2026/F/LGET/03

IN THE LOCAL GOVERNMENT ELECTIONS TRIBUNAL FOR CHINSALI DISTRICT HOLDEN AT CHINSALI (CIVIL JURISDICTION)

IN THE MATTER OF: ARTICLE 159 (3) OF THE CONSTITUTION CAP 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTION 71, 72, (1) (B) , 96,(1) (C) (1) 98(C), 100(1)(B), OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 AS AMENDED BY ACT No. 12 of 2026

IN THE MATTER OF: LOCAL GOVERNMENT ELECTION PETITION FOR COUNCILOR- KAUNGA WARD IN CHINSALI DISTRICT HELD ON THE 13TH AUGUST 2026

BETWEEN:

MUSATA REAGAN — **PETITIONER**

AND

LASTONE BWALYA — **RESPONDENT**

Coram:

Chairperson: Hon. Arnold Kasongamulilo

Members : Hon. Agatha Musukwa Chipende

:Hon. Chibaula Silwamba

For the Petitioner: Mr. Y. Mwambazi & R. Bonsu - Messrs K. Phiri & Co.

For the Respondent: Mr. M. Mweene & Mr. B. Nyirenda of Messrs M. Mweene & Partners and Mr. A. Malando – Messrs Aongola & Co .

JUDGMENT

AUTHORITIES

Legislation

1. **Constitution of Zambia Amendment Act No. 2 of 2016**
2. **Electoral Process Act Number 35 of 2016**

Cases

1. **A J TRADING COMPANY LIMITED v CHILOMBO (1973) ZR 55 (HC)**
2. **Abuid Kawangu v Elijah Muchima**
3. **Christopher Kalenga v Annie Munshya and two others 2011/HK/EP/03**
4. **Mubika Mubika v Poniso Njeulu, SCZ Appeal No. 114 of 2007**
5. **Nkandu Luo and the Electoral Commission of Zambia v. Doreen Sefuke Mwamba and the Attorney General, Selected Judgment No. 51 of 2018**
6. **Sibongile Mwamba v Kelvin Sampa and Another, Appeal No. 2 of 2017**
7. **Sikota Wina and Others v Michael Mubenga(2003)**
8. ***Sunday Chitungu Maluba v Mwewa Another CCZ Appeal 40 of 2016***
9. ***The People v. Phiri* (2014) Z.R. 134 (H.C**

BACKGROUND

This matter was commenced by way of an Election Petition. The gist of the petition is that the Petitioner and the Respondent were both candidates in the Local Government elections for Kaunga ward of Chinsali District in Muchinga Province of the Republic of Zambia. The Petitioner was sponsored by the **United Party for National Development (UPND)** and the Respondent was sponsored by the **National Reconciliation Party for Unity and Prosperity (NRPUP).** After the General election which was conducted on **13th August 2026** the Respondent was declared winner of the election for **Kaunga ward.**

Being unhappy with the election results, the Petitioner took out this action. He complained of widespread electoral malpractices which included bribery, intimidation and threats of violence. The Petitioner prays that this Tribunal determines that the Respondent was not duly elected and that the election was void.

The Respondent filed his answer wherein he disputed the allegations by the Petitioner and claimed that he was the duly elected councilor for **Kaunga Ward**. He calls upon this Tribunal to dismiss the Petition.

Burden and Standard of Proof

We wish to state that the burden of proof in Election Petitions just like it is in all other civil matters is upon the Petitioner. In the case of ***Sikota Wina and Others v Michael Mubenga(2003)*** Chirwa JS opined that:

> ***'An election petition is like any civil claim that depends on pleadings and the burden of proof is on the challenger of the election to prove to a standard higher than on a balance of probability [and the] issues raised are required to be established to a fairly high degree of convincing clarity.'***

Whereas the burden of proof is the same in election petitions as in all civil case, the same cannot be said of the Standard of proof. From the case cited above it is clear that the standard of proof in election petition is high than the balance of probability. The issues raised must be proved to a **fairly high degree of convincing clarity**.

In the case of ***Abuid Kawangu v Elijah Muchima*** the Constitutional Court reaffirmed this standard when it held that:

> ***"The standard remains higher and distinct from that required in an ordinary civil matter but lower than the standard of beyond reasonable doubt required in criminal matters. As the Supreme Court opined in the case of Lewanika and Others, parliamentary election petitions are required to be proved to a standard higher than on a mere balance of probabilities and issues raised to be established to a fairly high degree of convincing clarity.***

At this stage we propose to analyze the law pursuant to which an election petition can be challenged. ***Section 97(2)*** of the ***Electoral Process Act Number 35 of 2016*** 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

For avoidance of doubt we now list these ingredients as follows:

(i) **a corrupt practice or an illegal act or other misconduct was committed**

(ii) **the illegal act or misconduct being alleged by the petitioner was committed by the respondent or by his election agent or polling agent or with the respondent's knowledge, consent or approval; and**

(iii) **As a result of the corrupt 'or illegal act or misconduct committed, the majority of the voters in the constituency were or may have been prevented from electing a candidate whom they preferred**

This is what the Petitioner was being invited to prove before this tribunal.

PETITIONER'S CASE

At this stage our attention is now directed at the evidence tendered. The Petitioner testified as PW1 and called five (4) witnesses.

Evidence of PW1 [Musata Reagan]

His testimony was that, he was initially adopted by the **UPND** to contest the seat of Councillor for **Kaunga ward**, and that the Respondent contested under the **NRPUP**.

He stated that on **13th August 2026**, he arrived at Nkweto polling station around 07:15 hours to cast his vote and found voters on the queue. He said he saw the Respondent distributing black ball pens to voters and telling them not to use the pens provided by the **Electoral Commission of Zambia (ECZ),** on the assertion that those pens were associated with Satanism and that any writing made with them would disappear. He testified that he, the Respondent and a **UPND** agent each received such a pen, and that the pen received by Simon Bwalya had a K10.00 wrapped inside. He further testified that the Respondent and his agents were preparing nshima and goat meat and providing beer to voters outside the polling station before they entered to vote.

He testified that he then proceeded to Munwe polling station, where he observed the same pattern of pen distribution accompanied by instructions not to use the **ECZ** pens and to vote for the lamp symbol, encouraging them to vote for, the NRPUP candidate. He said food was being prepared by the Respondent's agents at the boundary of the polling station along the route taken by voters. Further that voters were being told that there would be no development in the area if they voted for the Petitioner, as he did not hail from the ward. He testified that at Sula polling station he saw the Respondent distributing pens to voters, including to his own agent Stephen Chimfwembe. He explained that when the Respondent noticed the petitioner approaching him, he walked away leaving his agents behind.

PW1 further testified that at Chamba polling station he found the Respondent, his agents and NRPUP cadres in possession of ballot papers outside the polling station. The ballot papers were being used to direct voters to the lamp symbol, and that they were distributing posters which caused voters to change their intended choice of candidate. He said that when he questioned this conduct, confusion arose and the Respondent's agents threatened violence, to the extent that he was nearly assaulted. He explained that a police officer calmed the situation. According to PW1, he and his agent were denied access to the Gen-20 forms, and he could not establish the votes he had polled against the number of registered voters.

Cross examination

In cross examination, PW1 conceded that he did not know the amount of money said to have been distributed, and that the only money he saw was the K10.00 in the pen given to Simon Bwalya. He produced no proof that the Respondent personally performed the acts alleged. He did

not name any of the Respondent's agents, notwithstanding that he knew most of the people in the area.

PW1 also conceded that he did not see the Respondent carrying posters or urging voters to vote for him. Departing from his evidence in Chief, the witness stated that he did not see the Respondent distributing pens but saw the Respondent's agents doing so. He said he identified those persons as agents by their identity cards. He confirmed he was assaulted but produced no medical report. He confirmed he was aware of the ECZ mechanism for reporting electoral malpractice, but did not make any written report. He confirmed that the ECZ did not permit anyone to enter a polling station with ballot papers.

Evidence of PW2 [Josan Chanda]

PW2 was a UPND election monitor, for Nkweto polling station. He testified that he voted at Nkweto polling station around 06:00 hours on 13th August, 2026. He then proceeded to Fisonge polling station, where he found many people in possession of pens. He said an unidentified woman told him that she had been given a pen so that she would not use the one provided by the ECZ. He said he also saw food being cooked and given to voters by the Respondent's agents near the polling station.

He testified that he later left for Munwe polling station and arrived between 10:00 and 11:00 hours. He met PW1 and observed the same conduct where food was being cooked by the agents of the respondent and pens being distributed to voters before they voted. He said that at Lole Chitula polling station the position was worse, as he found voters eating and drinking beer as if there was a party, contrary to the guidance given by the Commission, and with the Respondent's agents distributing pens.

He testified that at Sula polling station he saw the Respondent ahead of him and observed people distributing pens. He explained that the mother of one Chipwepwe Milton told him that she was advised by those distributing pens not to use the pens provided by the ECZ. When he went to Samuel Sula polling station, he said he also found people distributing pens and directing voters to the lamp symbol. He testified that he asked the Respondent why he was engaging in such conduct and that the Respondent said he had a grudge against the Petitioner.

He further testified that at Chamba polling station he found persons with ballot papers outside the polling station and reported this to the police officer on duty, who did not take any action. He said the Respondent's agents refused him entry to the polling station. This led to a confrontation with the Respondent, and the Respondent's agents began to insult him. He identified the Respondent in court as the person he had a confrontation with.

Cross Examination

In cross examination, PW2 conceded that, he had no proof of having been told that the Respondent was the person distributing pens. When asked how he identified the people he found cooking as the Respondent's agents, he said they themselves had told him the Respondent had purchased the food. He confirmed reporting the issue of ballot papers to the police officer but did not show any proof. He also confirmed that the Respondent was not present at Sula polling station when he saw food being cooked and eaten by the voters. As regards the alleged violence, the witness produced no proof of violence or confusion at the polling station and confirmed he did render any report. He produced no proof of the K10.00 wrapped inside a pen. He confirmed that the tabulation of results and declaration of the winner were the responsibility of the Commission and not of the Respondent. The witness was evasive and became emotional during cross examination

Evidence of PW3 [Simon Bwalya]

PW3 was a polling agent at Nkweto polling station. He testified that he arrived at Nkweto polling station around 05:00 hours on 13th August, 2026. He assisted the ECZ officials in preparing for the poll, which opened around 07:00 hours. He explained that, what he observes at this polling station was that voters were not leaving the polling station after voting, that they were remaining there to show voters the lamp symbol and directing them to vote for the NRPUP candidate.

According to PW3 the Respondent and his agents were distributing pens and that he personally received from the Respondent a black glass pen containing a K10.00 note which was produced and marked **P2**. He stated that after counting the votes, he noticed a discrepancy in the figures during tabulation against the number of registered voters. That at the end of the process he signed the Gen-20 forms but was not given any copies.

Cross Examination

In cross examination, PW3 confirmed that no one other than the Petitioner saw the Respondent handing him the pen. He confirmed that exhibit **P2** bore no party symbol and that he had no proof to show that it was given to him by the Respondent. He also confirmed that he did not make any report when he noticed the discrepancies on the vote tabulations. The witness confirmed that the Respondent was present at Nkweto polling station only around 07:00 hours and that he was not present when the discrepancies were noticed.

Evidence of PW4 [Stephen Chimfwembe]

PW4 was a UPND agent for Lole Chitula polling station. He testified that he arrived at Lole Chitula polling station around 06:00 hours on 13th August 2026 and observed voters arriving at the polling station with pens. When he asked them why they were coming in with their own pens, the voters told him that the Respondent had instructed them not to use the pens provided by the ECZ. He said voters remained at the polling station after voting in order to give pens to incoming voters and to direct them whom to vote for. He testified that he found a group of people eating and drinking beer behind the school where the polling station was housed. That these who told him that they did not want anything to do with the UPND. Further that they were encouraging voters to vote for the NRPUP and not the Petitioner because he did not hail from Kaunga ward.

PW4 testified that he then went to Sula polling station to cast his vote, where he saw people with pens. That he was also given a pen by a person who warned him that any writing made with the pens provided by ECZ would disappear. He said he carried that pen into the polling station but did not use it to vote. He testified that during counting, many people entered the room, which he regarded as unusual, though the presiding officer did not take any action. He explained that he signed the Gen-20 forms and left the polling station around 01:00 hours.

Cross examination

In cross-examination, the witness conceded that he did not know and could not name the person who gave him the pen. He confirmed that the Respondent was not among the people cooking, eating and drinking. He confirmed that he was trained by the Commission, that by signing a Gen-

unwell. He said he began receiving results from polling agents around 22:00 hours. He stated that on 15th August 2026, he was informed by the civic centre that he had been declared the winner of the councillor seat for Kaunga ward. Thereafter on 27th August 2026, he was served with the Petition.

RW1 denied visiting any polling stations or distributing pens, stating that he had no means to do so. He also denied meeting any voters on the polling day by reason of his ill health. He denied intimidating any person before or during the poll. According to RW1, there was no confusion on polling day and that he did not received or hear any report of confusion or violence. He said the ECZ training required any person who observes violence or malpractice to report in writing but there was no such report. He confirmed that agents were not given the Gen-20 forms but were allowed to sign them.

Cross examination

In cross examination, RW1 stated that he was not aware of his agents distributing pens or food at polling stations on the polling day. He explained that the elections were free and fair but conceded that he had not produced any evidence in court. As regards the accredited agents, he stated that they were not his agent but that they were agents of the party, NRPUP.

Evidence of RW2 [Denis Bwalya]

RW2 was Dennis Bwalya the NRPUP agent for, Nkweto polling station. He testified that he went to Nkweto polling station around 06:00 hours on 13th August, 2026. He narrated that around 07:00 hours, the coordinator, Mr. Chimbala, arrived at the polling station to monitor the elections. According to RW2, he was informed by the coordinator that the Respondent was unwell and would not be present at the polling station. Thereafter the coordinator left for other polling stations.

RW2's further testimony was that he remained at Nkweto polling station until 18:00 hours when vote counting began. Around 21:00 hours, he was given the Gen-20 forms which he signed and returned home. He said he did not observe any distribution of pens, money or food, at the polling station. He also stated that he did not observe any violence as the polling station was manned by police officers.

Cross examination

In cross examination, RW2 confirmed that he was chosen as an agent by the NRPUP and that he knew the Respondent as a candidate prior to the elections.

Evidence of RW3 [Anthony Bwalya]

RW3 was Anthony Bwalya, the coordinator for Chilinda ward. He testified that on 13th August 2026, around 05:00 hours, he went to the Respondent's house to discuss the duties of the day. When he arrived, he noticed that the Respondent was unwell. The Respondent told him to proceed with his duties as coordinator, which required him to move between polling stations. He narrated that he then went to Lole Chitula polling station to cast his vote around 06:00 hours. Thereafter he went to Nkweto polling station where he met his agent Dennis Bwalya (RW2) who informed him that the Respondent would not be present at the polling station because he was unwell.

It was RW3's further testimony that atround 08:00 hours he proceeded to Fisonge polling station and later went to Munwe polling station around 09:30 hours, and back to Lole Chitula around 11:30 hours, where he met the Petitioner. He explained that, PW2 warned him that that if they win the election, he should dig a pit for himself. Thereafter, he went to Sula polling station around 12:30 hours, where he found that voting was ongoing. He finally returned to Lole Chitula polling station where he remained until the counting of votes.

He testified that at all the polling stations he visited, voting going on well without any confusion, and that he did not see any person being given food or money. He explained that during the ECZ training people were told to report any irregularity in writing. He gave the results at Lole Chitula polling station, where 202 voters were registered, 1 vote for the UPND candidate, 3 votes for the Socialist Party candidate, 49 votes for the Chitelelwa party candidate and 149 votes for the NRPUP candidate.

Cross examination

In **cross-examination**, the witness confirmed that he knew the Respondent as a candidate prior to the elections and that he had accompanied him during campaigns, with the party providing fuel for his motorcycle. He stated that the voting was free, peaceful and fair but produced no evidence in support.

Findings

After looking at the evidence in this case we find that, the pens were being distributed at various polling stations and that the said pens had no political party symbols to be attributed to a particular political party. Further that food was being cooked and consumed at some polling stations. We found these facts to be undisputed. It is further not in dispute that all aspiring candidates and their agents were trained by ECZ and oriented on how to report any electoral malpractice.

In dispute, the respondent denied being the person responsible for the act of distributing pens in the polling stations. He also disputed being the person responsible for serving or providing food that was cooked and eaten at some polling stations. The respondent also disputed being present at polling stations other than the polling station where he voted.

This Tribunal is called upon to determine the elections conducted in Kaunga ward where bribery, intimidation, threats of violence and other electoral malpractice have been alleged. Secondly, whether the Respondent, personally or through his election or polling agents, or with his or their knowledge and consent engaged in the said malpractice. Thirdly whether the none issuance of Gen 20 forms, affected the result of the election.

DETERMINATION

Our starting point is the case of ***Mubika Mubika v Poniso Njeulu, SCZ Appeal No. 114 of 2007*** where the Supreme Court opined that:

> ***The provision for declaring an election of a Member of Parliament void is only where, whatever activity is complained of, is proved satisfactorily that as a result of that wrongful conduct, the majority of voters in a constituency were, or might have been prevented from electing a candidate of their choice, 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 greater numbers were influenced so as to change their selection of a candidate for that particular election in that constituency; only then can it be said that a greater number of registered voters were prevented or might have been prevented from electing their preferred candidate.***

In the case of ***Nkandu Luo and the Electoral Commission of Zambia v. Doreen Sefuke Mwamba and the Attorney General, Selected Judgment No. 51 of 2018***, the Constitutional Court held 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…"***

The court further guided that:

> ***"..in addition to proving the electoral 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."***

In the case now before us the petitioner alleges that the respondent and his agents engaged in bribery, intimidation and threats of violence. The petitioner also raised the issue of possession of ballot papers outside polling stations and the non-issuance of the Gen 20 forms.

We have considered all the evidence and the submissions from the parties. We first observe that every witness called by the Petitioner was a partisan witness or a witness with an interest to serve. PW2 was the Petitioner's party's election monitor, PW3 and PW4 were his party's agents, and PW5 was an aspiring candidate of a rival party who had himself contested against the Respondent. Their evidence therefore requires corroboration before it can safely be relied upon. In the case of ***Christopher Kalenga v Annie Munshya and two others 2011/HK/EP/03***, the Court held that:

> ***In an election petition, just like in an election itself, each party is set out to win. Therefore, the court must cautiously and carefully evaluate all the evidence adduced by the parties. To this effect evidence of partisans must be viewed with great care and caution, scrutiny and circumspection….it would be difficult indeed for a court to believe that supporters of one candidate behaved in a saintly manner, while those of other candidate were all servants of the devil…..in an election contest of this nature, witnesses most of them motivated by the desire to score victory against their opponents will deliberately resort to peddling falsehoods. What was a hill is magnified into a mountain.***

We equally bear in mind that RW2 and RW3 are NRPUP functionaries, and we shall treat their evidence with the same caution. We emphasize, however, that the Respondent bore no burden to prove that the election was free and fair. The burden of proof in an election petition rests squarely upon the petitioner. In ***Sunday Chitungu Maluba v Mwewa Another CCZ Appeal 40 of 2016*** **the** court guided as follows:

> ***The law on who bears the burden of proof is well known and it is in fact trite that he who alleges must prove.***

In interpreting ***section 97(2) of the Electoral Process Act***, the Constitutional Court has consistently held that a petitioner who seeks to invalidate an election bears the responsibility of proving, to the satisfaction of Tribunal, both the existence of alleged electoral malpractice and its legal consequences. The petitioner must prove that a corrupt practice, illegal practice or other misconduct was committed by the candidate or with the knowledge, consent, or approval of the candidate or the candidate's election or polling agent. Secondly, the petitioner must adduce cogent evidence demonstrating that the malpractice or misconduct was so widespread that it prevented, or may have prevented, the majority of voters from electing the candidate of their choice. The case of ***Nkandu Luo and the Electoral Commission of Zambia v. Doreen Sefuke Mwamba and the Attorney General*** is instructive.

The question is whether the Petitioner has discharged his burden.

The first issue raised to be determined is whether the elections conducted in Kaunga ward involved bribery, intimidation, threats of violence and other electoral malpractice. Regarding the distribution of pens and money and providing food and beer to the electorate, **PW1**'s testimony was that he did not see the Respondent distributing pens but that he saw people he described as the Respondent's agents. He however did not name any of them despite stating that he knew most of the people in the area.

Regarding the giving out of money, the only money PW1 saw was the K10.00 inside the pen which was said to have been given to PW3 and PW4 who allegedly received a pen from the Respondent at Sula polling station. PW3 is the only witness who claims to have received a pen containing money directly from the Respondent. He conceded that no one else witnessed this. He confirmed

that exhibit **P2** bears no party symbol or anything else connecting it to the Respondent, and that he had no proof to show that the Respondent gave him the said pen. This is clearly uncorroborated evidence of partisan witness. The law requires corroboration before such evidence can be relied upon.

PW2 and PW4 did not see the Respondent give anyone a pen or money. PW2 conceded that he had no proof that the Respondent distributed pens, and PW4 received a pen from a person he only identified as Chipwepwe Milton's mother. We consider this evidence as hearsay as it was told by persons who were not called to give testimony before this Tribunal.

We also note from PW5's testimony that voters were told in the ECZ training that they were free to bring their own pens. The possession of pens by voters is therefore not in itself evidence of an inducement. The claim that the Commission's pens were linked to satanism and that their writing would disappear is regrettable misinformation if it was made. But there is no evidence that it caused any voter to vote differently, and no reliable evidence of who made it.

In addition, no witness identified any person who cooked or supplied food or beer. PW2's belief that the food had been bought by the Respondent rests entirely on what unnamed persons told him, and he produced no evidence to support his assertions. He also conceded that the Respondent was not present at Sula polling station when food was being cooked. PW4 conceded that the Respondent was not among those eating nshima and drinking beer behind the school at Lole Chitula polling station, and did not show proof of the gathering. Even assuming pens, food and beer were being given near some polling stations, there is no evidence to show that the same was provided by the Respondent.

As earlier pointed out in the authorities cited above, none compliance with the electoral law must be committed by the Respondent or his agents as defined above. The Respondent in this case testified that he went and cast his vote thereafter returned home as he was not feeling well. We must state this evidence went without challenge. It is trite law that a party's failure to cross-examine a key witness leaves that witness's testimony uncontested and accepted as credible, which effectively strengthens the opposing side's case. The cases of *The* ***People v. Phiri (2014) Z.R. 134***

(H.C) and A J Trading Company Limited V Chilombo (1973) ZR 55 (HC) are authorities on point.

We wish to point out the Failure to cross examine the Respondent or offer any rebuttal when he said he was unwell and remained home after voting made this tribunal believe that the respondent was being truth. We therefore find that the Petitioner has not proved, to a fairly high degree of convincing clarity, that the Respondent personally, or through his election or polling agents, or with his knowledge and consent or approval, gave money, pens, nshima or beer to voters as an inducement to vote for him. We therefore find that, even if food and beer were consumed near some polling stations, there is no evidence that it was provided by the Respondent.

We also find that his polling agents and elections agents were not involved in any electoral misconduct complained of. We take this position because none of his agents were mentioned by name or physically identified. All the witnesses for the petitioners just said his agents without identifying them by any means. We paid particular attention to the evidence of RW2 who was a polling agent for the Respondent. He denied being involved in any malpractice complained of and also denied seeing any of it happen at Nkweto Polling station where he was deployed and remained throughout the voting process. We emphasize that his evidence equally went unchallenged and consequently the tribunal took it that RW2 was also being truthful when he denied involvement and any happenings of malpractice at Nkweto polling station.

With regard to intimidation and threats of violence, PW1's account shifted. In chief, he said he was nearly assaulted and that a police officer calmed the situation, while in cross-examination he confirmed that he was assaulted. He produced no medical report and made no report to the ECZ or the police, although he knew of the reporting mechanism. PW2 conceded that he had no proof of the confusion and did not report the incident. His alleged report of ballot papers to the police officer was also without proof. The record shows that PW2 was evasive and became emotional under cross-examination. PW1 did not even mention or identify a person or persons he alleged were involved in the attack. His evidence left the tribunal doubtful. For that reason the tribunal cannot make a finding that such an event happened as claimed.

PW5 was an aspiring candidate under a different party who had contested against the Respondent. As earlier pointed out we find PW5 a witness with interest of his own to serve. It was his evidence that he heard noise from 100 metres away and arrived as the Petitioner and PW2 were leaving. He produced no evidence of an attack, named no attacker and made no report, although he was trained that a written report was required. His assertions that the situation was not good at the polling station came from his agent, Bwalya Mulundu, who was not called as a witness. The police officer who, on the Petitioner's own account, calmed the situation was an obvious independent witness. He was also not called to give his testimony. It is our view that his evidence did not help prove the incidents he narrated.

Therefore, none of the three witnesses identified any person who threatened or assaulted anyone, or said that the Respondent did so or directed anyone to do so. The evidence that the Respondent was present during a confrontation does not establish that the Respondent committed, authorized or approved the alleged violence. We therefore find that the allegations of intimidation and threats of violence have not been proved to the required standard against the Respondent or any person under his charge.

Regarding the Ballot papers and display of posters outside the polling station, PW1, PW2 and PW5 said that persons outside Chamba and Samuel Sula polling stations had ballot papers, which they used to direct voters to the lamp. No one was named, although PW5 conceded that he knew most people in the ward. No ballot paper was produced, no presiding officer was told or called, no report to the Commission was made, and PW2's report to the police is unproved. The witnesses also conceded that ballot papers are issued only by the Commission. PW1 conceded that he did not see the Respondent carrying posters or urging voters to vote for him. We therefore find that none of these allegations is connected, by any evidence, to the Respondent or to his election or polling agents. Due to lack of supporting evidence to prove these claims, we cannot hold that the same were proved.

We shall now determine whether the Respondent, personally or through his election or polling agents, or with his or their knowledge and consent engaged in the said malpractice. We note that none of these allegations is connected, by any evidence, to the Respondent or to his election or polling agents. Throughout the Petitioner's case, the persons accused of misconduct were

described generally as the Respondent's 'agents' or NRPUP 'cadres' and none of them was named. There was no evidence of the Respondent's nomination paper naming an election agent, nor of any letter or form appointing a polling agent. PW1 said he identified the persons as agents by their identity cards, but he did not say what the cards showed or whose names they bore. The Respondent's concession that the accredited agents were NRPUP agents does not establish that any particular unnamed person seen outside a polling station was one of them. The Act defines the two agents for the purposes of elections under Section 2 of the Electoral Process Act as follows:

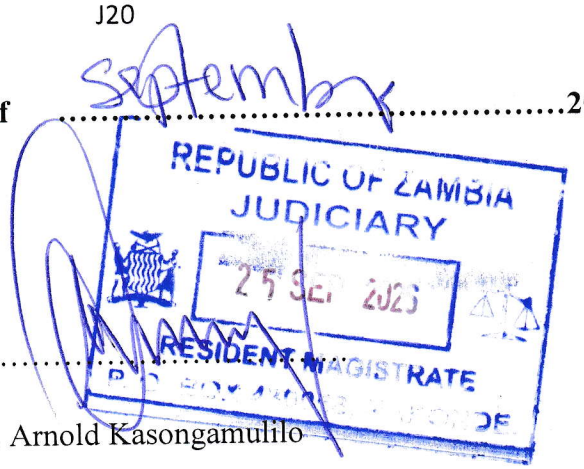
> ***"election agent" means a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate's nomination paper and;***
>
> ***"polling agent" means an agent appointed by a candidate in respect of a polling station;***

In light of the above authority, an electoral agent or polling agent can only be a person appointed by a candidate and not any other member of the party. We therefore find that the Petitioner has not proved that any person who allegedly distributed pens, food or beer, was the Respondent's election or polling agent.

As to whether failure to give out the Gen 20 forms affected the result of the election, the Petitioner complains that agents were not given copies of the Gen 20 forms. This issue concerns the conduct of the election by the ECZ. Section 97(2)(b) must be attributable to the Commission and cannot be visited on the Respondent. PW2 and PW4 rightly conceded that the Gen 20 forms and the tabulation of results were the responsibility of the ECZ, not the Respondent. Unfortunately, and for reasons unknown the ECZ were not sued in this action. That being the case the tribunal is unable to determine if there was any wrong doing on the part of an institution or person that was not a party to these proceedings.

PW3 testified that there was a discrepancy in the vote tabulation at Nkweto polling station but gave no figures for the alleged discrepancy. His testimony was that no one else observed and that he himself did not take any action. PW4 on the other hand received and signed the Gen 20 forms, and conceded that by signing he confirmed the record as a true reflection of events at his polling station. RW2 also confirmed that he signed the Gen 20 forms. In ***Sibongile Mwamba v Kelvin Sampa and Another, Appeal No. 2 of 2017,*** the Constitutional Court dismissed the Appeal on account that there was no evidence to show that the effect of the irregularities resulted in the

Dated at Chinsali this 25th **day of** September **2026**



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Hon. Arnold Kasongamulilo

CHAIRPERSON

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Hon. Chibaula Silwamba

MEMBER

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Hon. Agatha Musukwa-Chipende

MEMBER