

2026/F/LGET/06

IN THE LOCAL GOVERNMENT ELECTION PETITION TRIBUNAL FOR THE MUCHINGA PROVINCE HELD AT CHINSALI DISTRICT

(CIVIL JURISDICTION)

IN THE MATTER OF: ARTICLES 57, 158 (1) (B) AND 159 OF THE CONSTITUTION CAP 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 98 (C), 99(A), 100(2) (B), 106(1) (A), AND 108 (4) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: THE LOCAL GOVERNMENT ELECTIONS TRIBUNALS RULES, 2026 AS READ TOGETHER WITH STATUTORY INSTRUMENT NO 60 OF 2016

IN THE MATTER OF: COUNCILLOR ELECTION PETITION FOR CHINSALI WARD HELD ON THE 13TH DAY OF AUGUST, 2026



BETWEEN:

DERRICK LUKONDE **PETITIONER**

AND

MORGAN CHIKWANKA **RESPONDENT**

Coram: ***CHRISANTOS K CHANDI, CHONGO MVULA, HICKET N NALISHUWA***

FOR THE PETIONER: ***K.Phiri, Y Mwambazi-*** *Messrs K Phiri And Company*

FOR THE RESPONDENT: ***M. Mweene, G.C.Phiri, N.Nyirenda-****M Mweene & Partners Legal Practitioners.*

A.Malando- *A. Aongola And Partners*

JUDGMENT

LEGISLATION REFERRED TO:

1. *Constitution of Zambia (Amendment) Act No.2 of 2016*
2. *Electoral Process Act No.35 of 2016 of the Laws of Zambia*

3. *Local Government Election Tribunals, Statutory Instrument No. 32 of 2026*

CASES REFERREDTO:

1. *Abuid Kanwangu vs. Elijah Muchima Appeal No. 8 of 2017.*
2. *AkashambatwaMbikusitaLewanikav FredrickTJ, Chiluba (1998)ZR49*
3. *Mazoka v. Mwanawasa and Mubika Mubika v. Poniso Njeulu, SCZ Appeal No. 114 of 2007.*
4. *Nkandu Luo (PROF) and Another v. Doreen Sefuke Mwamba and Another , Judgement No. 51 0f 2018.*
5. *Bowman Lusambo vs Benard Kanengo and Others (2021)CCZ -A0019*
6. *Herbert Shabula v. Greyford Monde (Constitutional Court Appeal No.13 of 2016.*
7. *Nelson v. Bwalya and Another (No. 15 of 2021).*
8. *Mwiya Mutapwe v Shomeno Dominic, Appeal No. 19 of 2017.*
9. *Saul Zulu v Victoria Kalima (AC No. 141 of 2013-14) ZMSC 24.*
10. *Steven Masumba v Elliot Kamondo - Appeal No. 17 of 2016.*
11. *Sibongile Mwamba v Kelvin Sampa and Another - Appeal No. 2 of 2017.*
12. *Chrispin Siingwa v Stanley Kakubo - 2016/CCA/A28; Appeal No. 7 of 2017.*
13. *Njeulu v Mubika - Appeal No. 9 of 2017.*
14. *Chewe v Mucheleka and Another - CCZ/A 23 of 2021.*
15. *Christine Phiri and Another v Melessiana Phiri and Another - CCZ/A 37 of 2021.*
16. *Dean Masule v Romeo Kangombe - 2019/CC/A002.*
17. *2017.*
18. *Brelsford James Gondwe v Catherine Namugala, Appeal No. 175 of 2012, [2014] ZMSC 1*

1.0 INTRODUCTION

This is a Petition filed by LUKONDE DERRICK challenging the election and declaration of MORGAN CHIKWANKA as elected Ward Councillor for CHINSALI WARD pursuant to the Local Government Election Tribunals Rules, 2026 as read with the Electoral Process Act No.35 of 2016 of the Laws of Zambia.

2.0 BACKGROUND

This Petition follows the Local Government Election for Chinsali Ward within of Chinsali District of the Muchinga Province of the Republic of Zambia held on the 13th August, 2026 in which the Respondent was declared the duly elected Councillor for Chinsali Ward by the Returning officer of the Municipal town and District of Chinsali.

The ground upon which this petition is presented is that the Respondent and /or his agents involved themselves in electoral malpractices and misconduct. The petition was accompanied by an affidavit verifying facts.

Accordingly the Respondent filed an answer and accompanying affidavits.

3.0 ATTENDANT LEGISLATION AND JURISDICTION OF THE TRIBUNAL

Article 159 of the Constitution of Zambia Chapter 1 the Laws of Zambia as read with the Constitution of Zambia (amendment Act No. 2 OF 2016) provides for and establishes the Local Government Election Tribunals. It provides as follows:

> ***"159. (1) The Chief Justice shall establish such number of ad hoc local government elections tribunals as are necessary to hear whether— (a) a person has been validly elected as a councillor; or (b) the office of a councillor has become vacant. (2) A local government elections tribunal shall be presided over by a magistrate of competent jurisdiction sitting with two legal practitioners appointed by the Chief Justice."***

This Tribunal was appointed for Chinsali ward of the Chilinda Constituency in the Chinsali District of the Muchinga Province of the Republic of Zambia.

Further, Rule 3 the Local Government Election Petition Tribunals Rules, 2026 provide that:

> ***"A tribunal has power to hear and determine a nomination petition or election petition within the province for which the tribunal is constituted."***

Further, Section 97 (2) of the Electoral Process Act provides that "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."

It is further right that before the Tribunal can address the issues raised in this petition, we remind ourselves that this is an election petition; as such the burden of proof and standard to be proved is higher than ordinary civil matter.

This was elaborated in the case of ***Akashambatwa Mbikusita Lewanika vs Fredrick T.J.Chiluba 2*** where the court held that:

> ***"Parliamentary election petitions are required to be proved to a standard higher than a mere balance of probabilities and therefore, where the petition had been brought under Constitutional provisions and would impact on the governance of the nation and deployment of constitutional power, no less a standard of proof was required. Furthermore, the issue raised were required to be established to a fairly degree of convincing clarity."***

Similarly, in the case of ***Michael Mabenga vs Sikota Wina*** and others 6 the court stated that,

> ***"An election petition like any other civil claim depends on the pleadings and burden of proof is on the challenger to the election to prove to a standard higher than on a mere balance of probability."***

The import of the above guidance is that an electoral cause is established much in the same way as a civil cause. The legal burden rests, however, on the petitioner to place credible evidence before the tribunal which will satisfy the Tribunal that the allegations made by the petitioner are true. The burden is on the petitioner to prove not only non-compliance with the election law but also that non-compliance affected the results of the election in a substantial manner.

Once credible evidence is brought before the tribunal, the burden shifts to the Respondent and it becomes the responsibility of the Respondent to show either that there was no failure to comply with the law or if there was any non-compliance, that none-compliance was not so substantial as to affect the outcome of the election.

We now consider the evidence in this case:

4.0 PETITIONER'S CASE

The Petitioner was **Derrick Lukonde** herein called PW1 who was sponsored by the United Party for National Development as a Councillor for Chinsali ward. PW1 testified that on the 15th day of July,2026, he went to a village called Shika where he found an unknown person who was being dragged and grounded down by Respondent and a Mr. John Mulenga, he narrated that the duo were heard telling the unknown grounded person that they did not condone 'red colour' in that area. The duo fled the scene and that PW1 together with his team helped lift this unknown person from the ground whose red-tshirt was torn and tendered herein as "Exibibit P1".

PW1 further testified that the same incidence was later on reported to Chinsali Police Station against the Respondent and Mr. John Mulenga .PW1, went on to testify that around 12:00 hours just after reporting the same incidence on their way to visit the unknown person who was earlier on dragged and grounded whilst in Chipande Village, they found John Mulenga. PW 1 testified that a few minutes later he received a phone call from the neighbour to John Mulenga's Mother who inquired from them if they were buying voters cards. Morgan told him that John Mulenga was telling people that the UPND who buy voters cards have passed here.

PW1 further testified that Ronald Kalwambo called and said that John Mulenga was telling and directing people to beat them up. It was PW1's testimony before this Tribunal that when he called John Mulenga using Anthony Mukosa's phone, John Mulenga used abusive language towards him. It was also his testimony that they had difficulties during the campaigns because they were being intimidated by the Respondent and John Mulenga using intimidating words.

PW 1 further testified before the Tribunal that at some point, the Respondent went to a radio station called Radio D-Light alleging that PW1 was a thief, including his MP. And that once people elected them, they would do nothing for them except stealing. Subsequently, PW 1 also went to Muchinga Radio Station on an unknown date to dispute the allegations around July 2026, stating that he had never been convicted of the said allegation made by Respondent. It was also his testimony before the Tribunal that that the

coverage frequency for Muchinga Radio was not as wide as that of Radio D-Light Station to which the Respondent had gone.

PW1 testified that on an unknown date but between 27 and 28 July 2026, they discovered that their campaign posters were being removed. He stated that Anthony Mukosa brought his campaign posters, which had been torn, and said that he had seen a young man named Kangwa, who was working with the Respondent at a Bar in Makoba removing and tearing PW1s posters. The said two campaign posters were tendered in evidence as "Exhibit P1-P2."

PW1 testified before the Tribunal that on the 13th day of August 2026, in the morning, as he was going to the polling station, named Mulelema or Grace Ministries. He found people at the Respondent's Parents' home Slaughtering a goat and drinking beer at around 08:00 to 09:00 hours. Upon inquiring from the neighbours, who were UPND members, what was happening. They responded that people were being fed before going to cast their vote. He testified that even the Respondent was there showing people to vote for him.

It was PW1's testimony that at approximately around 10:00 to 11:00 hours, after returning home he later received a phone call from Maggie Nsofu informing him that she had seen the Respondent distributing pens to voters at Chinsali Day Polling Station, subsequently he went there and found the Respondent there. Almost everyone had a ball pen, except Maggie Nsofu, who had made the call. He testified that he heard the voters on the Queue saying "This is how it is supposed to be" and to him, that meant that they had been given money. He stated that the registered voters in Chinsali Ward were 3961 while at grace Ministries it was 368. It was his testimony before the Tribunal that on the 13th of August 2026, he went to Chinsali Day polling station thrice. The first time he went was to check on his polling agents, the second time was when Maggie Nsofu called to inform him that the Respondent was distributing pens to voters in the Queue and the third time was around 13:00 hours when Maggie Nsofu called again to inform him that the Respondent was in the Queue writing something instead of going straight to vote.

When PW1 went to Chinsali day the third time, he found the Respondent in the Queue and decided to report the matter to the Police Officer at the polling station while the Respondent was still in the queue. PW1 narrated that the

police officer admonished that Respondent that he was a candidate and was not supposed to be in the queue and that even earlier he was told.

PW1 testified before the Tribunal that after leaving the polling station, he found individuals who were working with the Respondent at the main entrance of Chinsali Day, approximately 100 metres away from the polling station telling people who to vote for, specifically encouraging them to vote for the Respondent. He testified that he was able to identify them as individuals who had been working with the Respondent because he had previously campaigned together with them in the past. There were approximately 50 people present he said, although they were not all in one group.

PW1 testified that at approximately 16:00 hours on the same day, he received a phone call from Rupiah Chola who informed him that another candidate was organizing people, alleging that UPND intended to steal votes.

When he returned to the area, he found three groups of people and that Lupiya Chola informed him that a police officer had just dispersed the same groups of people. And that he also found the Respondent addressing his fellow supporters and telling them that they were not going to leave the polling station until the results were announced.

PW1 testified that at approximately 18:00 hours, he returned to the polling station accompanied by three people, namely Anthony Mukosa, Godfrey Malama and Derick Chisanga. Upon arrival, he found the Respondent standing by the window and shouting at the polling agents, telling them, "You must ensure that you follow what they told you to do." He further testified that the people who had been shouting through the windows had scared away PW1 s polling agents and that the agents were therefore leaving the polling station one by one.

PW 1 testified that upon returning home he later called one of his polling agents, Kunda Oswald Sichalwe, who informed him that things were not okay and that he was concerned that he might lose his life. He further testified that he was not directly informed of the results. Instead, he heard the results being announced on the radio station. According to the results he heard, the Respondent scored 1,292 votes, followed by another candidate named Derrick who scored 642 votes.

PW1 concluded his testimony before the Tribunal that by virtue of the aforesaid circumstances, i.e being accused of buying votes, the same caused them to fear that people might beat them and as such their campaign activities were consequently reduced. As a result of the said incidences, he did not obtain the intended results. It was PW1s testimony before the Tribunal that he believed that some people became afraid to go and vote for him because of acts of intimidation and that he also considered the provision of food and the purchase of beer for the electorates during the election period to amount to vote buying.
Under cross examination PW 1 confirmed that he never knew the name of the man that was being dragged and grounded by the Respondent and John Mulenga. PW 1 further agreed that, that this incident was among the reasons the election must be nullified. He further confirmed that he did not take any video, despite knowing that the Respondent was among the people dragging and surrounding the person whose Red T. shirt was torn. And he confirmed having proceeded to report the matter to the police and that the alleged victim did not make the report himself. PW1 conceded that he did not bring any evidence showing the Respondent was ever prosecuted in respect of dragging, grounding and tearing a T-shirt of an unknown UPND supporter.
PW1 confirmed having received a telephone call from John's mother alleging that they were buying voters' card and that he did not produced any call log to substantiate his claim.
PW1 also agreed that despite the Respondent being on the radio D-Light, he did not produce any recording of the said broadcast before the Tribunal. He agreed having equally gone to Muchinga Radio Station to report and the rebut the Respondents allegations made on Radio D-Light save to say Muchinga Radio Station had no wider frequency. He also admitted that nothing stopped him from using the same Radio D-Light Station.
PW1 conceded that the Respondent was not found removing and tearing his Campaign posters and that in light of "Exibit P-3" he never mentioned that the poster had the face of an MP And that even if it was removed, it would not affect his results. When what was used to stick the "ExibitsP2-3", he responded that he used Bubble gums and that they were stuck on the poll. Exhibit P-3 was shown to PW1 and he did not agree not to have seen marks of bubble gum on

the poster. Further, on Exhibit P-2, PW1 conceded that the poster did not have four bubble gums marks.

PW1 confirmed that the Respondents' parents did not participate in the elections. He denied that the Respondent's parents had the right to also eat from their own place. He however, agreed that ECZ did not restrict meals or prohibit people from eating at their places.

PW1 agreed that he did not bring any evidence apart from his oral testimony that there was any form of malpractice at Grace Ministries. PW1agreed and confirmed that he did not take any picture or video at Chinsali Day School to show that the Respondent was telling electorates who to vote for. PW1 further, confirmed that, despite being informed by Maggie Nsofu that the Respondents was distributing pens, he did not obtain any picture or video to substantiate his claim. When asked whether the said pens being distributed had any party symbol? PW1 responded that he did not get closer to verify.

PW 1 agreed that said the incidents that happened made him reduce his campaigns but he confirmed not having told the Tribunal how many hours he was taking to conduct his campaigns. Equally, he confirmed that he did not mention the places where he used to campaign before and after the threats. He also confirmed not having also told the Tribunal the places he stopped going to after the threats and he agreed that he was never stopped from putting up campaign posters after the threats.

PW1 agreed that he did not bring any written complaint that he submitted to ECZ against the Respondent despite having been briefed on the existence of the Conflict Management Committee and channels of handling electoral grievances before, during and after elections.

PW1 agreed that there was no Central Ward. He however, disagreed that his own petition focused more on Central Ward than Chinsali Ward.

PW1 denied appearing on Radio Sheila, after the elections and that he had no problem even if a recording was brought where he conceded defeat and agreeing that the elections were free and fair. PW1 agreed that despite the distributions of pens to the voters, by the Respondent, he would not have known whom those people would have voted for. He further agreed not having been given GEN 20 form and that he only heard the results from the radio station and he concluded

by agreeing that he never mentioned any single person who was scared to vote because of fear , intimidation or threat occasioned by the Respondent and his supporters.

The Second Petitioners witness was **Mukosa Anthony**, PW2. His testimony was to the effect that on the 15th day of July, 2026. PW 2 together with PW1, Chanda Elvis, and Bernard Mulenga headed to Chipande Village to sensitise their people on campaigns in that branch and arrived at about 14:00 hours and that on their way back around15:00 to 17:00 hours. they found an unknown old man who was being dragged within Chipande Village by John Mulenga and the Respondent who tore his T-shirt.

It was PW2's testimony before the Tribunal that he gave the unknown man the shirt he was wearing, and got the torn T. shirt from him. The alleged perpetrators then fled the scene.The following morning, both PW1 and PW2 set off for Chinsali Central Police Station to report the case of the T-shirt being torn by the Respondent and John Mulenga. He testified that PW1 and that PW 2 were the complainants in the matter. Nonetheless, PW2 testified that the officers advised them to record the complaint; and to concentrate on their campaigns.

PW2 further testified that on the 26th day of July 2026, whilst with Elvis Chanda putting Political Posters on Poles, they stopped by Sheba Shika's bar. Shortly thereafter, he saw a young man called Kangwa removing the posters they had just stuck on the pole. PW1 decided to follow Kangwa so that he could beat him, but the owner of the bar stopped them from beating the said Kangwa whom he knew as a person who was found with the Respondent.

It was PW2's testimony before the Tribunal that the posters that were torn were for Honourable Chipande MP, PW1, and the President and that the said torn Posters were collected by the duo. PW2 further testified that on the 29 July 2026, around 14:00, he was alone coming from Choshi Village going to Makoba. When he arrived in Makoba, at a certain house, he found people drinking beer. He then saw the Respondent with his people remove a UPND cap from a man's head and tear the front of the cap. They threw the cap down. The owner of the cap picked it and decided to leave the place. PW2 followed the man whose cap had been torn and asked him to give him the torn cap promising him that he

would bring him a new cap. PW2 was given the cap which he took to his sister's house. On the 2nd of August, 2026, PW2 collected the cap from his sister's house and gave it to PW1. The said cap was tendered in evidence as 'exhibit P-4". He narrated that the people who did this were the Respondent's people and that the Respondent was actually present himself during this incidence.

PW2 further narrated that on the 13th day of August 2026, he went to vote at around 06:00hours to 07:00 hours and joined the queue at Chinsali Day Polling Station. He stated that at around 09:00 to 10:00 hours before casting his vote two groups comprising of the Respondent's supporters came carrying boxes of pens, and started distributing the said pens to every voter in the queue, together with twenty kwacha (K20) and as such confusion erupted and the said incidence was reported to the police by the said PW2. Consequently, The Police Officer managed to control and calm the situation and as such voters in the queue continued voting.

PW2 narrated before this Tribunal that at around 18:00 hours, the polling station was declared officially closed and that a group of people deemed to be members of NRPUP surrounded the classroom and were on windows of classrooms where the counting of votes was taking place and the said people started making noise and insulting and telling ECZ officials to count votes properly as Mundubile had clearly won the said election. This was happening while PW2 was outside the said polling station. PW2 concluded his oral testimony by stating that as result of the chaos, noise and insults hurled by purported NRPUP supporters he decided to go home around 23hours . He also added that he had been at the said Polling Station from around 18:00hrs up until he decided to go home around 23:00hours as he desired to hear the official announcements of the results at the said Polling Station. PW2 identified the Respondent in Court.

When Cross-examined on how long he had been a UPND member, he responded being a member of the said Party for over six years. He also agreed that he did not know the identity of the person that was attacked and whose UPND t-shirt was torn and that neither did he know where the said victim was taken to. PW2 further admitted that he did not know the reason why the said unknown victim was beaten.

When asked where he stuck and what he used to stick the campaign posters, he responded that he stuck them on a Pole situated at a certain Bar and that he used cellulose tape (sellotape) to stick the same. He further agreed in Cross examination that he would not be shocked if he was told that someone else stuck the said posters on the wall as opposed of being stuck on the Pole. However, PW2 confirmed that he would be shocked if someone said they used bubble gum instead of Sellotape. When he was asked as to who was lying between PW1 who had earlier on testified to the effect that he used bubble gum and him who said sell tape. PW2 responded that he didn't know who was lying. When referred to "Exhibit P-2 to show the Tribunal where the Sellotape was on the poster, PW2 stated that the sellotape remained on the pole. In further cross-examination when PW2 was showed "Exhibit P2 to P3" to show the Tribunal where Sellotape was on the said exhibits. he could not do so and further agreed in cross examination that there were no markings of Sellotape on both "ExibitsP-2 and P-3".

When asked to identify any of the Respondents agents, PW 2 could not identify any. furthermore, PW confirmed not to have seen an accreditation letter suggesting that Kangwa was an agent of the Respondent. When asked whether he had any other form of evidence in form of either a picture or a video besides his oral testimony, he could not produce any to substantiate the aforesaid allegations

In further cross examination PW2 confirmed having not known the said victim of a cap and that he agreed not to have testified before the Tribunal that anyone beat him up during the time he was sticking up campaign posters but he agreed that it was in fact him who wanted to beat Kangwa had it not been for the bar owner stopping him.

PW2 agreed that the pens were brought and distributed by the Respondent but that he had no any evidence brought before the Tribunal to speak to details such as colour, and model of the said pens. He further, confirmed to have not gotten any picture or video showing that indeed the Respondent distributed the said pens.

PW2 agreed having been at Chinsali Day Polling Station from about 07:00hours to 20:00 hours and he confirmed having seen the Respondent distributing

money and pens but that he did not receive any himself. Further, he had not adduced any piece of evidence in form of any picture or video substantiating his allegations against the Respondent distributing any money.

When asked as to whether the confusion at the said polling station stopped people from voting, PW2 testified that no one was stopped from voting. He however, stated in cross examination that the distribution of pens affected the choice of candidate in that the said pens had money inside.

When PW2 was showed "ExibitP-4", he confirmed to have stated that it was his testimony during examination in chief that the cap had been only reaped in front. He however, agreed not to have testified before the Tribunal that said cap was reaped on the left, right and behind that has been presented. In cross examination, PW 2 confirmed also that "Exibit P-4" earlier exibited did not have the face of the PW1. He however insisted that he had demonstrated earlier on how the said cap affected PW1 despite not having his PW1's face and further confirmed that though the said Exibit had face of the MP, he did not deem it necessary to take it to him as the said MP was not around during that particular period of time. In the same vein, he agreed having never mentioned of any attempts to take the said cap to the MP.

When asked where he kept the said cap, he responded to have taken it to her Sister who had it in custody of it within Makoba village .PW2, further told the Tribunal in cross examination that he had 5 siblings. He however, confirmed having not stated the name of the said Sister that kept the said Cap and further confirmed to have kept the cap for a future petition but denied having envisaged as early as July preparation of for the petition.

PW2 concluded his cross-examination testimony by confirming that the counting proceeded and the results were delivered at the polling station despite the confusion.

The third Petitioners witness was **Mpundu Thelma**, PW3, whose evidence was to the effect that in the month of July 2026, the Respondent asked her to be his polling agent and that she declined owing to the fact that she was a member of UPND. It was her testimony that the Respondent would always park his motor vehicle at her house whenever he went for campaigns and that he would always display to her the lamp symbol and made remarks that she would lose

together with her useless friend, and she should be careful or else she will die in her house when her and her fellow fools lose. She stated that the Respondent was referring to the President when he said your fellow fool.

It was PW3's testimony before the Tribunal that on the polling day, the 13th day of August 2026, she arrived at the polling station at 04:30hrs at Chinsali Day Polling Station, which was in Chinsali Ward in her capacity as an accredited UPND Polling agent.

It was her further testimony that people started voting around 06:00hours. After voting had commenced, she saw the Respondent flashing the lamp symbol to people who were in the queue. Furthermore, the Respondent started distributing pens. She further narrated that at some point when she went outside the Polling Station to answer the call of nature, she saw NRPUP Supporters by the name of Kangwa Bode and Chisala who threatened to beat her up for supporting a UPND candidate. She further added that she was able to associate the duo to being members of NRPUP owing to the fact that at some point the duo wanted to convince her joining the NRPUP Party.

She further testified that after official closure of the Polling Station at 18:00hrs, counting commenced during which the Respondent and his supporters surrounded the Polling station and were seen peeping on windows, causing confusion, insulting and threating to beat UPND supporters inside the polling Station. It was also her testimony that the Police officers endeavoured to control the situation outside and that counting ended at around 05:00 hours the following day and afterwards PW3 proceeded going home before signing a Gen 20. She added that she went home alone without being escorted by any Police Officer and that the time the results were being announced she had already left.

In Cross Examination. PW3 admitted being trained by ECZ and admitted that during the training ECZ did not say that people could not come with their own pens. She admitted that other than her oral testimony, she had no independent evidence such as a video or picture to show that the Respondent was distributing pens to voters. When asked whether she had confirmed with the NRPUP Secretariat if Kangwa Bode and Chisala were members of NRPUP, she responded in the negative. In further Cross examination, she agreed that

Kangwa Bode and Chisala were not wearing any party regalia. She admitted to not reporting Kangwa Bode and Chisala to the police.

She further confirmed that she remembered ECZ, after training them, instructed them to sign GEN 20 and that she did not sign the said Gen 20 on the material day. And when she was asked who was to blame for running away without signing Gen20 she remained mute. And finally she agreed that failure to obtaining GEN 20 after the counting did not change any results.

The fourth petition witness was Oswald Sichalwe, PW4, whose testimony was to the effect that on 13 August 2026, he was appointed as an agent for UPND at Chinsali Day Polling station Room1.His testimony before the Tribunal was that at around 06:00 hours when the said polling station was officially opened and that People formed queues and started voting using their own pens. At around 0900 hours, PW4 narrated that he saw the Respondent talking to other people while holding a box in his hand, and confusion erupted. Further He was also writing names in the book and that the police approached the people to calm the situation.

His testimony before the Tribunal was that voting continued up until around 1600 hours to 1700 hours when he saw people entering and surrounding the wall fence and the polling station. As a result, noise erupted. Furthermore, at around 1800 hours, after the polling station had been declared closed, people came to the windows and started shouting, saying, "Count quickly so that we know the winner." While they were doing this, the electoral officials waited a bit. this however caused further confusion, as the people thought that the ECZ officials were about to do something. In about an hour counting commenced. During the counting, people who were at the window and started using abusive language against UPND. Nonetheless, UPND members were not present, except for the agents and monitors, who were only there to monitor the process. PW4 further narrated that because of fear, He left at around 2300 hours to go and sleep and that he did not sign anywhere because he was scared for his life.

In cross examination PW4 agreed to have been at the Polling Station by 6:00 hours and that at that time electorates had pens and he further confirmed that at that point, he did not see those people with pens being given to them by the Respondent. That he only saw the Respondent at around 0900 hours.

He further confirmed that he was briefed by ECZ regarding how electoral grievances were to be reported during brief. PW4 further agreed that at no point in his testimony did he ever state that every confusion he witnessed at the polling station was reported to ECZ. PW4 proceeded to confirm that the delay to commence counting of votes was never caused by people that were standing on the windows during the count and that at no point did the same people contribute to the disruption of the same.

In further cross-examination PW4 confirmed having not seen any UPND Supporter outside and inside the Polling station, Further, that he left the Polling station at 2300 hours and at the time of leaving he was outside among the crowd that was standing on the window, he also agreed that at no point did anyone beat him or attempt to beat him when leaving the said polling station

PW4 confirmed to have been briefed by the ECZ on the importance of signing the Gen 20. In the same vein he agreed having left the Polling Station before signing the Gen and further stated that it was his duty to confirm the outcome of the election. When asked whether he swore an oath, his response was to the effect that he was only given forms by PW1 after the same forms were date stamped by the District Commission(DC).

PW4 confirmed that the distribution of pen by the Respondent had no condition attached to it and further confirmed not to have testified seeing any person being given alcohol. He concluded his testimony in cross examination before the Tribunal by confirming that he had not brought any evidence be it in picture or video form to substantiate all his claims.

Maggie Nsofu herein PW5 whose testimony was to the effect that on the 13th day of August 2026, she left her home at about 05:40 hours and went to vote at Chinsali Polling Station, which is in Chinsali Ward. She arrived at the polling station at about 05:50 hours. Upon arrival, she narrated before the Tribunal that she found a large number of people gathered in groups and these people were shouting, "Vote on the lamp." She testified that the Respondent was also among the people in the groups. It was her testimony that she then asked the supporters and the Respondent whether it was time for campaigning. Thereafter, she also heard the 'lamp' supporters shouting at the ECZ officials

saying it was time to start voting, as the time for opening the polling station and voting was up.

PW 5 further narrated that after joining the queue, she saw the Respondent together with his supporters and she decided to follow him and approach him concerning the distribution of pens to voters. She further told him that it was a polling day and not a campaign day. Consequently, the Respondent insulted her and told her that she had no right to ask him why he was doing so. She narrated that the Respondent referred to PW5 as "children of dogs." He also called her "satanic" in reference to UPND. Furthermore, PW5 narrated that the Respondent justified the distribution of the pens by saying that this was the reason they were distributing pens because they were Satanists and so were their pens.

She went on to narrate that she saw the Respondent holding a book and writing names in it and when asked why he was writing the names. He responded that he was writing the names of people who were going to eat. Consequently, PW5 then told him that she knew him an aspiring candidate and such he was not supposed to be in the queue in the first place, however, PW5 stated that the Respondent remained adamant.

PW 5 further narrated that she reported the Respondent to the Police Officer who was stationed at the Polling Station asking whether it was allowed for a candidate in an election to be in a queue the officer instead asked PW5 to call the Respondent who in turn refused to comply. PW5 went back to the same Police Officer who finally came and removed the Respondent from the said queue directing him to be ushered inside the Polling Station. PW5 further stated that she had no role to play on the Poll day other than being a mere voter and that she was at the said Polling Station from about 05:40 to 12;00hrs. PW5 narrated before the Tribunal that the Respondent voted around 12:00 hours. But he was there from about 05:00 to 12:00 hours and that she knew the Respondent because he was a candidate in that election.

In cross examination PW5 stated that she didn't know the name of the Police Officer that she reported to, she also confirmed that the pens distributed by the Respondent were just ordinary pens. She further stated that she was not aware that besides those pens provided by ECZ, people were free to use their own

pens. She also stated that she had nothing to show that she reported the issue to the police.

She further confirmed that she found groups of people at the polling station and the only person she knew was the Respondent. She further stated that she had no video or picture to show, other than her testimony, because she had no smartphone.

PW5 confirmed that no one was stopped her from voting and that she also voted on the said Poll day. She further stated that it takes approximately 10 minutes to walk from the polling station to her home. She also confirmed not having brought any video, picture or recording to show that that the Respondent and his supporters insulted the people. PW5 confirmed having seen the Respondent at about 06:00 hours, but she only decided to report the same to the Police at around 11:00 to 12:00 hours

PW5 further confirmed that in the queue, she never saw anyone wearing party regalia. No did she see any poster with political party symbols and that It was not her first time participating in elections. She went to state that for the past six years she has been participating as a voter and that she has had voted five times before during general elections.

PW5 stated that she did not have her voter's card president before the Tribunal and confirmed that other than her testimony, there was no any evidence showing that she participated as a voter due to the fact that she did not bring her voter's card.

PW5 agreed that she was a member of UPND. She further confirmed that she did not find any other member of UPND at around 05:50 hours and that she only saw supporters of the Respondent. She also agreed that there were other people belonging to other political parties

PW5 admitted that Since she did not belong to any group she was still just alone, standing outside with other had come to vote.

When asked the distance she between her and the Respondent she stated that it was about five meters from the Respondent and further narrated that they were a lot of people in between the Respondent and herself.

When asked whether the Respondent moved out of the line PW5 responded in affirmative and stated that he moved out of line to give people pens. PW5 denied

however receiving a pen from the Respondent as she knew that ECZ had pens inside.

PW 5 further denied seeing the Respondent instructing his supporters to insult people and confirmed that her candidate did not win the election. But admitted that it was the Respondent who won. PW5 further denied ever being bitter as a result of Respondent winning the election.

Petitioner filed submissions and prayed for the nullification of the declaration of the Respondent, **MORGAN CHIKWANKA**, as the duly elected Councillor for Chinsali Ward following the local government elections held on 13th August 2026. He submitted Section 97(1) of the Electoral Process Act, No. 35 of 2016, which mandates follows:

> ***"An election of a candidate as a member of Parliament or a councillor shall be void if it is proved to the satisfaction of the court or tribunal, on the trial of an election petition, that-***
>
> ***non-compliance with the provisions of this Act relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in those provisions and that non-compliance affected the result of the election;***
>
> ***corrupt practice or illegal practice was committed in connection with the election by the candidate or with the knowledge and consent of the candidate or by any agent of the candidate; or***
>
> ***the candidate was at the time of the election a person not qualified or a person disqualified for election as a member of Parliament or a councillor."***

He submitted that as demonstrated during this trial, the Petitioner exercised his constitutional and statutory right to challenge the election of the 1st Respondent by calling five witnesses from 5 of whom 2 spoke to activities prior

to elections. PW1 and PW2 both spoke to incidences of violence and threats which hampered their campaign while PW3, PW4 and PW5 all supported evidence placed on record by PW1 the Petitioner that there was a lot of Electoral malpractices committed by the Respondent and his NRPUP Members. Among these practices include vote buying, campaigns through an act disguised as pen distribution, feeding voters, as well as threatening UPND agents who could not verify the electoral votes obtained by their candidate.

He submitted that the act of pen distribution has largely not been disputed because it was practiced openly as an innocent undertaking due to the fact that going to vote with own pen is not in itself an electoral malpractice. While we agree that this act indeed is not an act capable of offending any electoral regulations, the said act of pen distribution was merely a conduit used to disseminate campaign message and lure voters to vote for the Respondent.

He further submitted that the Petitioner, through his witnesses, produced physical evidence including "Exhibit P1, P2 and P3" Torn T-Shirt, and 2 ripped campaign poster respectively while PW2 "Exhibit P4" a ripped UPND Cap containing campaign message. All these exhibits demonstrate to this Tribunal that indeed there was physical violence exercised in the 13th August elections.

He contended that the election was compromised by widespread corrupt and illegal practices, specifically bribery, undue influence, voter misdirection, and procedural malpractices committed directly by the Respondent and his accredited agents and that Under Section 97(1)(a) and (b) of the Electoral Process Act No. 35 of 2016,

> ***"an election shall be declared void if it is proven that by reason of corrupt practices or illegal practices committed in connection with the election, the majority of voters were prevented from electing the candidate whom they preferred, or that a corrupt or illegal practice was committed by or with the knowledge and consent of the candidate or his agents."***

He submitted that the evidence before this Honourable Tribunal gives this Honourable Tribunal the powers to annul the election held on 13th August 2026 of the Respondent as Councillor of Chinsali Ward, as shall be shown.

Regarding proof of corrupt practice, illegal practice and misconduct, the petitioner submitted the that under Section 97(2)(a)(i) of the Electoral Process Act No. 35 of 2016, the law provides:

"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 corrupt practice, illegal practice or other misconduct has been committed in connection with the election-
by a candidate;"

and further that Section **97(2)(a)(i)** operates on a strict liability basis regarding the direct, personal conduct of the candidate. The Respondent attempts to resist the Petitioner's allegations of personal corrupt practices by pleading a defence of alibi but lacks evidential support.

The Petitioner recounted certain portions of his Witnesses testimonies and submitted that the Tribunal is left with allegations raised by the Petitioner and his witnesses which have not been alluded to by the Respondent through witnesses except for bare denials of having not been there or "nothing of such happened". The Tribunal is denied evidence to prove that the Respondent was with any person during the alleged times that he was seen by Witnesses distributing money and pens and or campaigning in the queues and the time he personally had a confrontation with PW5.

The petitioner submitted that to satisfy Section 97(2)(a)(i), the Petitioner must establish a direct, personal link between the candidate and the alleged corrupt practices. A direct judicial precedent in favour of the Petitioner is the case of ***Tom Michelo v. Miles Sampa and Electoral Commission of Zambia* (2022) CCZ:** The Constitutional Court affirmed that where a petition is grounded on **Section 97(2)(a)(i)** of the Electoral Process Act No. 35 of 2016, the Petitioner is required to establish a direct, personal nexus between the successful candidate and the specific corrupt or illegal acts. He submitted that where cogent, credible eyewitness testimony establishes direct personal commission by the candidate

and the Respondent fails to rebut this with a complete, verifiable defence, the statutory threshold is met and the court must void the election.

Further, he said that in the case of ***Gershom Tanga v. Jonas Shakafuswa (2008) Z.R. 180***, the court affirmed that:

> ***"The provision of food, alcohol, and money to voters on election day near polling stations constitutes corrupt treating and bribery under election law, as its sole purpose is to corruptly influence the vote."***

And that in the case of ***Miyanda v. Handahu (1993-1994) Z.R. 187***: The court held that

> ***"fraudulent devices and misleading claims intended to induce fear in voters, such as falsely claiming ballot secrecy is compromised or attaching superstitious/spiritual threats to official voting materials, amount to undue influence sufficient to invalidate an election"***

The Petitioner submitted that Under **Section 89 of the Electoral Process Act** read together with **Section 97(1)(b)**, systematic interference with ballot secrecy, unauthorised display of marked sample ballots, and refusal to issue official result documentation (**Gen 20 forms**) constitute illegal practices that vitiate an election.

In the distinguished case of ***Dean Masule v. Romeo Kangombe and Electoral Commission of Zambia (Selected Judgment No. 27 of 2021)***: The Constitutional Court affirmed that

> ***"where procedural irregularities and malpractices such as non-compliance with statutory form issuances and interference with illiterate voters are so pervasive that they breach the fundamental constitutional principles of a***

> ***free, fair, and transparent election under Article 45 of the Constitution, the election must be declared null and void"***

Further, ***Sitali v. Sitali (1999) Z.R. 155*** establishes that **where electoral malpractices are committed by candidate agents with implied authority, the candidate cannot escape the statutory consequence of nullification.**

The Petitioner also argued on evidential burden and the Tribunal having warned itself on this aspect moves to note the indication.
Regarding personal involvement or approval the Petitioner advanced the case of ***Mutotwe Kafwaya v. Bernard Katonga and Others*** **(2022) ZMCC 8,** the Constitutional Court affirmed

> ***"that the statutory relief under Section 97(3) cannot be invoked on mere argument or uncorroborated denials. The candidate must present concrete, verifiable evidence establishing active prevention and complete absence of personal involvement or approval."***

The Petitioner argued that Respondent's failure to tender any evidence under Section 97(3)(a), (b), or (c) leaves the primary findings of corrupt practices under Section 97(2)(a) fully intact, requiring this Honourable Tribunal to declare the election null and void.
The petitioner concluded that the Petitioner has cogently proved through direct physical exhibits (**Exhibits P1 to P4**) and mutually corroborating oral testimonies of candidate **PW1**, monitors **PW2, PW3, PW4**, and **PW5** that the Chinsali Ward election was severely infected by bribery, undue influence, and illegal malpractices.

This marked the close of the Petitioner's case.

5.0 THE RESPONDENT'S CASE

The Respondents called 2 witnesses.

The first Respondents witness was the Respondent, **Chikwanka Morgan**, RW1, who testified that he was the duly elected Councillor for Chinsali Ward and sponsored by NRPUP. His testimony was to the effect that on the 13th day of August 2026, RW1 was at home with his family in the morning and arrived at Chinsali Day around 11:45 hours. He searched for his name, among other names that were arranged in alphabetical order, and found it in Stream 1. He then went direct to vote but was instructed by a police officer at the entrance to wait as there was congestion inside. His testimony before the Tribunal was that During ECZ orientation, aspiring candidates had been instructed to go straight to vote to in order to avoid confusion. And such RW1 therefore stood beside the queue for about 20 minutes until he was permitted to enter. He then entered inside the Polling station and cast his vote. He stated that he spent about 5 minutes therein before returning to his home and further stated that he had no campaign posters displaying his face.

RW1 stated before the Tribunal that he had agents in all eleven polling stations and that after voting, he waited for his agents to inform him of the results. He further stated that at about 23:30 hours, he received results from Stream one and also heard the results on radio, particularly, Grace Ministries Radio Station. He also stated that Some agents sent him text messages. The last results he heard were at about 05:00 hours on 14th August 2026.

RW1 told the Tribunal that thereafter he waited for the ECZ to announce the results at the Civic Centre. He added that on the afternoon of 14th August, he received a call from the ECZ and an invitation through WhatsApp via his sister's phone. Hence 15th August 2026 at about 15:00 hours, he went to the Civic Centre, where he was declared the winner.

RW 1 further stated that he stood for Chinsali Ward, not Central Ward and further denied being involved in any election malpractice and that he was not called by the police or the Tribunal in relation to any conflict involving the ECZ. PW I denied that the evidence that NRPUP distributed pens at the polling station. He also denied slaughtering a goat on 13th August 2026 to induce

people to vote for him, and stated that neither him nor his agents distributed money at the polling station.

RW1 further denied insulting any of his opponents on polling day. He also denied dragging anyone wearing a UPND T shirt and tearing his T. shirt in the presence of John Mulenga and denied He stated that he was aware that tearing of the regalia is an offence. He denied intimidating the other camp stating that any such incident could have been reported to the ECZ or Conflict Management Committee.

RW1 also denied distributing pens on polling day, noting that police officers were present at the polling station and could have received a report if such an incident had occurred. He also denied that he had been reported twice and removed from the queue and that no Police Officer approached him whatsoever, and he proceeded to vote.

PW 2 stated that his agents did not tear anyone's cap because they knew that tearing political regalia was a criminal offence. He further denied any report against him of dragging a man wearing a red T-shirt.

RW1 also denied the testimony made by PW3 that he would always park his motor vehicle at her place and make noise adding that he had no vehicle. He further denied threating or beating people on polling day.He also stated that his agents were not given Gen 20 including himself despite having been informed that his agents had signed on it.

In Cross-examination RW 1 agreed that he was a public figure, especially that he claimed to have and that more people knew him than he knew them. When asked as to whose pen he used to vote, he stated that he used the pen provided by the Electoral Commission of Zambia. RW1 denied that purpose of this tribunal was to give him an opportunity to narrate how he campaigned and voted he instead confined myself to the events of 13th August 2026.

RW 1 denied seeing Maggie on Nsofu on the 13th day of August, 2026. He also denied speaking to any of his supporters on the poll day. He agreed admitted that in his testimony, he did not tell the Tribunal where he was on the day it was alleged that he dragged a man and tore his T. shirt. When asked that since he only spent 20 minutes at the polling station, he could not tell for sure

whether his people were distributing pens or not, he responded in the affirmative.

RW1 admitted that he knew PW3 prior to the elections and could not fault her evidence that she identified him. When asked whether he ever had any disagreements with Anthony Mukosa and Maggie Nsomfu, he responded in the negative. RW1 agreed that because he was not always with his political members, he cannot confirm any malpractices they alleged to have committed. He also denied knowing why the UPND did not collect the Gen 20 forms. RW1 denied having seen any of his people disturbing people, both at Chinsali and Grace Ministry. He further denied that the elections were marred by violence.

RW1 agreed to have heard the Petitioner's witnesses testifying that food was being prepared by his parents but he denied ever being at his Parents place on that day adding that he was at his home that day. He further denied having book and writing names at Chinsali Polling Station.

RW 1denied that the elections were marred with violence other irregularities. He further added that it was the duty of the ECZ to declare that the elections were free and fair and that it wasn't his duty to confirm such.

The second Respondents witness was Tiyonge Munthali, RW2, whose testimony was to the effect on the 13th day of August, 2026, RW2 arrived at Chinsali Day Polling Station at around 04:00 hours and found ECZ officials and other polling agents. It was RW2s testimony before the Tribunal that she was an agent for NRPUP and that each party and organization had two people present as representatives. PW2 testified that after introductions were done, they were informed that only one representative from each party should remain while the rest were told to go outside.

RW2 testified that at 06:00 hours, the polling station was officially opened. Voters entered one by one and were verified using the voters' register and that she remained inside and took part in the verification process until the station closed at 18:00 hours. RW2 narrated that after polling closed, the ballot boxes were opened and counting began. She was able to see the ballot papers as they were picked out and counted according to their respective candidates. The counting ended at around **05:00** hours the following day.

PW3 further testified that they were given GEN 20 forms to sign, followed by the declaration of the winners and losers. The Presiding Officer later announced the results outside the polling station and added that she could not remember the exact time of the announcement or the total number of people who were present during the counting.

In cross examination RW2 confirmed knowing RW1, but denied seeing him on voting day and denied speaking to him. When asked if she had experienced any confusion in the Queues for voters, she responded in the negative. She also denied hearing anything concerning UPND members who were attacked. Further she also denied ever hearing about any Violence in Chinsali.

RW 2 confirmed being a member of NRPUP and further denied ever hearing any member of the Party being attacked. RW2 stated that she sat at the center of the room and as such she was able to see everyone who entered the room. When asked whether the ones who were coming in with their own pens were many or few, she stated that she did not know because she was busy ticking names in the register. RW2 denied being in a position of telling the Tribunal where the pens were coming from. She stated that the pen she was using was given to her by the ECZ. She agreed that the reason she did not see RW1 on poll day is because he operated from a different room.

RW2 agreed that RW2 voted, but he did not see him. She added that this was so because RW2 was a candidate in the elections. Consequently, she agreed that she could not be a witness as to whether

RW2 denied ever submitting a copy of GEN 20 to her sponsoring party. She added that Immediately after signing the form, ECZ officials got them. And she did not by any chance, see any UPND member receive a GEN 20 form. When asked whether she was disputing that UPND members did not get GEN 20 forms because threats or fear of violence? She responded that in the room she was in, no one ran away.

The Respondent who for most relied on the answer and affidavit verifying answer submitted that the central question is whether, upon the evidence actually adduced, the Petitioner has proved the statutory grounds upon which the election and declaration of the Respondent may lawfully be annulled under

Section 97 of the Act and submitted that that the Petitioner has failed to discharge that burden.

The Respondent submitted that in accordance with the governing law and jurisdictional framework, Section 97 of the Electoral Process Act No. 35 of 2016 provides that the jurisdiction to avoid an election is statutory; accordingly, the Petition must be determined by applying the evidence to the express requirements of the statute.

He argued that of particular importance to the allegations directed against the Respondent, section 97(2)(a) provides for avoidance where a corrupt practice, illegal practice or other misconduct has been committed in connection with the election and that same has to be: "**by a candidate"** or: **"with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent".**

He further submits that the subsection further requires the statutory electoral consequence that:

> **"the majority of voters in a constituency, district or ward was or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred"**

and that these words are central to the determination of the Petition against the Respondent.

The Respondent submitted that first, there must be proof of a corrupt practice, illegal practice or other misconduct. Second, where the Petition seeks to avoid the election of the successful candidate, the statute expressly identifies the basis upon which the relevant misconduct must be connected to that candidate.

He submitted that the first statutory route is concerned with misconduct committed: "**by a candidate**". The alternative route concerns misconduct committed: **"with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent"** that the third route is that proof of misconduct and attribution does not complete the statutory inquiry. The Petitioner must further establish the electoral consequence expressly prescribed by section 97(2)(a). We have not reproduced this section as the same was reproduced above.

He argued that the requirements are therefore cumulative and Proof that an incident occurred does not dispense with proof of the statutory connection to the Respondent; and proof of a statutory connection does not dispense with proof of

Respondent submitted that the evidence brought forth did not satisfy those cumulative requirements as provided for in section 97(2).

He argued that the Petitioner separately advances allegations concerning the conduct and administration of the election. Those allegations engage section 97(2)(b) and must be distinguished from allegations directed against the Respondent under section 97(2)(a) and that this Tribunal should therefore avoid conflating alleged candidate misconduct with alleged non-compliance in the administration of the election.

The respondent also submitted regarding the burden of proof. The tribunal having warned itself at the onset took note of this indication. He further submitted that the Tribunal must, therefore, scrutinize the quality, source, credibility, corroboration and probative effect of the evidence relied upon to establish each statutory ingredient to determine whether the requisite standard has been satisfied or not in an election petition.

He submitted that the precise language of **section 97(2)(a) of the Electoral Process Act No. 35 of 2016** assumes particular importance because a substantial part of the Petitioner's case concerns conducts allegedly committed by persons other than the Respondent. The Respondent argues that the first statutory question is whether the relevant misconduct was committed: **"by a candidate".** The evidence must therefore establish whether any relevant corrupt practice, illegal practice or other misconduct was personally committed by the 1st Respondent or the alternative statutory formulation concerns misconduct committed: **"with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent".** These words require an evidential basis connecting the particular third-party misconduct to the First Respondent in the manner prescribed by the statute.

The Respondent argued that he was fortified by the decision and guidance in the case of **Mwiya Mutapwe v Shomeno Dominic, Appeal No. 19 of 2017**, wherein the Constitutional Court made the important observation that: ***"not everyone in a candidate's political party is his election agent"*** adding that the above referred to principle is directly relevant to the present Petition. He submitted that the Petitioner has failed to establish the statutory connection required by section 97(2)(a) merely by proving that an alleged wrongdoer belonged to, supported or was associated with NRPUP or were involved in tearing a poster could not make a person to be an agent of the Respondent. He submitted further that in **Chrispin Siingwa v Stanley Kakubo - Appeal No. 7 of 2017**, the Constitutional Court considered the statutory character of an election agent and emphasized the need to establish the relevant relationship before the conduct of another person can properly be attributed to the candidate.

He argued that in the case of **Chewe v Mucheleka and Another - CCZ/A 23 of 2021,** the Constitutional Court similarly reversed a nullification where the evidence did not establish the alleged malpractice to the required standard and aspects of the alleged attribution to agents were unsupported by evidence.

The Respondent submitted that the case of **Christine Phiri and Another v Melessiana Phiri and Another - CCZ/A 37 of 2021** likewise, emphasizes both the need to prove the statutory connection to the candidate or duly appointed agent and the separate requirement of widespread electoral effect and that this Honourable Tribunal must therefore determine the actual capacity in which the persons relied upon by the Petitioner acted and whether the statutory basis for attribution was proved.

The Respondent urged the Honourable Tribunal that in accordance with **Section 97(2)(a) of the Electoral Process Act No. 35 of 2016,** the Tribunal does not end with proof of misconduct or attribution. It further requires proof that: **"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".** He submitted that the statutory test is therefore not simply whether some voters encountered an irregularity. Nor is it sufficient merely to establish misconduct at one or more polling stations.

The Respondent submitted that the Petitioner must establish the electoral consequence prescribed by the statute and that in the case **Mwiya Mutapwe v Shomeno Dominic - Appeal No. 19 of 2017**, the Constitutional Court treated proof of the alleged corrupt or illegal practice and proof of its effect upon the majority of voters as separate requirements and that in **Chrispin Siingwa v Stanley Kakubo - Appeal No. 7 of 2017** the Constitutional Court likewise held that section 97(2)(a) requires proof of the relevant malpractice together with proof of the prescribed effect upon the majority of voters.

He submitted that on alleged non- compliance with electoral laws the allegations concerning the conduct and administration of the election by the Second Respondent stand on a distinct statutory footing. In **Dean Masule v Romeo Kangombe - 2019/CC/A002**, the Constitutional Court considered the distinction between candidate misconduct under section 97(2)(a) and the conduct of an election by the Electoral Commission under section 97(2)(b).

He further submitted that in the case **Sibongile Mwamba v Kelvin Sampa and Another - Appeal No. 2 of 2017**, the Constitutional Court considered both alleged corrupt or illegal practices under section 97(2)(a) and alleged non-compliance by election officers under section 97(2)(b), including whether the alleged non-compliance affected the result.

Having considered the evidence in this case we have found these as facts and require no further proof.

1. We are clear and the parties have attested to the fact that the Petitioner and the Respondent were both candidates for the election to the office of Chinsali ward in Chinsali district on the 13th of August, 2026.
2. It is further a Fact and we are satisfied that on 13th August, 2026 the election did come to pass.
3. It is further a fact and we are satisfied that the Respondent was elected and declared as duly elected councillor for Chinsali ward.

6.0 ANALYSIS AND DETERMINATION

We warn ourselves that the Petitioner PW2, PW3, PW4 and PW5 are UPND members and are partisan witnesses. Equally, RW1 and RW2 are NRPUP members and are partisan witnesses, and in election matters witnesses from the Litigant's own political party are generally witnesses who fall into the category of partisan witnesses. The evidence of such witnesses should be treated with caution and are required to be corroborated to eliminate the danger of exaggeration and falsehood; the reason being that such witnesses have a tendency to exaggerate claim to support their own political parties during election. The Tribunal is guided by the constitutional court in the case of ***Steven Masumba V Eliot Kamondo (2023) Selected Judgment No* 53 of 2017.**

Having considered the evidence, the question for the Tribunal to answer is; whether the Respondent or his agents engaged in electoral malpractice and misconduct or illegal practices, corrupt practices and non-compliance of the electoral laws and whether the same affected the election results that they ought to be declared null and void.

Under Section 2 of the Electoral Process Act ***"corrupt practice"*** means any conduct which is declared to be corrupt practice in accordance with Section 81 while ***"illegal practice"*** means an offence which is declared under the Electoral Process Act to be an illegal practice.

Broadly, the Petitioner and his witnesses testified concerning events alleged to have occurred principally from July, 2026 and immediately following nominations up to poll day the 13th August, 2026 and into the 14th day of August, 2026 at about 06:00 hours. Their evidence concerned, *inter alia* matters, alleged violence and intimidation, food rewards, bribery and vote buying, poll day campaigning or solicitation of votes around polling stations, interference with polling agents, and conduct attributed to persons associated with the Respondent's political party.

We will now take each allegation in turn:

6.1 VIOLENCE DURING CAMPAIGNS AND ON THE POLLING DAY:

We note that section 83 of the Electoral Process Act No.35 of 2016 proscribes all manner of violence. Thus if the Petitioner can prove the allegation to the requisite standard, and prove further that the said violence affected the majority of voters in the ward then the relief prayed for will be granted.

From the evidence of PW1 the violence he spoke about was one involving the reaping of UPND T-shirt at Choshi village soon after nominations, tearing of campaign posters by one Kangwa at Sheeba Shika's bar in Mukoba village and insults directed at polling agents during counting as reported to him by his agents PW3, and PW4. Other than these, a remnant of insults is reported by PW2 as coming from John Mulenga via phone.

The totality of the evidence shows that the cap is said to have been reaped by unknown people at what was described as a drinking place and in an area not described clearly but that it was of UPND material. Further the cap had the Face of an aspirant Member of Parliament with no evidence clearly connecting the incidence to the herein Respondent. The witness PW2 testified he got the cap because it was for his party UPND. The victim remained unknown and nature of altercation, if any, undisclosed. There was no sufficient evidence adduced to convince the tribunal that the same cap PW2 is alleged to have

picked and taken to his sister's house and later to PW1 was the same cap before the Tribunal more so that PW1 in his testimony never spoke about any cap. It is the same PW2 who brought forth the campaign posters with a claim that they were torn by Kangwa in PW2's presence just after he stuck them on the pole. The Tribunal did have the chance to look at both the cap and posters. The posters were new and the tearing did not look old. No marks suggesting, they were once stuck on the pole with sellotape wrapped around the said pole. If the pulling from the pole was violent as suggested by PW2, with near fight ensuing, these posters would be messy, wrinkled and torn in a manner suggesting something being pulled off the pole. On ocular observation Exhibits P-2, P-3 and P-4 did not appear to the Tribunal that they were removed or reaped with such violence. They seem to have been torn and reaped deliberately and quite recently.

We further looked at PW1's testimony who stated that posters given to him which were removed from the walls of the bar belonging to SHEBA SHIKA at Makoba villege had been stuck using bubble gums. This piece of evidence is inconsistent with PW2's evidence whose testimony was that he used sellotape to stick the posters to the poll and not the wall of bar. This shows the stories of the posters and cap are irreconcilable; they appear manufactured and remained unproved. Yet it is the evidence brought to this Tribunal as proof of the unsafe atmosphere, violence and intimidation that influence the UPND members and supporters not to vote for their Petitioner.

The Tribunal noted that Kangwa who is alleged to have torn the campaign posters and the unknown persons who reaped the cap have not been clearly identified to be agents of the Respondent herein. No evidence in any form was adduced but a mere claim by PW1 and PW2 that such incidence occurred. In actual fact although the claim was that the torn cap was given to PW1 to keep for future cases, PW1 and Petitioner made no mention of having received a cap but only the reaped T-shirt and posters. It does mean that PW2 was the only one who experienced violence or intimidation in many different places prior to poll day and during poll day. It also implies that the Petitioner knew nothing about the cap and the incidence relating to it, except for PW2. Conversely, it is untenable to suggest that the same had a relation to the Respondents electoral competition with the Petitioner.

We note further that the current Act, under section 97(2) requires that the illegal act or misconduct and non-compliance of the law must be done by the candidate or his agent, and affect the majority of the electorate among others. We therefore understand the Supreme Court's guidance to mean that the satisfactory proof of a single act of corruption, illegality, or misconduct suffice to nullify an election if it was done by the candidate or his agent and it was widespread. Our decision will thus be guided by the above legal provisions, and authority.

For the avoidance of doubt **Section 97(2)(a) of the Electoral Process Act No. 35 of 2016, "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".** It is therefore not just proof of misconduct or non- compliance.

The evidence on record shows that the violence complained of relates to the violence on the 13th of August, 2026 and a period from July to poll day, and are in form of the insults against the petitioner's polling agents in the chinsali Day Polling Station and the stories brought by PW2 with exhibits and PW3 one Thelma Mpundu; who was a UPND member and a polling agent. We further note that this is the agent who said that she was insulted and threatened by Kangwa bode and another who she said was Chisala. The threat was in form of insults and threatened of beating.

In essence, the Respondent was mentioned as one of the people who tore the unknown man's T. shirt and his exchanges with PW3, THELMA MPUNDU allegedly whenever he went to park or leave the motor vehicle near her yard. We are of the view that the alleged conduct of violence requires proof by evidence other than mere oral evidence of sworn witnesses before the Tribunal. Equally there should be evidence that the alleged violence did affect in a substantial manner the election results. In *casu*, allegation did come to this Tribunal but fail short of proof that the alleged circumstance actually happened. For instance, no pictures, accreditation documents such as cards, declaration and oath relating to Kangwa Bode and Chisala as appointees of the Respondent were adduced or that they acted with the consent and knowledge of the first Respondent. An inquiry into the statutory requirement of whether the alleged violence and intimation did indeed affect the election results remain remote owing to failure to prove that the incidences or circumstances did occur.

6.2 COOKING OF FOOD ON THE POLL DAY:

The Petitioner had alleged that the parents to the Respondent had killed a goat at their home with further evidence by PW5 that the Respondent had a book in which he was writing people who were going to eat.

The Respondent denied this allegation and stated that he had no knowledge of what was going on at his parents' house. He contended that there were no provisions that or electoral rules that forbade people from eating at their homes. We are of the view that if there is proof that the said food and party occurred and were something more than just what would be normal but election related bribery or reward promise then it would qualify as misconduct.

We have noted that apart from the claim by the Petitioner's oral testimony that this happened no further evidence was brought to prove that there were food handouts on poll day or prior or after as rewards. Pictures, videos of such incidences were never adduced.

6.3 THE GIVING OF PENS AND CAMPAINGING ON POLL DAY

From the evidence on record the Petitioner and PW3, PW4 and PW5 test to the effect that the Respondent was present at the polling station givir to Again no independent or concrete evidence was brought to the lling corroborate that the Respondent was soliciting for votes at or ne

station by giving pens to voters. We apprehend that the presence of pens in mass at the polling station and being handed in the queue of voters about to cast the vote can and would amount to campaign within the polling station. Yet like all other allegations and especially that PW1 and PW5 had a chance to confront the Respondent; these electoral infractions could be proved by written complaints, audio recordings, videos and independent witnesses. The Tribunal received no such evidence but oral claims from the Petitioner and his witnesses.

6.4 NON – COMPLIANCE OF THE ELECTORAL LAW

The question we ask ourselves is that; was there non-compliance and if there was, was it sufficient for us to avoid and nullify the election of the Respondent as a Ward Councilor for Chinsali Ward. The answer is found in section 97 (2) (b) and (4) of the Electoral Process Act No. 35 of 2016 of the laws of Zambia that enacts as follows;

4. ***(b)." Subject to the provisions of subsection (4), there has been non-compliance with 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 non-compliance affected the election***
5. ***(4) An election shall not be declared void by reason of any act or omission by an election officer in breach of that officers official duty in connection with an election with an election if it appears to the High Court or 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 affect the result of that election."***

Thus, where a party alleges non-conformity with the electoral law' in election petition, there must be proof not only that there was non-compliance with the Law in the conduct of an election in issue but also that such non-compliance did affect the result of the election. A tribunal will only invalidate an *election on* account of irregularities in the conduct of an election if satisfied that the non-

compliance with electoral law was so great that it rendered the conduct of election invalid and affected the result of the election.

The constitutional court reiterated in the case of ***Sibongile Mwamba V Kelvin M. Sampa 9*** that for the Court to nullify an election based on a fact that the election was not conducted substantially in conformity with the law, the non-compliance with the law should affect the outcome of election.

6.5 AGENTS AND SUPPORTERS

The Tribunal is further aware that Section 2 of the Electoral Process Act defines an election agent " ***as a person appointed as an agent of a Candidate for the purpose of an election and who is specified in the candidate's nomination paper"*** while a polling agent is defined "***as an agent appointed by a candidate in respect of a polling station."***The Tribunal is further alive to the definition given for the polling agent by the Constitutional Court in the case of" ***Nkandu Luo and The Electoral Commission of Zambia V. Doreen Sefuke Mwamba and the Attorney General.8*** cited above. We note that the Petitioner's witnesses did not establish that the People alleged to have committed the alleged electoral infractions were agents of the Respondent or and that they acted with the knowledge and consent of the Respondent. We say this because the claim was that Kangwa at Sheeba's bar, Kangwa Bode at Chinsali Day Polling station, John Mulenga who is involved with insults to Anthony Mukosa and reaping of political T-shirt and those at the windows of the polling station during counting were said to act for the Respondent.

We have come to the conclusion that that there are no electoral infractions that have been proved and associated with the Electoral Commission of Zambia. There is allegation that the Petitioner's agents were not given gen 20 forms and in fact they left due to threats. There was also evidence that the alleged booing was directed at the all polling agents yet RW2 was able to wait and sign gen 2020 forms. She further said they were told to leave them with ECZ. Yet the petitioner decided not to sue the Electoral Commission of Zambia who should answer this allegation.

7.0 CONCLUSION

The obvious outcome is that this petition is unsuccessful and is hereby dismissed; and Pursuant to *section* ***108 (1) of*** *the* ***Electoral Process*** *Act No.35 of 2016* we therefore order that the Respondent was duly elected to the office as COUNCILLOR for CHINSALI Ward in Chinsali District of the Muchinga Province of the Republic of Zambia.

Given the Nature of these proceedings we order that each party will bear its costs.

We now and further inform the parties to this petition that it is within their right to appeal if a party so desires and advise that same is attendant under ***Rule 14 of the Local Government Election Tribunals Rules 2026*** which allows appeals to be made within 14 days of this decision to the constitutional court.

DELIVERED IN OPEN COURT THIS..... DAY OF.....2026

HON. CHRISANTOS K. CHANDI

HONOURABLE CHAIRPERSON

MS. CHONGO MVULA

HONOURABLE MEMBER

MR. HICKET N, NALISHUWA

HONOURABLE MEMBER

REPUBLIC OF ZAMBIA JUDICIARY 27 SEP 2026 RESIDENT MAGISTRATE NDOLA SUBORDINATE COURT P.O.BOX 70930, NDOLA