 72(2) (C), 99 OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 81, 83, 89, 97(1), 98(c), 99, 100(2) AND 106(1) (a) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016

IN THE MATTER OF: THE CODE OF CONDUCT RULES

IN THE MATTER OF: PARLIAMENTARY ELECTION PETITION RELATING TO THE PARLIAMENTARY ELECTION HELD IN LUNTE CONSTITUENCY ON 12TH AUGUST 2021

IN THE MATTER OF: AN ELECTION PETITION BY CHASAYA KATONGO AND JUSTINE CHONGO

BETWEEN:



MUTOTWE KAFWAYA — APPELLANT

AND

CHASAYA KATONGO — 1ST RESPONDENT

JUSTINE CHONGO — 2ND RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA — 3RD RESPONDENT

CORAM: Sitali, Mulenga, Mulonda, Munalula, Mulongoti, JJC on 9th February, 2022 and 13th April, 2022

For the Appellant	:	Mr. T. S. Ngulube, Miss K. Mwila and Mr. F. Chipompela of Tutwa S. Ngulube and Company
For the 1st Respondent	:	Mr. B. Sitali of Butler and Company Legal Practitioners
For the 1st and 2nd Respondents:		Mr. J. Mataliro and Mr. D. Mwaba of James and Doris Legal Practitioners
For the 3rd Respondent	:	Mr. B. Musenga and Mr. M. Bwalya In-house Counsel

JUDGMENT

Sitali, JC, delivered the judgment of the Court.

Cases cited:

1. Alfonso G. Chungu and Others v Anthony Kasandwe and Another, 2021/HN/EP/004
2. Haonga and Others v The people (1976) Z.R. 200
3. Attorney-General v Kakoma (1975) Z.R. 212
4. Simasiku Kalumiana v Geoffrey Lungwagwa and the Electoral Commission of Zambia, 2006/HP/EP/007
5. Mubika Mubika v Poniso Njeulu, SCZ Appeal No. 114 of 2007
6. Jonathan Kapaipi v Newton Samakayi, CCZ Appeal No. 13 of 2017
7. Nkandu Luo and the Electoral Commission of Zambia v Doreen Sefuke Mwamba and the Attorney-General, Selected Judgment No. 51 of 2018
8. Margaret Mwanakatwe v Charlotte Scott, Selected Judgment No. 50 of 2018
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10. Christopher Kalenge v Annie Munshya and Two Others, 2011/HK/Ep/03
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12. Abiud Kawangu v Elijah Muchima, CCZ Appeal No. 8 of 2017
13. Chrispine Siingwa v Stanley Kakubo, CCZ Appeal No. 7 of 2017
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15. Mbololwa Subulwa v Kaliye Mandandi, Selected Judgment No. 25 of 2018

16. **Godfrey Chimfwembe v The People SCZ/9/145/2013**
17. **Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa (2005) Z.R. 138**
18. **Madubula v The People SCZ Judgment No. 11 of 1994**
19. **Chief Chanje v Paul Zulu SCZ Appeal No. 73/2008**
20. **Attorney General v Marcus Achiume (1983) ZR 1**
21. **GDC Hauliers (Z) Limited v Trans Carriers Limited (2001) Z. R. 47**
22. **Saul Zulu v Victoria Kalima, SCZ Judgment No. 2 of 2014**
23. **Akashambatwa Mbikusita Lewanika and Others v Fredrick Jacob Titus Chiluba (1998) Z. R. 97**
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25. **Richwell Siamunene v Sialubalo Gift, Selected Judgment No. 58 of 2017**
26. **Kufuka Kufuka v Mundia Ndalamei, CCZ Appeal No. 15 of 2016**
27. **Examination Council of Zambia v Reliance Technology Limited SCZ Judgment No. 46 of 2014**
28. **Sibongile Mwamba v Kelvin M. Sampa and Electoral Commission of Zambia Selected Judgment No. 57 of 2017**

Legislation referred to:

1. **The Constitution of Zambia, Chapter 1 of the Laws of Zambia as amended by the Constitution of Zambia (Amendment Act No. 2 of 2016).**
2. **The Electoral Process Act No. 35 of 2016, section 97 (2) (a).**

1.0 INTRODUCTION AND BACKGROUND

[1.1] The Appellant, Mutotwe Kafwaya, who was the 1st Respondent in the Court below, appeals against the decision of the High Court to nullify his election as Member of Parliament for Lunte Constituency. The Appellant and the 1st and 2nd Respondents, Chasaya Katongo and Justine Chongo, were three of five contenders for the Lunte Constituency seat in the parliamentary election held on 12th August, 2021.

[1.2] The Appellant was the candidate for the Patriotic Front party (PF) in the election, the 1st Respondent was the candidate for the United Party for National Development (UPND) while the 2nd Respondent was an independent candidate. Two other candidates contested the election on the Democratic Party (DP) ticket and on the Socialist Party (SP) ticket, respectively.

[1.3] The Appellant was declared as the duly elected Member of Parliament for Lunte Constituency having received six thousand, nine hundred and ninety-two (6,992) votes; the 1st Respondent was runner-up having received five thousand, three hundred and ninety-one (5,391) votes; while the 2nd Respondent was in third place with five thousand and eighteen votes (5,018). The other two candidates shared the remaining valid votes which were cast.

[1.4] Dissatisfied with the election results, Chasaya katongo filed a petition before the High Court against Mutotwe Kafwaya and the Electoral Commission of Zambia as 1st and 2nd Respondents, respectively, while Justine Katongo filed a separate petition against Mutotwe Kafwaya only. Both petitioners sought a declaration that the Appellant was not duly elected as Member of Parliament for Lunte Constituency and that the election was a nullity. The two petitions

were subsequently consolidated by the learned trial Judge. In the consolidated petition, the Court designated Chasaya Katongo as the 1st Petitioner, Justine Chongo as the 2nd Petitioner, Mutotwe Kafwaya as the 1st Respondent and the Electoral Commission of Zambia as the 2nd Respondent, respectively.

[1.5] In his petition, Chasaya Katongo, the 1st Respondent, alleged that the campaigns and voting in the election were characterized by bribery, corruption and undue influence of voters and general violations of the Electoral Process Act No. 35 of 2016. He alleged that on 11th August, 2021 and on the polling day, 12th August, 2021, the Appellant and his agents commandeered the disbursement of social cash transfer funds in the entire Lunte Constituency and increased the amount from the authorized K130 to K300 which they paid to voters as a bribe and an inducement for them to vote for the Appellant.

[1.6] He also alleged that on polling day, the Appellant and his agents prepared nshima, beef and chicken which they positioned on routes to polling stations. They gave K20.00 to each voter and instructed them to vote for the Appellant and return to eat the food. It was alleged that prior to voting, the Appellant and his agents informed

the voters that there were cameras in the polling booths and that if they did not vote for the Appellant, they would be identified and would be disqualified from receiving future social cash transfer funds and would also not partake of the meal.

[1.7] It was further alleged that on polling day, an NGO known as GGOZA affiliated to the PF, together with the Appellant's agents, hired vehicles and ferried voters to polling stations. A PF official was deployed on the vehicles to direct voters to vote for the Appellant and to inform them that if they did not vote for the Appellant, they would be identified by cameras placed in the polling booths.

[1.8] Furthermore, it was alleged that on polling day the Appellant went to Fitaba, Mukolwe, Sambala and Filipo polling stations and took pictures of the inside of the polling stations in the presence of the presiding officer. He then announced to voters on the queue that the pictures he had taken of the polling booths would be uploaded on to the computer and that anyone who voted for the UPND would be identified and dealt with.

[1.9] The 1st Respondent alleged that the Appellant and the 3rd Respondent's agents denied him and his campaign manager access to the totaling center at Vincent Bulaya while the Appellant was

allowed in as the results were announced; and that although Lunte Constituency has 65 polling stations, he and his agents were only given Gen 20 forms for 20 polling stations.

[1.10] The Appellant filed an Answer to the 1st Respondent's petition with an opposing affidavit in which he denied engaging in any acts of corruption involving the distribution of K20.00 notes to voters or cooking food for voters in the vast constituency as alleged. He further denied that he told voters that there were cameras placed in polling booths and asserted that if that were true, he would have obtained 100% votes in the election.

[1.11] He further denied any involvement in distributing social cash transfer or increasing the amount to K300.00 which he averred was not possible to do in such a vast constituency. He denied any involvement in the preparation of nshima for the electorate on polling day. He also denied any knowledge or linkage to the Non-Governmental Organisation (GGOZA) before or during the elections. He contended that he was duly elected as Member of Parliament for the constituency.

[1.12] The Electoral Commission of Zambia (as 2nd Respondent) filed its Answer to the petition in which it denied all the allegations set out

in the petition. It averred that it did not receive any objection from the Petitioner in the prescribed form or at all and asserted that its electoral staff complied with the provisions of the electoral laws and regulations before, during and after the elections.

[1.13] The 2nd Respondent, Justine Chongo, alleged in his petition that the Appellant engaged in corrupt and illegal practices prior to and during the elections. He specifically alleged that the Appellant and or his agents on 11th August 2021 bribed and induced voters by handing out sums of money so that they could vote for him. That on polling day, they handed out money to groups of voters at the barrier and entrance to polling stations.

[1.14] He further alleged that the Appellant and or his agents threatened the voters by telling them that those who did not vote for the Appellant would be detected by security cameras placed in polling booths. He contended that the Appellant and or his agents bribed voters through mass distribution of mealie meal, cooking oil and sugar at all polling stations; and that on the polling day they slaughtered numerous cows, goats and chickens and prepared meals. He alleged that they told the voters to go and vote for the Appellant and return to partake of the meals prepared.

[1.15] It was further alleged that the Appellant and or his agents widely disseminated false information to voters in the constituency, particularly targeting those eligible for the social cash transfer, that if the Appellant was not duly elected as Member of Parliament for the constituency, the social cash transfer programme would be discontinued.

[1.16] Lastly, the 2nd Respondent contended that although he had two polling agents in each of the 65 polling stations in Lunte Constituency, his polling agents in some polling stations did not counter sign for the election results announced by the presiding officer at those polling stations as being true and correct.

[1.17] The Appellant filed an Answer to the 2nd Respondent's petition in which he denied engaging in any corrupt or illegal practices before and during the elections as alleged. He denied handing out cash to voters or distributing food stuff to voters at polling stations; he asserted that he did not slaughter any cows, goats or chickens to feed voters and stated that the places where this was allegedly done were not disclosed and that the allegations were a smear campaign intended to show that his campaign was bad.

[1.18] He also denied that he had any connection to, or that he influenced, the social cash transfer programme and stated that he could not be held accountable for it. He further asserted that he only had one election agent and was not responsible for the conduct of elections; that any complaints should have been reported to the Electoral Commission of Zambia or to the law enforcement agencies. He stated that he was duly elected as Member of Parliament for Lunte Constituency.

[1.19] In his reply, the 2nd Respondent reiterated that the Appellant engaged in corrupt and illegal practices prior to, and during, the election; that individuals who worked on his behalf during the campaign period handed out cash to voters and distributed food to persuade voters to vote for the Appellant; that the activities complained of were widespread and influenced the outcome of the election in the constituency. He also stated that he would prove that the Appellant was not duly elected as Member of Parliament for Lunte Constituency.

[1.20] At the trial of the petitions, Chasaya Katongo (1st Respondent) testified in support of his petition as PW1 and called twenty-three other witnesses. Justine Choongo (2nd Respondent)

testified as PW25 and called twelve other witnesses. In rebuttal, the Appellant, (as 1st Respondent) testified as RW1 and called two other witnesses. The Electoral Commission of Zambia, as the 2nd Respondent, did not call any witnesses.

[1.21] The learned trial Judge identified four allegations (from both Petitions) for his determination: the first allegation was that the Appellant with the assistance of his agents commandeered the disbursement of social cash transfer funds in the entire Lunte Constituency, from the person duly authorized to disburse the said funds and erected and manned pay points at which social cash transfer money was being disbursed to the electorate as an inducement for the electorate to vote for the 1st Respondent.

[1.22] Secondly, that the Appellant and his agents were involved in treating of registered voters through mass distribution of foodstuff at all polling stations, particularly mealie meal, cooking oil and sugar and prepared nshima with beef and chicken, which they positioned on various routes to polling stations to secure the vote of the Appellant by voters; thirdly, that the Appellant's polling agents in some polling stations were not allowed by the presiding officers to countersign on the Gen 20 forms and that there was non-compliance

in the conduct of the elections; and fourthly, that the campaigns and voting in the election were characterised by bribery, corruption and undue influence of voters and that the Appellant and or his agents further enticed the registered voters through the gifting of sums of money and threatened them by cautioning them that cameras would be placed in the polling booths to determine whether or not they voted for the Appellant.

[1.23] The learned Judge set out the evidence adduced by the petitioners on the four allegations and held that the petitioners had not proved the first three allegations made against the Appellant to the required standard and dismissed them. The trial Judge found that the allegation that the Appellant gave money to the voters and threatened them by alleging that cameras placed in polling booths would detect those who did not vote for him had been proved to the required standard and therefore, upheld the petitions and accordingly declared the election of the Appellant void. He further declared that the Appellant was not duly elected as Member of Parliament for Lunte Constituency.

[1.24] Aggrieved by the decision of the lower Court, the Appellant appealed to this Court and advanced eleven grounds of appeal set out verbatim as follows:

1) **The trial judge erred in law and in fact when he nullified the election of the Appellant despite almost all witnesses disputing the 1st Respondent's version of the testimony and inspite of all the witnesses refusing having seen the appellant in most of the alleged places.**

2) **That the trial court erred in law and in fact when he held that the malpractices were widespread despite knowing that the Appellant had not campaigned in all the polling stations in Lunte Constituency.**

3) **The trial court erred in law and in fact when he failed to warn himself of the dangers of receiving evidence from partisan witnesses who alleged that the Appellant herein was giving out money during various meetings held before elections.**

4) **The trial court erred in law and in fact when he failed to resolve the contradictory statements of the Respondent's witnesses and make a finding but instead believed all the contradictory statements at once and relied on them to nullify the Appellant's election.**

5) **The trial court misdirected himself when he made a finding of fact that the Appellant took advantage of the illiteracy of the general populous in Lunte Constituency without any evidence laid before him to support the alleged illiteracy in Lunte and thereby fell into grave error.**

6) **The trial court erred in law and in fact when he was fortified that the misconduct of the Appellant herein was widespread in the absence of cogent evidence from the Respondents to prove the alleged meetings the Appellant was attending in the wards that constitute Lunte Constituency.**

7) **The trial court erred in law and in fact when he failed to analyse the evidence of the parties to the Petition and their witnesses both in examination in chief and cross examination before nullifying the election of the Appellant.**

8) **The trial court erred in law and in fact when he nullified the election of the Appellant herein based on the evidence of malpractice which was not proven to a standard required under the law.**

9) **The trial court misdirected himself when he considered the admission of documents during cross examination of a witness by the 2nd Respondent without due regard to the prejudice that was going to be occasioned to the Appellant herein who had already cross-examined the witness.**

10) **The trial court erred in law and in fact when he failed to critically analyse evidence before him when he ignored some questions put across in cross examination by the Appellant herein thereby misdirecting himself.**

11) **The trial court erred in law and in fact when he ignored the responses given by various witnesses who in cross examination pointed out that they did not see the Appellant herein giving out money but that the same was being given by party officials.**

2.0 APPELLANT'S ARGUMENTS

[2.1] The Appellant filed heads of argument in support of the appeal which Mr Ngulube, counsel for the Appellant, relied on and augmented with oral submissions. Grounds one, four, seven, ten and eleven were argued together, grounds two and six were also argued together while grounds three and eight were argued

separately. No written arguments were proffered on grounds five and nine of the appeal.

[2.2] In arguing grounds one, four, seven, ten and eleven, the Appellant submitted that the 1st and 2nd Respondents' witnesses gave contradictory evidence in the Court below. The Appellant argued that PW4 and PW5 whom the trial court heavily relied upon, failed to identify the Appellant and gave contradictory statements regarding what the Appellant was wearing on the material day and what vehicle he was driving.

[2.3] He stated that PW4 on page 433 of volume 2 of the record of appeal testified that the Appellant was driving a mini bus while PW5 at page 442 of the same record testified that the Appellant was wearing a blue shirt and driving a canter. The Appellant contended that PW5 said most of PW4's testimony was false when asked similar questions to those PW4 was asked.

[2.4] He submitted that PW8 at page 470 of the record of appeal testified that the Appellant was distributing money to the public and was wearing a white shirt and driving a canter in contradiction of the testimony of PW5. The Appellant further submitted that PW7, PW8 and PW9 gave contradictory statements regarding the incident at

Filopo where it was alleged that the Appellant gave money to the electorate. PW7 and PW9 testified that the Appellant threw the money in the air while PW8 testified that the money was put on the table.

[2.5] Regarding the allegation relating to social cash transfer, the Appellant submitted that PW29 at page 271 of the record of appeal in cross examination testified that the Appellant had nothing to do with the registration and distribution of the social cash transfer, that at page 772 PW29 said he was not aware of any meals being cooked at Chitoshi polling station while at page 774, he said that he was not given any money by the Appellant to vote for him.

[2.6] The Appellant referred to the evidence of PW30 in examination in chief on page 780 of the record of appeal where he testified that he was given mealie meal and cooking oil by the ward chairman. In cross examination at page 784 to 786 of the record of appeal however, PW30 said he got the mealie meal and cooking oil from the Appellant.

[2.7] He also referred to PW37's testimony on page 896 of the record of appeal where he said the Appellant was giving money to would be voters. However, in cross examination at page 909 of the record of appeal, PW37 said he never received money from the Appellant and

denied seeing the Appellant give money to Victor Bwalya. The Appellant submitted that this witness contradicted himself regarding who was cooking meals for voters. Further, that the witness said the Appellant was not present when the mealie meal and other food were distributed. The Appellant contended that it was very dangerous to invalidate an election based on the testimony of such witnesses.

[2.8] The Appellant submitted that the trial court did not address the contradictions or warn itself regarding the contradictions. Instead, the learned Judge at page 85 of the record of appeal made a finding of fact that the Appellant was guilty of bribery. The Appellant cited the learned authors of Halsbury's Laws of England, 4th edition, volume 15 at paragraph 780 cited by the High Court in the case of **Alfonso G. Chungu and Others v Anthony Kasandwe and Another** [1] wherein the Court held that:

> **due proof of a single act of bribery by or with the knowledge and consent of the candidate or by his agents, however, insignificant that act may be, is sufficient to invalidate the election; for this reason, clear and unequivocal proof is required before a case of bribery will be held to have been established. Suspicion is not sufficient and the confession of the person alleged to have been bribed is not conclusive.** (Emphasis added)

[2.9] The Appellant contended that in the present case, the trial court relied on evidence that was neither conclusive nor sufficient. He

submitted that no video, audio or other documentary evidence was produced by the 1st and 2nd Respondents in the lower court making the testimonies of their witnesses suspicious and requiring corroboration. The Supreme Court case of **Haonga and Others v The people** [2] was cited in support of the submission that where a witness has been found to be untruthful on a material point, the weight to be attached to the remainder of his evidence is reduced. Further reliance was placed on the case of **Attorney-General v Kakoma** [3] wherein it was held that a Court is entitled to make findings of fact where the parties advance directly conflicting stories, and the Court must make those findings on the evidence before it, having seen and heard the witnesses giving that evidence. The Appellant invited us to take into account the Latin maxim *allegens non est audienus* which means he that alleges things contrary to each other should not be heard.

[2.10] The Appellant submitted that in light of all the contradictions, the learned Judge in the lower court misdirected himself by drawing conclusions from contradictory and uncorroborated evidence. He cited the case of **Simasiku Kalumiana v Geoffrey Lungwagwa and the Electoral Commission of Zambia**[4] in support of that argument.

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[2.10] The Appellant submitted that in light of all the contradictions, the learned Judge in the lower court misdirected himself by drawing conclusions from contradictory and uncorroborated evidence. He cited the case of **Simasiku Kalumiana v Geoffrey Lungwagwa and the Electoral Commission of Zambia**[4] in support of that argument.

[2.11] In arguing grounds two and six, the Appellant began by stating that the two grounds centered on proof of widespread malpractice or wrongs during the campaign period. The Appellant submitted that although the trial Court at page 84 of the record of appeal made a finding of fact that the alleged malpractice by the Appellant was widespread and further that the Appellant only campaigned in 8 of the 14 wards in Lunte constituency, no statistics were produced by the 1st and 2nd Respondents and no evidence was adduced as to whether the 8 wards had the majority of registered voters in the constituency in order to prove how many would-be voters were or may have been affected by the alleged actions of the Appellant.

[2.12] The Appellant proceeded to submit that where it is proved that a corrupt practice or illegal practice or other misconduct was committed by a candidate or with the knowledge and consent or approval of the candidate or the candidate's election or polling agent, the petitioner must further prove that as a result of that corrupt or illegal practice or misconduct, the majority of the voters in the constituency were or may have been prevented from electing the candidate whom they preferred. The cases of **Mubika Mubika v**

Poniso Njeulu,[5] **Jonathan Kapaipi v Newton Samakayi,**[6] **Nkandu Luo and the Electoral Commission of Zambia v Doreen Sefuke Mwamba and the Attorney-General**[7] and **Margaret Mwanakatwe v Charlotte Scott,**[8] were cited in support of that submission.

[2.13] The Appellant further submitted that the mere fact that the Appellant in this case had campaigned in 8 of the 14 wards of Lunte constituency did not mean that it was proven that the Appellant's alleged corrupt or illegal practices were widespread in the constituency and prevented or may have prevented the majority of voters from electing their preferred candidate. It was submitted that Lunte constituency has 65 polling stations and yet the Respondents' witnesses referred to only a few polling stations and did not prove whether those polling stations had the greater number of registered voters so that it could be said that the Appellant's actions were widespread.

[2.14] In arguing ground three, the Appellant submitted that the 1st and 2nd Respondents' witnesses were partisan as the 1st Respondent was a member of the UPND and his witnesses were primarily members of the UPND. He contended that while the 2nd Respondent was an independent candidate and his witnesses were

seen to be independent, they also had an interest to protect. The Ugandan case of **Nabukeera Hussein Hanifa v Kibule Ronald and Another** [9] which was referred to in the persuasive case of **Christopher Kalenge v Annie Munshya and Two Others**[10], was cited in support of the submission regarding partisan witnesses. In that case the Court held that in an election petition, just like in the election itself, each party is set out to win. Therefore, the Court must cautiously and carefully evaluate all the evidence adduced by the parties. And that the evidence of partisan witness must be viewed with great care and caution, scrutiny and circumspection.

[2.15] It was submitted that this Court has stated that in election matters, witnesses from a litigant's own political party are generally witnesses who fall into the category of partisan witnesses and the evidence of such witnesses should be treated with caution and requires corroboration in order to eliminate the danger of exaggeration and falsehood as such witnesses tend to exaggerate claims to support their own political parties during elections.

[2.16] The case of **Changano Kakoma Charles v Kundoti Mulonda**[11] was cited in support wherein we said that the mere fact that a witness is not partisan does not mean that such a witness is

credible and that the issue of credibility is broad and includes the demeanor and perception of truthfulness of the witness and the consistency of his testimony. The Appellant submitted that PW8, PW15, PW19, PW34 and PW37 whom the trial Court heavily relied upon admitted to being members of the UPND and therefore fell in the category of witnesses with an interest to serve as was held in the case of **Abiud Kawangu v Elijah Muchima.**[12] He submitted that in that case, we held that witnesses from the same political party fall under the category of witnesses with an interest to serve and that their testimony ought to be treated with caution. He contended that in this case, the lower Court did not caution itself of the dangers of relying on witnesses with an interest to serve.

[2.17] The Appellant cited section 97(3) of the Electoral Process Act No. 35 of 2016 and submitted that the evidence adduced by the Respondents and their witnesses did not show that the Appellant took part in, or authorized the practice of any corruption; and that all the allegations were hearsay or speculation and did not establish any ground to justify the nullification of the election of the Appellant as Member of Parliament.

[2.18] In arguing ground eight, the Appellant submitted that the judgment at page 85 of the record of appeal reveals that the malpractices upon which the Appellant's election was nullified were bribery and undue influence. He contended that although the lower Court made a finding of fact that the Appellant and his agent breached section 81 of the Act, the 1st and 2nd Respondents did not adduce cogent evidence to prove that the Appellant had actually committed the wrongs complained of.

[2.19] Further, that the 1st and 2nd Respondents made accusations against the PF in general and no evidence was led to prove that the people complained against were named in the Appellant's nomination papers as his agents. The case of **Chrispine Siingwa v Stanley Kakubo**[13] was cited to press the point that an election agent must be specifically appointed and named in the candidate's nomination paper and that not everyone in a candidate's political party is his or her election agent.

[2.20] The Appellant submitted that the lower court referred to the testimony of PW4, PW6, PW7, PW8, PW10, PW11, PW16, PW18, PW27 and PW29 who alleged that they saw the Appellant give money to would be voters. He contended, however, that the lower Court

ignored their testimony in cross examination wherein they denied or contradicted their testimony in examination in chief. He submitted that the evidence did not prove the allegations against the Appellant to the high standard of proof required in election petitions as guided in the **Nkandu Luo**[7] case.

[2.21] The Appellant contended that the 1st and 2nd Respondents lamentably failed to prove the allegations against him as Lunte Constituency has 65 polling stations and therefore, there was need for evidence to corroborate the commission of the alleged malpractices in the majority of the polling stations.

[2.22] The cases of **Steven Masumba v Elliot Kamondo**[14] and **Mbololwa Subulwa v Kaliye Mandandi**[15] were cited in support of the submission that corroborative evidence is independent evidence which strengthens or confirms other evidence and that something more was required to confirm or strengthen the allegations by the 1st and 2nd Respondents' witnesses.

[2.23] The Appellant contended that the 1st and 2nd Respondents' allegations were not corroborated by their witnesses. Therefore, the trial Judge misdirected himself in drawing conclusions from

contradictory and uncorroborated evidence and erred in nullifying the election of the Appellant.

[2.24] The Appellant further submitted that the 1st and 2nd Respondents did not satisfy the requirements of section 97(2)(a) of the Act and that the learned Judge erred when he concluded in his judgment at page 81 of the record of appeal that there was widespread misconduct because the Appellant held meetings in the majority of the wards. He contended that holding meetings did not entail that there was misconduct.

[2.25] Further, that the learned Judge drew conclusions relating to the illiteracy of the general populous in Lunte constituency without statistical evidence. Lastly, the Appellant contended that the 1st and 2nd Respondents failed to distinguish the Appellant and his election or polling agents from the entire Patriotic Front party; and that the allegations ought to have been specific to the Appellant and his election or polling agents but were instead made against the Patriotic Front in general.

[2.26] The Appellant urged that the decision of the High Court be reversed and the Appellant be declared as the duly elected Member of Parliament for Lunte Constituency.

[2.27] At the hearing of the appeal, Mr. Ngulube more or less reiterated the written arguments in support of the appeal. He added with respect to ground nine that the trial Judge misdirected himself when he nullified the Appellant's seat for Lunte Constituency based on what he termed as allegation 4 in his judgment. He submitted that under allegation 4, the Court believed the testimony of the same witnesses he did not agree with when he dismissed allegations one, two and three, and ended up nullifying the seat. He contended that PW4 and PW5 whom he believed under allegation 4 contradicted each other, just as PW10 and PW11 did and that the learned Judge did not resolve those contradictions.

[2.28] He contended that out of the 65 polling stations in Lunte Constituency, the allegations of bribery and undue influence under allegation 4, only related to 4 polling stations namely Fitaba, Kapatu, Filipo and Kalangu. Counsel contended that the learned Judge attached much weight to the testimony of partisan witnesses who needed corroboration.

[2.29] He further submitted that there was no evidence before the lower Court to suggest that the allegations relating to the 4 polling stations were also present in the other 61 polling stations. He argued

that the evidence in the lower Court did not pass the test set by section 97(2)(a) of the Act and that the Learned Judge misdirected himself by failing to apply the test set by the Act before nullifying the Appellant's seat.

[2.30] In augmenting grounds two and six of the appeal, Mr. Chipompela referred to section 97(2)(a) of the Act and submitted that the learned Judge in the lower Court did not clearly address whether the majority of the voters were actually affected by the alleged conduct of the Appellant. He argued that in order for a Court to determine the majority or widespread effect of the acts complained of, numbers or statistics ought to have been produced before the lower Court so as to reveal the number of would-be voters who were affected by the Appellant's actions. That the register which the lower court relied on at page 79 of the record of appeal contained 157 registered voters and that the Court did not consider any other number or register.

[2.31] Counsel contended that given the number of votes which each candidate obtained in the election as stated on page 19 of the record of appeal, even if the 157 votes were substituted for any of the candidates, that would still not change the outcome of the election.

[2.32] Counsel therefore prayed that the decision of the lower court be set aside and the Appellant be declared the rightful winner of the election for Member of Parliament for Lunte Constituency.

3.0 1ST RESPONDENT'S ARGUMENTS

[3.1] In opposing the appeal, the 1st Respondent filed heads of argument on 1st January, 2022 which Mr Sitali, Counsel for the 1st Respondent relied upon and augmented with brief oral submissions. In opposing grounds one, four, seven, ten and eleven, the 1st Respondent submitted that contrary to the Appellant's submission, the 1st and 2nd Respondents' witnesses did not contradict themselves regarding what the Appellant wore or the vehicle he was driving on 12th August, 2021. He contended that the Appellant had picked immaterial and inconsequential details, and cast them as material contradictions warranting the dismissal of the witnesses' testimony. He argued that it is not every contradiction or inconsistency, assuming any existed, which should lead to dismissal of the witnesses' evidence.

[3.2] Regarding the motor vehicle which the Appellant was driving, on the polling day, Counsel referred to the evidence of PW4, PW6 and PW7 and submitted that PW4 (Evans Chanda) said he voted at Fitaba

polling station in the morning of 12th August, 2021 according to his evidence at pages 429-438 of the record of appeal and that he met the Appellant who was driving a white mini bus.

[3.3] That PW6 (Gladys Mwaba) testified that on her way to vote at Kapatu Polling Station at 10:00 hours on 12th August, 2021, she met the Appellant who was driving a white mini bus.

[3.4] PW7 (Felistus Kasonde) who also voted at Kapatu polling station said at page 456 of the record of appeal that in the morning of 12th August, 2021 after voting she was with Gladys Mwamba around 10:00 hours when the Appellant drove up to them in a white bus.

[3.5] The 1st Respondent submitted that the three witnesses who met the Appellant on the morning of 12th August, 2021 at Fitaba and Kapatu polling stations said that he was driving a white mini bus; and that there was therefore no contradiction in the evidence of the witnesses.

[3.6] He submitted that only PW5 (Cleopatra Nsama) who met the Appellant around 14:00 hours on 12th August, 2021 at Moseni polling station said at that time the Appellant was driving a canter according to her evidence on page 440-447 of the record of appeal.

[3.7] The 1st Respondent contended that the explanation for this disparity in the evidence was simply that in the morning the Appellant was driving a mini bus, (as consistently testified by the three witnesses who saw him), while in the afternoon, he had changed vehicles and was now driving a canter. Counsel submitted that the Appellant admitted in cross examination at page 931 of the record of appeal that he had a white Hiace mini bus among his campaign vehicles.

[3.8] It was submitted further that the Respondents' witnesses therefore did not contradict themselves regarding the motor vehicle the Appellant was driving on 12th August, 2021.

[3.9] Further, that the alleged contradiction between PW4 and PW5 regarding what shirt the appellant was wearing on 12th August, 2021 was similarly explainable by the difference in time.

[3.10] He argued that it was not in dispute that the Appellant gave PW4, PW5, PW6, PW7 and other voters money so that they could vote for him, and told them that if they did not do so, they would be identified through cameras placed in the polling booths, and would be excluded from receiving social cash transfer payments in future. He argued that none of the 1st and 2nd Respondents' witnesses

contradicted themselves on these material particulars. There was cogent evidence of extensive and repeated bribery of voters by the Appellant who gave money to would be voters on various occasions so that they could vote for him. He contended that therefore, the Court below was on firm ground when it held that the Appellant was giving out money to would be voters.

[3.11] That PW4 at pages 429-438 of the record of appeal, stated that on 12th August, 2021 the Appellant gave him and other people K20 notes and instructed them to vote for him.

[3.12] PW5 similarly informed the court below at pages 440-447 of the record of appeal that in the afternoon of 12th August, 2021 on her way to vote, the Appellant who was driving a canter truck laden with people, stopped to give her a lift to Moseni Polling station. He then gave her and the other people in the canter truck K20 notes each so that they could vote for him.

[3.13] PW6 also testified that as she was going to vote at Kapatu polling station in the morning of 12th August, 2021 she met the Appellant who was driving a white mini bus and he gave her K50.00.

[3.14] PW7 who voted at Kapatu polling station informed the court at page 453-457 of the record of appeal that in the morning of

12th August, 2021 she and PW6 met the Appellant who gave them a K50.00 each.

[3.15] PW8, a former headwoman also informed the court below of yet another incident at which the Appellant gave money to would be voters during a meeting which was held at Filipo village on 11th July, 2021 so that they could vote for him causing a scramble for the money. After the scuffle, the Appellant still produced more money which he gave a bana Muwowo to distribute to would be voters. He submitted that PW8's testimony was corroborated by PW10 and PW11 who also received money from the Appellant.

[3.16] At another meeting held on 8th August, 2021 at Kalangu school, the Appellant produced K3,140.00 which was later distributed to would be voters after establishing that there were 157 voters, and instructed that each registered voter should be given K20.00 in order to vote for the Appellant.

[3.17] It was submitted that an Electoral Commission of Zambia voter register for Kalangu 1 polling station, which was used by the Appellant at the meeting of 8th August, 2021, and the names of the people who were given K20.00 notes was produced in the court below at the instance of counsel for the 2nd Respondent and corroborates

the evidence of PW18. That during cross examination, PW18 stated that he got a copy of the voter register and that the names of the would-be voters were ticked in the register of voters.

[3.18] It was argued that the said voters register which comprises the 1st Respondent's supplementary record of appeal clearly shows how the Appellant paid money to the electorate so that they could vote for him. He submitted that PW29 also testified on how the Appellant gave money to would be voters so that they could vote for him.

[3.19] The 1st Respondent submitted that the learned trial judge after recounting in his judgment various incidents where the Appellant had dished out money on pages 78-80 of the record of appeal, observed in his judgment on page 80 of the record of appeal that it was evident on the record that the majority of the witnesses who attended the various meetings held by the 1st Respondent in wards, polling stations or villages witnessed at least an event where the 1st Respondent produced money to give the gathering.

[3.20] He submitted that in the face of the overwhelming evidence laid before him, and having observed the demeanour of the witnesses, the learned trial Judge was on firm ground when he found as a fact

that the Appellant gave money to would be voters to vote for him. He further submitted that the Appellant also attacked the lower court's finding that the Appellant was threatening would-be voters.

[3.21] It was contended that the court below rightly found that there was evidence that the Appellant used undue influence and threats to the electorate to vote for him. That in one such incident, the lower Court in its judgment on page 80 of the record of appeal recounted how some distraught villagers approached their headman, (PW29) to find out what they would do if the Appellant withdrew the social cash transfer from them if they did not vote for him.

[3.22] It was submitted that in determining the meaning of 'undue influence', the lower court referred to Halsbury's Laws of England and Black's Law Dictionary, in relation to the activities proscribed by section 81 (1) of the Electoral Process Act. He submitted that the Court below rightly observed that the Appellant had on numerous occasions threatened the electorate that if they did not vote for him, they would not receive the social cash transfer money.

[3.23] Our attention was drawn to the following passage in the High Court's judgment on page 80 of the record of appeal where the lower court said:

> **It is strikingly outstanding in the majority of the witnesses called by the Petitioners that there were verbal threats uttered by the 1st Respondent during the respective meetings that if they did not vote for him there shall be a camera in the polling booth that will detect such a voter and that those who shall not vote for him will stop receiving social cash transfer.**

[3.24] He submitted that the learned trial judge was therefore on firm ground when he found that the Appellant had used undue influence and threats to persuade voters to vote for him during the 12th August, 2021 election.

[3.25] It was submitted that the Appellant highlighted minor discrepancies in the witnesses' testimony about the events which occurred at a meeting held at Filipo village on 11th August, 2021, as reason why the lower court should have disregarded the evidence of the said witnesses. The 1st Respondent submitted that whether or not the Appellant threw the money in the air or put it on the table was not material. What was material was the fact that the Appellant at that meeting gave the electorate money so that they could vote for him.

[3.26] He further submitted that not every inconsistency or contradiction in evidence is material and that an inconsistency or contradiction will only be relevant if it is on a material particular. The case of **Chimfwembe v The People**[16] was cited in support of that submission.

[3.27] Further, that in the case of **Attorney General v Kakoma**[3] which was cited by the Appellant, the Supreme Court stated that even where witnesses have advanced directly conflicting stories, the court must make those findings on the evidence before it having seen and heard the witnesses giving that evidence.

[3.28] He submitted that, aside from the minor discrepancies being immaterial, the trial Judge made his findings on the evidence which was before him having seen and heard the witnesses give evidence.

[3.29] In opposing grounds two and six of the appeal, the 1st Respondent submitted that although the Appellant argued that the alleged malpractice he committed was not widespread and therefore did not warrant the nullification of his election, the learned judge in the court below addressed his mind to how widespread the malpractices were, and the extent to which they affected the election.

That in the judgment on page 83 of the record of appeal the learned Judge said:

> **The very fact that he held several meetings in the many parts of Lunte constituency with the same attitude, denotes that his misconduct was widespread and had the effect or like effect of preventing the majority from electing a candidate of their choice.**

[3.30] The learned judge on page 84 of the record of appeal went on to expound the meaning of the word "widespread" and also called into aid the case of **Anderson Kambela Mazoka and Others v Patrick Mwanawasa and Others**[17] wherein the meaning of widespread was explained.

[3.31] He submitted that the learned judge went on to state that of the 65 polling stations, the Appellant had campaigned in all but 8 polling stations thereby campaigning in the majority of the polling stations. This was also borne out in cross-examination.

[3.32] The 1st Respondent submitted that it was clear from the evidence in cross examination that, out of the 65 polling stations, the Appellant campaigned in the majority of them, thereby making the malpractices which he committed widespread enough to have affected the election.

[3.33] He argued that contrary to the Appellant's argument that he did not campaign in 8 wards out of the 14 wards, in the evidence

in court, the Appellant was talking about polling stations, as opposed to wards, and admitted that out of the 65 polling stations, he did not campaign in only about 8. Therefore, he campaigned in the majority of the polling stations, as opposed to wards.

[3.34] It was further submitted that the learned Judge was equally alive to what the Appellant had stated in cross examination regarding the number of polling stations in which he had campaigned. In this regard, the learned Judge in his judgment on page 84 of the record of appeal stated as follows:

> **The 1st Respondent under cross examination indicated that he did not campaign at Mulilo, Kafubu, Chongo Chibimbi, Lwangwa and two other more polling stations making up 6 to 8 polling stations. This clearly indicates that the 1st Respondent campaigned in at least 57 polling stations thereby constituting the majority polling stations.**

[3.35] The 1st Respondent submitted that since the Appellant had misconducted himself wherever he campaigned, and since he campaigned in the majority of the polling stations, his malpractices were widespread enough to have affected the outcome of the election in that the majority of the voters were prevented from electing a candidate of their choice.

[3.36] In opposing grounds 3 and 8 of the appeal, the 1st Respondent reiterated his arguments above. He submitted in conclusion, that the learned Judge was on firm ground when he declared the Appellant's election as Member of Parliament for Lunte Constituency null and void on account of the repeated and widespread malpractices committed by the Appellant and urged us to dismiss the appeal.

[3.37] In augmenting the written submissions, Mr. Sitali, relied on the written heads of argument. In response to the assertion by Counsel for the Appellant that the trial was rendered unfair by the trial Court's acceptance of the voters register containing 157 voters, Counsel submitted that the said register was admitted in evidence at the instance of the 3rd Respondent (as 2nd Respondent) in the Court below during cross examination. He added that the Appellant therefore cannot argue that the admission of the register into evidence rendered the trial unfair. He further submitted that there was nothing unusual about the voters register being found at the polling station as it had been circulated by the Electoral Commission of Zambia so that voters could verify their names. He argued that the appeal be dismissed.

4.0 1ST AND 2ND RESPONDENTS' ARGUMENTS

[4.1] On 1st February, 2022, Mr. Mataliro and Mr. Mwaba, filed heads of arguments on behalf of the 1st and 2nd Respondents. They began by submitting that the Appellant's memorandum of appeal and heads of argument offend the provisions of Order XI rule 9(2) and (10) of the Constitutional Court Rules, S.I. No. 37 of 2016, respectively, making it difficult to follow which points of law or and facts were allegedly wrongly decided by the lower Court.

[4.2] Counsel, however, proceeded to oppose the grounds of appeal in the order they were argued by the Appellant. In opposing grounds one, four, seven, ten and eleven, the 1st and 2nd Respondents submitted that the Appellant failed to specify which part of the Respondents' version of the testimony their witnesses disputed and which witnesses said they did not see the Appellant in most places. They argued that the Appellant did not demonstrate which part of the judgment was faulty based on the allegations.

[4.3] The 1st and 2nd Respondents asserted that there were no contradictions in the evidence which grounded the findings of fact on bribery and threats upon which the trial Judge nullified the election of the Appellant. They further argued that PW4, PW5 and PW8 did

not contradict each other as the Appellant himself stated the vehicles he used in the campaigns; that those were the vehicles the 1st and 2nd Respondents' witnesses talked about. They argued that for one person to have seen him driving a canter and later on another person seeing him in a minibus was not contradictory as the witnesses did not describe an event which happened at the same place and time.

[4.4] The 1st and 2nd Respondents referred to page 80 of the record of appeal where the trial Court made findings of fact that the majority of witnesses who attended the meetings held by the Appellant witnessed an event where the Appellant produced money to give to the gatherings and further that they testified that the Appellant uttered verbal threats during his meetings that if they did not vote for him, there would be cameras in the polling booths to detect such voters; and that those who would not vote for him would no longer receive social cash transfer money.

[4.5] The 1st and 2nd Respondents referred to the testimonies of PW4, PW5, PW8, PW29, PW30, PW36 and PW37 and submitted that these witnesses testified about incidents where the Appellant offered money to potential voters at his meetings and further said that those who did not vote for him would be detected on cameras placed inside

polling booths and would no longer receive money under the social cash transfer programme.

[4.6] The 1st and 2nd Respondents argued that it is not always that when witnesses contradict each other on any issue, then they are untruthful on the existence of a fact, that the contradiction must be one which goes to the root of a dispute or which relates to a fact in issue relevant to the determination of a dispute. The Supreme Court case of **Madubula v The People**[18] was cited in support of that argument. They contended that case law guides on what should be done if evidence is conflicting or contradictory; that it should be demonstrated that the inconsistencies taint or affect the evidence in a material particular as was held by the Supreme Court in **Godfrey Chimfwembe v The People**[16].

[4.7] The 1st and 2nd Respondents further contended that appellate courts have opined that it is the duty and privilege of the trial Court to observe the witnesses and decide which witnesses to believe. And further that a trial court is entitled to make findings of fact where the parties advance conflicting stories and that the Court must make those findings on the evidence before it, having seen and heard the witnesses giving that evidence. The cases of **Chief Chanje v Paul**

Zulu[19] and **Attorney General v Marcus Achiume**[20] were cited in support of these submissions. So were the cases of **GDC Hauliers (Z) Limited v Trans Carriers Limited,**[21] **Steven Masumba v Elliot Kamondo** [14] and **Attorney General v Kakoma.**[3]

[4.8] The 1st and 2nd Respondents argued that the Appellant had failed to demonstrate how the witnesses contradicted each other and had picked incidences that occurred in different places and on different days and expected those events to be explained in the same way. They contended that witnesses could not be expected to talk about events which they had not witnessed and which occurred in different places and on different days. Further, that in this case, even if one or two witnesses gave contradictory statements, the trial Court decided who to believe having had the benefit of listening to and observing the demeanor of the witnesses. They urged us not to interfere easily with the findings of fact and submitted that these five grounds of appeal must fail.

[4.9] The 1st and 2nd Respondent opposed grounds two and six together and submitted that although the Appellant alleged that the incidents of malpractice that led to the nullification of his election were not widespread, the lower Court found that they were

widespread as the majority of witnesses attended various meetings where the Appellant committed the malpractice. They quoted the case of **Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Others**[17] on the importance of the word widespread and contended that from the record, the Appellant's conduct of giving money and threatening voters that if they did not vote for him, cameras would detect them and he would stop bringing social cash transfer, was witnessed in many areas creating a standard of conduct.

[4.10] They further submitted that contrary to the Appellant's submission that he campaigned in eight of fourteen wards, the evidence on record was that he campaigned in 57 polling stations of the 65 polling stations leaving out only 8 polling stations. They contended that the meetings were held in villages and not polling stations which are demarcations for administrative convenience. It was argued that it cannot be said that campaigning is done in polling stations but in villages and that as on record, people would move from nearby villages to attend campaigns.

[4.11] The 1st and 2nd Respondents' contended that by his own admission, the Appellant campaigned in the entire constituency and

that his conduct was shown to be consistent as he gave money to the voters in as many areas as he was seen campaigning; it was argued that the Appellant's argument that the Court should have been given information by the statistics office to determine the number of affected voters was flawed; that the Supreme Court in the case of **Saul Zulu v Victoria Kalima**[22] guided that what is expected of a petitioner is to show that the corrupt or illegal practice was committed on a large scale so as to prevent the majority of voters from voting for their preferred candidate. Therefore, that a petitioner need not analyse the results from different polling stations in order to prove that the electoral malpractice substantially affected the results. That this means that the petitioner need not analyse the number of persons as what the court considers is whether the number of meetings or campaign rallies where the electoral malpractice was committed are a large number. They urged us to dismiss these two grounds.

[4.12] In opposing ground three, the 1st and 2nd Respondents referred us to page 75 of the record of appeal where the trial Judge in his judgment cited the case of **Steven Masumba v Elliot Kamondo**[14] wherein we said:

The evidence of partisan witnesses should be treated with caution and requires corroboration from an independent source in order to eliminate the danger of exaggeration and falsehood.

That on the same page 75 of the record of appeal, the trial Judge made the following observations:

In this matter even though this evidence was led by witnesses who might be perceived to be partisan, I do not question the credibility of the witnesses who deposed to the fact that they were not availed with the Gen 20 forms for them to counter-sign. The witnesses were forthright and this piece of evidence stands unperturbed.

[4.13] It was submitted that the above quotation revealed that the trial Judge was aware of the dangers of relying on evidence of partisan witnesses and warned itself of the dangers but stated his impression of the witnesses. The case of **Chief Chanje v Paul Zulu**[19] was cited in support wherein the Supreme Court stated that:

We cannot fault the learned Judge for so finding as he was perfectly entitled to decide whom to believe as he had the opportunity to observe the witnesses and to form the impression he did.

[4.14] The 1st and 2nd Respondents submitted that by arguing that all the witnesses were partisan, the Appellant ignored the fact that PW29 was a village headman whose evidence showed that he was a neutral person and that PW36 and PW37 were members of the Appellant's party. They added that as they submitted on bribery and

its widespread nature, the trial Judge relied on the evidence of witnesses who saw the Appellant giving out money and not that of any other person as he stated in his judgment on page 80 of the record of appeal in relation to the threats the Appellant issued.

[4.15] They submitted that the lower Court was alive to the requirements of section 97 (2)(a) of the Electoral Process Act and limited itself to the acts of the Appellant. They urged that ground three be dismissed.

[4.16] In opposing ground eight, the 1st and 2nd Respondents submitted that the lower Court was on firm ground to have nullified the election of the Appellant as the evidence on record was overwhelming and met the requirements for nullification. They further submitted that in order for us to resolve this ground, we must consider whether the evidence on record met the standard we set down in the celebrated case of **Nkandu Luo and the Electoral Commission of Zambia v Doreen Sefuke Mwamba and Attorney-General**[7] that the corrupt practice or illegal practice or other misconduct was committed by the candidate personally or with the candidate's knowledge and consent or approval or that of his or her election or polling agent. Further, that the malpractice must have

been widespread and swayed or may have swayed the majority of the electorate from electing a candidate of their choice.

[4.17] The 1st and 2nd Respondents submitted that the lower Court was on firm ground to have nullified the Appellant's election as there was clear evidence on record which proved corruption and undue influence to the required standard and further, that the malpractices were widespread. They argued that ground eight should also fail.

[4.18] In conclusion, the 1st and 2nd Respondents urged us to dismiss the appeal and uphold the judgment of the lower Court and declare that the Appellant was not duly elected as Member of Parliament for Lunte Constituency.

[4.19] In augmenting orally, Mr. Mataliro similarly reiterated the 1st and 2nd Respondents' written arguments in opposition to the appeal and urged that we uphold the lower Court's nullification of the Appellant's election.

5.0 3RD RESPONDENT'S ARGUMENTS

[5.1] The 3rd Respondent filed its heads of argument on 21st January, 2022 which Mr. Musenga entirely relied on at the hearing of the

appeal. The 3rd Respondent began by submitting that the standard of proof required in an election petition though, a civil matter, is higher than on a balance of probabilities. The cases of **Akashambabtwa Mbikusita Lewanika and Others v Fredrick Jacob Titus Chiluba**[23] and **Saul Zulu v Victoria Kalima**[22] wherein the Supreme Court held that election petitions are required to be proven to a standard higher than a mere balance of probabilities and that issues raised in an election petition must be established to a fairly high degree of convincing clarity, were cited in support.

[5.2] The Ugandan case of **Nakbukeera Hussein Hanifa v Kibule Ronald and Another**[9] was cited in further support wherein the Court observed *inter alia,* that in an election petition, partisan witnesses must be viewed with great care and caution, scrutiny and circumspection.

[5.3] The 3rd Respondent further submitted that the law relating to parliamentary election petitions is premised on section 97 (2) of the Electoral Process Act No. 35 of 2016 and that this Court has ably guided on the import of the provisions in the case of **Nkandu Luo v Doreen Sefuka Mwamba and Attorney General.**[7]

[5.4] Regarding the burden of proof, the 3rd Respondent submitted that this Court in the **Nkandu Luo**[7] case reiterated the long-standing principle that the burden of proof rests on the shoulders of the person alleging to adduce cogent evidence to prove the allegation, without which judgment would not go in his or her favour. It was submitted that this Court reiterated this position in the case of **Abiud Kawangu v Elijah Muchima.**[12]

[5.5] The 3rd Respondent further submitted that it is imperative that a petitioner should satisfy the trial court that the Respondent personally committed a corrupt practice or illegal practice or other misconduct in connection with the election or that such malpractice was committed with the knowledge and consent or approval of the candidate or his or her election or polling agent; that anything below that threshold should not be entertained by this Court. It was further submitted that as guided by this Court, there is the additional requirement to prove that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorate from electing their preferred candidate. The case of **Austin Liato v Sitwala Sitwala**[24] was cited in that regard.

[5.6] The 3rd Respondent proceeded to submit that a candidate can only be held liable for their own conduct or misconduct or that of their appointed agent in line with section 97(2) of the Electoral Process Act.

[5.7] It was submitted that a general allegation that supporters of a particular party were implicated in misconduct is not enough to attach responsibility to the Respondent. The cases of **Akashambatwa Mbikusita Lewanika and Others v Fredrick Jacob Titus Chiluba**[2] and **Richwell Siamunene v Sialubalo Gift**[25] were cited in support of that argument.

[5.8] The 3rd Respondent cited the cases of **Kufuka Kufuka v Mundia Ndalamei**[26] and **Steven Masumba v Elliot Kamondo**[14] to press the point that even if an electoral malpractice has been proven to have been committed by a candidate or with the candidate's knowledge, consent or approval or that of the candidate's election or polling agent, it must further be proven that the malpractice complained of was widespread and had the effect of dissuading the electorate from voting for a candidate of their choice. The cases of **Richwell Siamunene v Sialubalo Gift**[25] and **Jonathan Kapaipi v Newton Samakayi**[27] were further cited on this point.

[5.9] The 3rd Respondent submitted that the authorities cited should have guided the trial Court so that the evidence placed before it should have been analysed and critically examined and findings made by the Court based on that evidence.

[5.10] The 3rd Respondent went on to submit that in the case of **Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa,**[21] the Supreme Court dismissed the presidential election petition based on the majority requirement even when the petitioners in that action had proved six of the 36 allegations.

[5.11] The 3rd Respondent further cited the case of **Mubika Mubika v Poniso Njeulu**[5] and argued that since no statistics were given to the trial Court in the present case, the petitioners did not discharge the burden of proof and that as the evidence currently stood, anything short of that evidence would lead to speculative conjecture on the part of the trial Court.

[5.12] The 3rd Respondent went on to submit that in addition to the numerous authorities cited, international electoral law instruments are categorical on the sanctity of election results and guide that election results should not be lightly or easily disregarded. The International Foundation for Electoral Systems Guidelines for

Understanding, Adjudicating and Resolving Disputes in Elections (2011 p86/7) were quoted as providing as follows:

> **Elections are meant to give voice to the will of the people. The results of elections should not be disregarded lightly or easily. Election outcomes should only be overturned in extraordinary circumstances, where evidence of illegality, dishonesty, unfairness, malfeasance or other misconduct is clear and, importantly, where such improper behavior has distorted the vote outcome. Absent such extraordinary circumstances, candidates and parties that lose elections should accept electoral outcomes rather than routinely claim the elections and the governments they produce are illegitimate. Complaints adjudication mechanisms should not be manipulated to continue political battles after the election and to undermine the finality of official election results. Persons who violated the law may still be pursued through administrative or criminal processes without holding up election results.**

[5.13] In applying the foregoing to this appeal, the 3rd Respondent submitted that the 1st and 2nd Respondents had lamentably failed to prove any electoral malpractice or misconduct to the required threshold; and further that the 1st and 2nd Respondents did not adduce any cogent evidence to prove that the alleged electoral malpractice or misconduct, if any, was so widespread that it swayed or may have swayed the majority of the electorate from electing the candidate of their choice.

[5.14] It was further submitted that there was no evidence on record that the electorate were prevented from participating in the election and that none of the witnesses specified any provision of the

law that the 3rd Respondent breached. It was submitted, in conclusion, that the 3rd Respondent duly conducted the elections in substantial conformity with the law; that the election be upheld and that the appeal be allowed with costs to the 3rd Respondent.

6.0 APPELLANT'S ARGUMENTS IN REPLY

[6.1] In the heads of argument in reply, the Appellant essentially reiterated his written arguments in support of the appeal. We will therefore not restate the arguments here.

7.0 EVALUATION AND DECISION

[7.1] We have considered the grounds of appeal, the respective parties' written and oral arguments, the authorities cited and the judgment of the Court below.

[7.2] In determining this appeal, we start with an examination of the relevant law. Section 97 (2) of the Electoral Process Act No. 35 of 2016 (which we will refer to as the Act) sets out the grounds on which the election of a candidate as Member of Parliament, among others, can be nullified in the following terms:

> **(2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councilor shall be void if, on the trial**

of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be, that-

(a) a corrupt practice, illegal practice or other misconduct has been committed in connection with the election-

(i) by a candidate; or

(ii) with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and

the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred;

[7.3] The import of section 97 (2) (a) of the Act, as we have previously explained in our judgments, is essentially that both the commission of a corrupt or illegal practice or other misconduct by the candidate personally or with the knowledge and consent or approval of the candidate or his or her election or polling agent and the widespread nature of the corrupt or illegal practice or misconduct in the constituency, district or ward must be proved to the required standard.

[7.4] As is the case in any other civil action, the burden to prove the allegations in an election petition lies on the petitioner. The learned authors of Phipson on Evidence, 17th edition in paragraph 6-06 at page 151 state the following regarding the burden of proof in civil cases:

So far as the persuasive burden is concerned, the burden of proof lies upon the party who substantially asserts the affirmative of the issues. If, when all the evidence is adduced by all parties, the party who has this burden has not discharged it, the decision must be against him.

[7.5] This equally applies to an election petition. If a petitioner fails to discharge the burden of proving the allegations in the election petition to the required standard, the decision must be against such a petitioner.

[7.6] It is settled law however, that unlike in an ordinary civil action where allegations must be proved on a balance of probabilities, the evidence adduced by a petitioner in support of an election petition must prove the allegations to a fairly high degree of convincing clarity. The case of **Akashambatwa Mbikusita Lewanika and Others v Fredrick Titus Jacob Chiluba,**[23] clearly supports this position of the law. We shall bear these sound principles of law in mind as we determine this appeal.

[7.7] In determining this appeal, we shall first consider grounds seven, ten and eleven together as they are interrelated. We shall then consider grounds two, six and eight together and consider grounds one, three, four and nine individually. Before proceeding, we note that the Appellant did not proffer any arguments on ground five of

the appeal. We therefore take it that the ground was abandoned and shall say no more about it.

[7.8] That said, in ground seven of the appeal, the Appellant contends that the learned Judge erred when he failed to properly analyse all the evidence given by the parties and their witnesses before nullifying his election. In ground ten, the Appellant faulted the learned trial Judge for his failure to analyse the evidence before him and ignoring some questions asked in cross examination, thereby misdirecting himself. In ground eleven, the Appellant reiterated that the learned Judge ignored the witnesses' testimony in cross examination that they did not see the Appellant give out money but that it was given by party officials.

[7.9] These three grounds of appeal relate to the allegation made by the 1st and 2nd Respondents that the Appellant gave money to the electorate and further informed them that there would be cameras placed in polling booths to detect those who would not vote for him so that they would no longer receive social cash transfer money in order to induce them to vote for him. The issue we have to determine in relation to these grounds is whether the evidence adduced by the 1st and 2nd Respondents proved the allegations of bribery and undue

influence made against the Appellant to the required standard. The evidence regarding the alleged acts of bribery and undue influence was adduced by PW4, PW5, PW6, PW7, PW8, PW10, PW11, PW16, PW18, PW27, PW29, PW36 and PW37 on behalf of the 1st and 2nd Respondents. We consider it necessary to summarise the evidence adduced before the lower Court by these witnesses in order to provide a clear background to our decision in this appeal.

[7.10] PW4 alleged that on 12th August 2021, he went to vote at Fitaba polling station. While he was on the queue, the Appellant arrived and went to the front of the queue where he took pictures of the posters at the entrance. He then turned to the voters and asked them if the UPND were causing them problems. When the voters said they were not being troubled by the UPND, the Appellant informed the voters that there were machines inside the polling booths so that whoever voted for the 1st Respondent would be removed from the social cash transfer. PW4 said he left the queue and went to the roadside where he found the Appellant's councilor. The Appellant arrived there and asked the councilor if PW4 and others were his people. The councilor answered in the affirmative and the Appellant then gave K20.00 to each person and urged them to vote for him.

[7.12] PW5 Cleopatra Nsama said on 12th August, 2021 on her way to vote at Moseni in Lunte Constituency the Appellant gave her a ride in his canter. On their way, the Appellant stopped the canter and gave her and a lot of other people in the canter K20.00 each and instructed them to vote for him. He also informed them that a computer had been placed in the polling booths to identify those who would not vote for him so that they would no longer receive social cash transfer money. PW5 said the Appellant was wearing a blue long-sleeved shirt.

[7.13] PW6 Gladys Mwamba said on 12th August, 2021 while on her way to vote at Kapatu polling station, the Appellant gave her K50.00 and told her that if she voted for him, she would be receiving social cash transfer money. PW7 Felistus Kasonde also testified that on 12th August, 2021, she voted at Kapatu polling station in Lunte Constituency. On her way back she met PW6 and as they conversed, the Appellant drove up to them in a white minibus and produced K50 and demanded that she vote for him as Member of Parliament.

[7.14] PW8 Hilda Kuyela a former village headwoman said on 11th August, 2021, the Appellant went to Filipo Market where a lot of people had gathered and campaigned for the people to vote for him.

He produced a bunch of money and gave it to a young woman called Hellena with instructions to give K20.00 to whoever would vote for him. A scramble for the money ensued. PW10, PW11 and PW27 similarly testified that they were present at Filipo market when the Appellant addressed the electorate and produced money in K20 notes to give to the people and caused a scramble for the money.

[7.15] PW16 testified that on 8th August, 2021, the Appellant held a meeting at Kalangu School. He obtained the voters register from the school PTA Chairman Mr Darius Chishimba and produced K3,140.00 which he gave to the PTA chairman to distribute K20.00 each to the 157 registered voters. He said the Appellant also said that there would be a machine in the polling booth to detect those who would not vote for him. In cross examination, PW16 admitted that not all the 157 registered voters voted or received the K20.00. PW18 gave similar evidence to that of PW16. He, however, admitted in cross examination that no one signed for the receipt of the K20.00 but said that their names were ticked off in the voters register and the money which remained was kept by the PTA Chairman. He also admitted that he did not witness all the 157 registered voters receive

K20.00 but said that he made a photo copy of the register after the distribution of money was concluded.

[7.16] PW29 headman Buntungwa who said he was non-partisan, testified that on 9th August, 2021, the Appellant addressed a meeting in Buntungwa village and said if the people did not vote for him, they would no longer receive social cash transfer money. At the same meeting, he gave a single woman called Chifwesa K150 and said he had engaged her. The Appellant then left to go to Mukupa Kaoma and Chenda Eka. He got to the vehicle and started giving money to the people who were near him. He threw money and people scrambled for it. Later on, two elderly women called PW29 and asked him what would happen to them if they stopped receiving social cash transfer money for not voting for the Appellant. In cross examination, PW29 admitted that the Appellant did not give him any money to vote for him and also that he did not see how much money the Appellant gave to the people who followed him to his vehicle. PW29 further admitted that he did not see anyone distributing social cash transfer money or mealie meal or cooking food for voters at Chitoshi polling station where he voted.

[7.17] PW36 and PW37 testified that the Appellant attended a meeting held at Lubushi and Lungula village where he gave K150 to the women who danced for him and demanded that they should vote for him. At the same event, the Appellant gave K300.00 in K50 notes to the ward secretary for him to share with other voters.

[7.18] In rebuttal of the evidence given by PW4, PW5, PW6 and PW7, the Appellant denied that he gave money to the electorate at Fitaba, Moseni and Kapatu polling stations on 12th August, 2021. He said he only visited Kapatu polling station where he voted on that day. He stated that he wore a brown Nigerian shirt and was driving a Ford Ranger as his campaign canter was in Kasama at the time.

[7.19] In rebuttal of the evidence given by PW8, PW10, PW11 and PW27, the Appellant denied the allegation that he gave money comprising a bunch of K20 notes to the electorate at Filipo market on 11th August, 2021 and said that he did not campaign at Filipo throughout the campaign period. He also denied the allegation that he said there would be hidden cameras installed in polling booths to identify voters who did not vote for him. He further denied the allegation by PW29 that he gave money to the electorate at Buntungwa village on 9th August, 2021.

[7.20] In rebuttal of the evidence given by PW36 and PW37, the Appellant denied the allegation that he gave K150 to the women who danced for him or K300 to the ward secretary and stated that he merely danced with the women.

[7.21] In his judgment at page 78 of the record of appeal, the learned trial Judge stated that the 1st and 2nd Respondents had availed several witnesses from different wards of Lunte Constituency who adduced evidence to the effect that they were lured by the Appellant to vote for him. He further observed that the 1st and 2nd Respondents had provided witnesses to portray how the campaigns and election were marred by bribery and corruption. The learned Judge specifically cited the evidence of PW4, PW5, PW6, PW7, PW8, PW10, PW11, PW16, PW18, PW27, PW29, PW36 and PW37 which we have set out above all to the effect that the Appellant gave money to voters at different times to woo them to vote for him. The learned trial Judge made no reference to the Appellant's evidence in rebuttal to the allegations of bribery and undue influence regarding the hidden cameras to detect those who did not vote for him and only said that the Appellant's evidence consisted of bare denials contrary to the evidence on record.

[7.22] The learned Judge proceeded to observe in his judgment at page 80 of the record of appeal as follows:

> **It appears eminent on record that the majority of the witnesses who attended the various meetings held by the 1st respondent in wards, polling stations or villages, as the case may be, witnessed at least an event where the 1st respondent produced money to give the gathering.**

[7.23] The learned Judge further observed that the Appellant used the social cash transfer programme as a bait for the people of Lunte Constituency by misrepresenting that if they did not vote for him, cameras placed inside the polling booths would identify them and they would no longer be recipients of the social cash transfer funds. To that effect, the learned Judge observed on the same page of the record of appeal that it was:

> **strikingly outstanding in the majority of the witnesses called by the Petitioners that there were verbal threats uttered by the 1st Respondent during the respective meetings that if they did not vote for him there shall be a camera in the polling booth that will detect such a voter and that those who shall not vote for him will stop receiving social cash transfer.** (sic)

[7.24] The learned Judge in his judgment on page 81 of the record of appeal stated that the issue of influencing voters through gifts of sums of money appears to have been a trend or method

employed by the Appellant to lure voters. He quoted the provisions of section 81 (1) (a) of the Act and stated that the conduct of the Appellant offended that section and held that the 1st and 2nd Respondents had sufficiently proved the allegation of bribery against the Appellant.

[7.25] We have examined the evidence on the record of appeal given by the 1st and 2nd Respondents' witnesses relating to the allegations of bribery and undue influence allegedly exerted on the electorate by the Appellant through threats regarding the social cash transfer money and have equally examined the Appellant's evidence in rebuttal to those allegations. It is evident from the evidence on record that the trial Court was faced with directly conflicting evidence adduced by the 1st and 2nd Respondents' witnesses, on one hand, and by the Appellant, on the other hand.

[7.26] We say so because while PW4 alleged that the Appellant went to Fitaba polling station on 12th August, 2021 and took pictures of the posters at the entrance before he addressed the voters on the queue and warned them that cameras placed in polling booths would detect those who did not vote for him; and further that the Appellant later gave K20 notes to voters at the roadside near Fitaba polling

station, the Appellant denied that he visited Fitaba polling station on that day and stated that he only went to one polling station, namely Kapatu polling station where he voted. The evidence of PW4 that the Appellant asked the voters at Fitaba polling station if they were being troubled by the UPND and addressed them to warn them about the hidden cameras in the polling booths to identify those who would not vote for him needed to be corroborated before it could be accepted. There is no independent evidence on record to support this allegation.

[7.27] In examining the evidence of PW4, we are mindful that section 4(2)(e) of the Code of Conduct of the Act prohibits a candidate from continuously remaining at a polling station during elections while section 4(2)(f) of the Code of Conduct proscribes any form of campaigning within 400 metres of a polling station on the polling day. The trial Judge made no reference to the aspect that corroborating evidence was required to support the evidence of PW4 nor did he make any reference to the fact that if indeed the Appellant had addressed the voters at Fitaba polling station as alleged by PW4, that would have been tantamount to campaigning at a polling station

which conduct is prohibited by section 4(2)(e) and (f) of the Code of Conduct.

[7.28] Regarding the evidence of PW5 that the Appellant on 12th August, 2021 gave her a ride in his canter on her way to vote at Moseni polling station and gave her and other voters in the back of the canter K20.00 each and asked them to vote for him and also said there were cameras in the polling booths to detect those who did not vote for him who would no longer receive social cash transfer money as a result; and further that the Appellant wore a blue long-sleeved shirt, the Appellant denied that he went to Moseni polling station on 12th August, 2021. He asserted that he wore a brown Nigerian shirt and was driving a Ford Ranger because his campaign canter was in Kasama at that time.

[7.29] With regard to the evidence of PW6 and PW7 that the Appellant gave them K50.00 each near Kapatu polling station and urged them to vote for him; and that he was driving a white minibus at the time of that incident, the Appellant denied the allegation and said that he was driving a Ford Ranger on that day.

[7.30] Regarding the evidence of PW8, PW10, PW11 and PW27 that the Appellant gave K20.00 notes to voters at Filipo market on

11th August, 2021 to woo them to vote for him, the Appellant testified that he did not campaign at Filipo market throughout the campaign period. As regards the evidence of PW16 and PW18 that the Appellant gave Darious Chishimba K3,140.00 so that the 157 registered voters at Kalangu school could be given K20.00 each, the Appellant denied the allegation and stated that no such incident took place. Regarding PW29's evidence that the Appellant gave K150 to a woman and said he had engaged her; and that he later gave money to people who walked with him to his motor vehicle, the Appellant denied that allegation.

[7.31] Regarding the evidence of PW36 and PW37 that at a meeting held in Lubushi and Lungula village, the Appellant gave K150 to women who danced for him, the Appellant denied that assertion and said that he merely danced with the women and did not give them any money. He also denied that he gave K300 to the ward secretary to share it with other voters.

[7.32] In light of the foregoing evidence adduced by the parties on both sides, it was incumbent upon the learned trial Judge to critically analyse and evaluate the evidence and to clearly state in his judgment which of the witnesses he believed and why. We say so

because the law is settled that a trial court is entitled to make findings of fact where the parties advance directly conflicting stories and the court must make those findings based on the evidence before it having seen and heard the witnesses giving the evidence as was held in the case of **Attorney-General v Kakoma.**[3] Further, in the case of **Chief Chanje v. Paul Zulu**[19] which was cited by the 1st and 2nd Respondents, the Supreme Court stated that:

> **We cannot fault the learned Judge for so finding as he was perfectly entitled to decide whom to believe as he had the opportunity to observe the witnesses and to form the impression he did.**

[7.33] In other words, a trial Court is entitled to determine a matter based on the credibility of the witnesses and to make findings of fact based on the evidence before him. In the present case, however, the learned trial Judge did not analyse the evidence adduced by the parties on both sides and he made no findings of fact regarding the allegations of bribery and undue influence relating to the alleged hidden cameras in polling booths, save to state that the 1st and 2nd Respondents had proved the allegations to the required standard. As we earlier pointed out in this judgment, the trial Court completely ignored the Appellant's testimony and instead stated that

his testimony comprised bare denials. The learned Judge further made a sweeping statement that the witnesses called by the 1st and 2nd Respondents witnessed at least one incident where the Appellant gave money to the electorate without elaborating and notwithstanding the evidence given by the Appellant in rebuttal.

[7.34] The learned Judge made no attempt to evaluate the evidence of PW4, PW5, PW6, PW7, PW8, PW10, PW11, PW16, PW18, PW27, PW29, PW36 and PW37 whom he relied upon in arriving at a determination that the 1st and 2nd Respondents had sufficiently proved the allegation of bribery against the Appellant, as can be seen from his judgment on pages 78 to 81 of the record of appeal. He further did not state why he believed the testimony of those witnesses as against the testimony of the Appellant and also did not address the issue of corroboration. Furthermore, the trial Judge's observation in his judgment at page 80 of the record of appeal that the Appellant's evidence comprised general denials in rebuttal of the allegations, suggests that the trial Judge absolved the 1st and 2nd Respondents of the burden to prove their allegations of bribery against the Appellant to the standard required in election petitions, which the trial Judge could not legitimately do in light of the

provisions of section 97(2)(a) of the Act that it is for the Petitioner to prove the allegations to the required standard.

[7.35] We therefore agree with the Appellant's contention that the trial Judge was wrong when he failed to critically analyse the evidence before him as given by the parties on both sides. The same observation applies to the trial Court's determination that the 1st and 2nd Respondents had proved the allegation that the Appellant unduly influenced the electorate by threatening them that if they did not vote for him, their manner of voting would be detected by cameras in polling booths and they would consequently no longer receive social cash transfer money.

[7.36] We are mindful that as an appellate court, we ought not to interfere with the findings of fact made by a trial court except on very clear grounds. However, in this case we have pointed out that the trial Judge did not analyse the evidence adduced by the respective parties and therefore did not demonstrate in his judgment that the allegations of bribery and undue influence were proved to the required standard. Further, having carefully examined the evidence adduced by the 1st and 2nd Respondents in support of their petitions, our view is that the evidence did not support the allegations of bribery

and undue influence to the required standard. We therefore are left with no option but to reverse the lower Court's decision that the allegations were sufficiently proved by the 1st and 2nd Respondents as that finding is not supported by the evidence on record and is a finding which a trial Court properly directing itself would not have made. Grounds seven, ten and eleven therefore have merit and we accordingly uphold them.

[7.37] In ground two the Appellant contended that the trial Court was wrong to hold that the bribery and undue influence were widespread when he knew that the Appellant had not campaigned in all the polling stations in Lunte Constituency. In ground six, he reiterated that the trial Court erred in holding that the misconduct of the Appellant was widespread in the absence of cogent evidence from the 1st and 2nd Respondents to prove the alleged meetings he (the Appellant) was attending in the wards of Lunte Constituency and in ground eight, the Appellant contended that the trial Court was wrong to nullify the election of the Appellant based on evidence which was not proven to the required standard under the law. We shall consider these grounds together as they are related.

[7.38] In support of these grounds, the Appellant essentially argued that although the trial Court found that the Appellant's alleged malpractice was widespread and that the Appellant campaigned in eight of the fourteen wards in Lunte Constituency, the 1st and 2nd Respondents did not produce any statistics or evidence that the eight wards had the majority of registered voters in the Constituency to prove that the majority of voters were or may have been influenced by the Appellant's actions against voting for a candidate of their choice.

[7.39] He contended that the mere fact that he campaigned in eight of the fourteen wards in Lunte Constituency did not mean that the alleged corrupt or illegal practices or misconduct were widespread in the Constituency to the extent that they prevented or may have prevented the voters from electing their preferred candidate. Further, that whereas Lunte Constituency has 65 polling stations, the 1st and 2nd Respondent's witnesses only referred to a few polling stations and did not prove that those polling stations had the greater number of registered voters so that it could be said that the Appellant's malpractices were widespread.

[7.40] He submitted that the evidence adduced by the 1st and 2nd Respondents did not satisfy the threshold set by section 97(2)(a) of the Act for nullification of the election of a Member of Parliament.

[7.41] The 1st and 2nd Respondents opposed grounds two and six together and submitted that although the Appellant alleged that the incidents of bribery and undue influence that led to the nullification of his election were not widespread, the lower Court found that they were as the majority of witnesses attended various meetings where the Appellant committed the malpractice. They contended that from the record, the Appellant's conduct of giving money and threatening voters that if they did not vote for him, cameras would detect them and he would stop bringing social cash transfer was witnessed in many areas thereby creating a standard of conduct.

[7.42] They further submitted that contrary to the Appellant's submission that he campaigned in eight of fourteen wards, the evidence on record was that he campaigned in 57 of the 65 polling stations leaving out only 8 polling stations. They contended that contrary to the Appellant's submissions, the meetings were held in villages and not polling stations which are demarcations for administrative convenience. They further argued that it cannot be

said that campaigning is done in polling stations because it is done in villages and that it is on record that people would move from nearby villages to attend campaign meetings.

[7.43] The 1st and 2nd Respondents contended that by his own admission, the Appellant campaigned in the entire constituency and that his conduct was shown to be consistent as he gave money to the voters in as many areas as he was seen campaigning; it was argued that the Appellant's argument that the Court should have been given information by the statistics office to determine the number of affected voters was flawed. They submitted that the Supreme Court in the case of **Saul Zulu v Victoria Kalima**[22] guided that what is expected of the petitioner is to show that the corrupt or illegal practice was committed on a large scale so as to prevent the majority of voters from voting for their preferred candidate. They urged us to dismiss these two grounds.

[7.44] In opposing ground eight, the 1st and 2nd Respondents submitted that the lower Court was on firm ground to have nullified the election of the Appellant as the evidence on record was overwhelming and met the requirements for the nullification. They further submitted that in order for us to resolve this ground, we must

consider whether the evidence on record met the standard we set down in the celebrated case of **Nkandu Luo and the Electoral Commission of Zambia v Doreen Sefuke Mwamba and Attorney-General.**[7]

[7.45] The 1st and 2nd Respondents submitted that the lower Court was on firm ground to have nullified the Appellant's election as there was clear evidence on record which proved corruption and undue influence to the required standard and further that the malpractices were widespread. They urged that ground eight should also fail.

[7.46] On the other hand, the 3rd Respondent supported the appeal and essentially stated that the 1st and 2nd Respondents lamentably failed to prove the allegations raised in their petitions to the required standard of proof both regarding the commission of the alleged corrupt or illegal practices by the Appellant and regarding the widespread nature of those corrupt or illegal practices.

[7.47] We have considered the arguments on both sides. The issue we have to determine in relation to grounds two, six and eight is whether the lower Court was on firm ground when he nullified the election of the Appellant in light of the law and the facts. We should

state at the outset that the threshold for nullifying the election of a candidate as Member of Parliament is clearly stipulated by section 97 (2) of the Act. Specifically, section 97 (2) (a) of the Act on which the petitions in this case were based clearly stipulates a twofold threshold to be satisfied by the petitioner as we held in the case of **Nkandu Luo and the Electoral Commission of Zambia v Doreen Sefuka Mwamba and Attorney General**[7] wherein we stated that:

> **In order for a petitioner to successfully have an election annulled pursuant to section 97(2)(a) there is a threshold to surmount. The first requirement is for the petitioner to prove to the satisfaction of the Court, that the person whose election is challenged personally or through his duly appointed election or polling agents, committed a corrupt practice or illegal practice or other misconduct in connection with the election; or that such malpractice was committed with the knowledge and consent or approval of the candidate or his or her election or polling agent.**

We further stated that:

> **In addition to proving the election malpractice or misconduct alleged, the petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorate from electing the candidate of their choice.**

[7.48] In this case, the 1st and 2nd Respondents' witnesses testified, in the main, that it was the Appellant who personally offered money to the electorate during his campaign meetings and on polling day and instructed them to vote for him. They also alleged that the

Appellant repeatedly stated that there were cameras in the polling booths to detect how the electorate would vote so that those who voted against the Appellant would be excluded from receiving social cash transfer money in future.

[7.49] As we stated earlier on in this judgment, the learned trial Judge held that the allegations of bribery and undue influence were committed by the Appellant. He also held that the said bribery and undue influence were widespread in the constituency and on that basis nullified the Appellant's election. In view of that position, the question we have to determine is: was cogent evidence adduced by the 1st and 2nd Respondents, as petitioners in the court below, to prove that the bribery and undue influence attributed to the Appellant was so widespread in the constituency that it may have or did prevent the electorate from electing their preferred candidate?

[7.50] We have thoroughly examined the evidence adduced by the witnesses which the lower Court accepted. We note from the record that five polling stations, one market, two villages and one school were mentioned by the witnesses, namely Fitaba polling station, Moseni polling station, Kapatu polling station, Mukolwe polling station, Mukupa Kaoma polling station, Filipo market,

Lubushi and Lungula villages and Kalangu school, as the areas where the Appellant gave money to different people and informed the electorate that if they voted against him, they would be captured on camera and would no longer receive the social cash transfer money.

[7.51] We are mindful that the learned Judge in his judgment said the Appellant in cross examination said that he campaigned in every polling station except for 8 polling stations. However, it is not clear from the witness testimony on record how many wards may have been or were affected by the alleged bribery and undue influence attributed to the Appellant out of the 14 wards in the Constituency for it to be determined that the bribery and undue influence attributed to the Appellant were widespread.

[7.52] In our view, even the voters' register which was exhibited in the supplementary record of appeal filed by the 1st Respondent did not assist the 1st and 2nd Respondents to prove that the impugned bribery and undue influence complained of were widespread, as the mere fact that the names in the register were ticked did not prove that all the 157 voters got the K20.00 as alleged. In any case, and as Mr. Sitali submitted, the register in question could very well have been availed by the Electoral Commission of Zambia for the

concerned voters to verify the accuracy of the details entered therein. More importantly, the learned Judge did not hold that the 157 registered voters whose names were in that register may have been or were influenced against voting for a candidate of their choice or that their votes tilted the vote in favour of the Appellant.

[7.53] As the law requires that before the election of a candidate can be nullified, it must be proved that not only did the candidate commit the impugned electoral malpractice or that the malpractice was committed with the candidate's knowledge and consent or approval or that of the candidate's duly appointed election or polling agent, and, in addition, that the malpractice complained of was so widespread that it may have or did influence the voters in their manner of voting, it was incumbent upon the 1st and 2nd Respondents to adduce cogent evidence to prove both aspects.

[7.54] We note that the learned trial Judge in his judgment at pages 82 to 83 of volume one of the record of appeal stated as follows:

> **The court heard the testimony of PW25 (2nd Petitioner) to the effect that Lunte Constituency is vast and the biggest problem in Lunte is the high level of poverty and illiteracy, and that the 1st Respondent took advantage of the high levels of poverty and engaged in corruption in the period before and up to the date of the election. I do not question this observation because the 1st Respondent was seen**

in person giving out money during the various meetings he held before elections.

The learned Judge further observed as follows:

In the same vein I do not doubt that the 1st Respondent took advantage of the illiteracy of the general populous in Lunte to make them believe that he was a force behind the social cash transfer and that he would place hidden cameras in the polling booths. The utterances have been construed to be threats tantamount to undue influence.

The learned Judge went on to state that:

On this head I hasten to state that the 1st Respondent had misconducted himself during the campaign. The very fact that he held several meetings in the many parts of Lunte constituency with the same attitude, denotes that his misconduct was widespread and had the effect or like effect of preventing the majority from electing a candidate of their choice. I am fortified in stating that the misconduct of the 1st Respondent was widespread because he had meetings in the majority of the wards that constitute Lunte Constituency. (Emphasis added)

[7.55] It will be observed from the excerpt of the learned Judge's judgment quoted above that the learned Judge did not refer to any specific evidence by any witness to support his finding that the impugned conduct of the Appellant was widespread in the Constituency. Further, a careful examination of the evidence

adduced by the 1st and 2nd Respondent on record and which we have set out earlier in this judgment does not support the learned trial Judge's conclusion that the malpractices of bribery and undue influence attributed to the Appellant were widespread in the Constituency.

[7.56] We say so because there is no evidence on the record of appeal regarding how many wards were affected through the five polling stations, one market, two villages and one school where the witnesses alleged that the Appellant gave money to the electorate and allegedly said that cameras would be placed in polling booths to identify those who voted against him so that they would be excluded from receiving social cash transfer money. The 1st and 2nd Respondents' submission that campaigns are conducted in villages and not polling stations and that voters normally travel from other villages to attend the campaign meetings is not supported by any evidence on record and is tantamount to adducing evidence from the bar.

[7.57] We have settled this matter in our numerous judgments where we emphasized on the need for both the commission of the impugned electoral malpractice by the candidate or with his or her

knowledge and consent or approval or that of his or her election or polling agent to be proved to the requisite standard of proof by the petitioner as stipulated by section 97(2)(a) of the Act; including the case of **Nkandu Luo v Doreen Sefuke Mwamba and Attorney General**[7] which we quoted earlier on in this judgment. Further, in the case of **Richwell Siamunene v Sialubalo Gift**[25] we held on this point that:

> **"Just because an offence has been found to be proved against the Respondent whether directly or indirectly, does not mean a nullification is warranted because evidence of an offence does not necessarily constitute evidence of a negative and widespread impact. The impact on the electorate must be proved in its own right by the party alleging it to the same standard of a fairly high degree of convincing clarity."**

[7.58] We reiterated in the case of **Jonathan Kapaipi v Newton Samakayi**[6] that:

> **"It is clear that when facts alleging misconduct are proved and fall into the prohibited category of conduct, it must be shown that the prohibited conduct was widespread in the constituency to the level where registered voters in great numbers were influenced as to change their selection of a candidate for that particular election in that constituency; only then can it be said that a great number of registered voters were prevented or might have been prevented from electing their preferred candidate."**

[7.59] We wish to re-emphasise that the widespread nature of a corrupt or illegal practice or other misconduct committed by a

candidate or with the candidate's knowledge and consent or approval or that of his or her election or polling agent and its effect on the electorate must be proved with cogent evidence adduced by the petitioner alleging an electoral malpractice. It cannot be presumed by the trial Court in the absence of evidence to that effect. This is because the nullification of an election is a weighty matter and the decision to do so must be based on clear and cogent evidence to justify the nullification.

[7.60] The requirement for cogent evidence to be adduced to prove that the electoral malpractice complained of was widespread entails that in the absence of evidence to that effect, the trial Court cannot speculate on whether or not the malpractice was widespread nor can the court fill out the gaps in the evidence.

[7.61] Considering that the standard of proof in election petitions is above a balance of probabilities, it was incumbent upon the 1st and 2nd Respondents to prove their allegations against the Appellant to that high standard. They did not do so. As a result, the lower Court resorted to making assumptions in order to fill out the gaps in the evidence in support of the allegations. The learned judge observed that the Appellant campaigned in many parts of Lunte Constituency

with the same attitude of giving bribes and issuing threats, which denoted that his conduct was widespread. That approach was erroneous as by assuming that the Appellant gave out bribes and uttered threats everywhere he campaigned and that the malpractices were widespread, the lower Court absolved the 1st and 2nd Respondents of the burden to prove their case against the Appellant to the required standard. We reiterate that the 1st and 2nd Respondents in this case should have proved both the commission of the electoral malpractices of bribery and undue influence by the Appellant and further that the alleged bribery and undue influence was widespread and may have or did influence the electorate in the manner they voted.

[7.62] As we stated earlier on in this judgment, as an appellate court, we will not lightly interfere with the findings of fact made by a trial court except on very clear grounds. In **Examination Council of Zambia v Reliance Technology Limited**[28] which we cited with approval in the case of **Sibongile Mwamba v Kelvin M. Sampa and Electoral Commission of Zambia,**[29] the Supreme Court held that an appellate Court will not lightly interfere with findings of fact of the trial Judge who had the benefit of seeing and evaluating the

witnesses unless it is shown that the findings of fact were either perverse or were made in the absence of relevant evidence or were premised on a misapprehension of the facts.

[7.63] In the present case, the record of appeal reveals that the learned trial Judge's finding that the bribery and undue influence attributed to the Appellant were widespread in the Constituency was not supported by the evidence on record. In the absence of that evidence, we find that this is a proper case for us to interfere with the trial Judge's finding of fact that the bribery and undue influence allegedly perpetrated by the Appellant were widespread in Lunte Constituency. We accordingly reverse it. Ground two, six and eight of the appeal therefore succeed.

[7.64] In ground one of the appeal the Appellant contended that the trial Judge was wrong to nullify his election despite almost all witnesses disputing the 1st Respondent's version of the testimony and inspite of all the witnesses denying that they saw the Appellant in most of the alleged places. In ground three he contended that the trial court erred in law and in fact when it failed to warn itself of the dangers of receiving evidence from partisan witnesses who alleged that the Appellant was giving out money during various meetings

held before elections. In ground four, the Appellant contended that the trial Court was wrong when it failed to resolve the contradictory statements of the Respondent's witnesses and make a finding but instead believed all the contradictory statements at once and relied on them to nullify the Appellant's election. In ground nine he contended that the lower Court misdirected itself when it considered the admission of documents during cross examination of a witness by the 2nd Respondent without due regard to the prejudice that was going to be occasioned to the Appellant herein who had already cross-examined the witness. These four grounds relate to the allegations of bribery and undue influence which we have fully considered earlier in this judgment. Since we have upheld grounds two, six, seven, eight, ten and eleven of the appeal relating to the same allegations, it is our considered view that it is not necessary for us to consider grounds one, three, four and nine of the appeal as the learned Judge did not properly analyse the evidence before him before nullifying the Appellant's election.

[7.65] As we have found that the 1st and 2nd Respondents did not prove that the bribery and undue influence they complained of were committed by the Appellant as they alleged or that the alleged

electoral malpractices were widespread in the Constituency, as a mandatory requirement of section 97(2)(a) of the Act, the appeal succeeds.

[7.66] We therefore set aside the lower Court's decision to nullify the election and declare that the Appellant, Mutotwe Kafwaya was duly elected as Member of Parliament for Lunte Constituency.

[7.67] Each party shall bear their own costs of this appeal and before the lower Court.

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A. M. Sitali
CONSTITUTIONAL COURT JUDGE

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M. S. Mulenga
CONSTITUTIONAL COURT JUDGE

.....

P. Mulonda
CONSTITUTIONAL COURT JUDGE

.....

M. Munalula
CONSTITUTIONAL COURT JUDGE

.....

J. Z. Mulongoti
CONSTITUTIONAL COURT JUDGE

AMENDED ONCE WITH LEAVE OF COURT

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/039**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF:	**ARTICLE 73 (1) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016 OF THE LAWS OF ZAMBIA**
IN THE MATTER OF:	**SECTIONS 72, 76, 87, 97, 98, 99, 100 AND 108 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA**
IN THE MATTER OF:	**RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF:	**AN ELECTION PETITION RELATING TO THE CHILUBI CONSTITUENCY PARLIAMENTARY ELECTION**

BETWEEN:

SIMON MUSONDA MUWA **PETITIONER**

AND

MATHIAS CHITEMBO **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

AMENDED PETITIONER'S LIST OF DOCUMENTS
Pursuant to Rule 9(3)(c) of the High Court (Election Petition) Rules, 2026

The following is a list of documents relating to the matters in question which the Petitioner shall rely on at trial:

NO.	DESCRIPTION OF DOCUMENTS
1.	Declaration of Results - MP
2.	Declaration of Result - Presidential
3.	Declaration of Results – Council Chairperson
4.	Video of pre-marking of ballots
5.	Video of District Commissioner
6.	Any other document the Petitioner may rely on at trial.

Dated at Lusaka the_____ day of_____ 2026.

Prepared by: _____

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