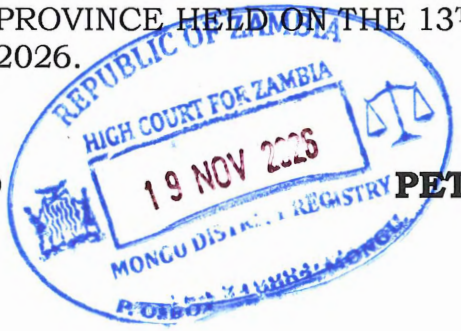
IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/010**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(*Civil Jurisdiction*)

IN THE MATTER OF	: ARTICLE 73(1) OF THE CONSTITUTION OF ZAMBIA CHAPTER 1 OF THE LAWS OF ZAMBIA AS AMENDED BY ACT NO. 2 OF 2016.
IN THE MATTER OF	: SECTION 97(2) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016.
IN THE MATTER OF	: SECTIONS 98 (C), 99(A), 100(2)(A),106(1)(B), 108(4) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016.
IN THE MATTER OF	: RULE 9 (1) (2) (3) OF THE HIGH COURT (ELECTION PETITION) RULES, 2026.
AND	
IN THE MATTER OF	: THE PARLIAMENTARY ELECTION FOR MWANDI CONSTITUENCY OF WESTERN PROVINCE HELD ON THE 13TH AUGUST, 2026.

BETWEEN:



SIBESO KAKOMA SEFULO **PETITIONER**

AND

IRIS KAINGU **1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

BEFORE THE **HON. MR. JUSTICE W. SINYANGWE** THIS 19TH DAY OF NOVEMBER, 2026.

FOR THE PETITIONER	: M. MWANGO & C. MBULO OF MAK PARTNERS LEGAL PRACTITIONERS.
FOR THE 1ST RESPONDENT	: L. KALALUKA S.C OF LIKANDO KALALUKA & CO, CO – ADVOCATES WITH I. SIMBEYE, V. MUNASINYUNGWE & R.K NSWANA OF MALISA & PARTNERS LEGAL PRACTITIONERS.
FOR THE 2ND RESPONDENT	: S. MAMBWE & A. SIWILA OF MAMBWE, SIWILA & LISIMBA ADVOCATES

J U D G M E N T

Cases referred to:

1. **Levison Achitenji Mumba v Peter William Mazyambe Daka SCZ/2/2002, Appeal No.38 of 2003**
2. **Saul Zulu v Victoria Kalima SCZ No.2 of 2014**
3. **Khalid Mohammed vs Attorney General (1982) Z.R. 49 (S.C)**
4. **Mutotwe Kafwaya v Chasaya Katongo and Two others- 2021/CCZ/A0020**
5. **Nkandu Luo and Electoral Commission of Zambia v Doreen Sefuke Mwamba & Attorney General, CCZ Selected Judgment No. 51 of 2018**
6. **Alphonso G. Chungu and Others v Anthony Kasandwe and Another - 2021/HN/EP/004**
7. **Chileshe Mpunga Chilufya v Jean Chisanga Ngandwe and the Electoral Commission of Zambia - 2021 CCZ/A0032**
8. **Giles Chomba Yamba Yamba v Kapembwa Simbao & Others-CCZ Selected Judgment No 6 of 2018**
9. **Jonathan Kapaipi v Newton Samakayi - CCZ Appeal No. 13 of 2017.**
10. **Akashambatwa Mbikusita Lewanika and 4 Others v Fredrick Jacob Titus Chiluba (1998) ZR 79**
11. **Michael Mabenga v Sikota Wina SCJ No.15 of 2003**
12. **Anderson Kambela Mazoka and Others v. Levy Patrick Mwanawasa and Others (2005) Z.R. 138 (S.C.)**
13. **Margarette Mwanakatwe v Charlotte Scott and Attorney General, CCZ, Appeal No. 14 of 2016**
14. **Austin Liato v. Sitwala Sitwala, Selected Judgment No. 23 of 2018 (C.C.)**
15. **Wilson Masauso Zulu v. Avondale Housing Project Limited (1982) Z.R. 172 (S.C.)**
16. **Desmond Chanda v Derrick Lukonde (2021/CCZ/A004)**
17. **Bowman Lusambo v. Bernard Kanengo and Electoral Commission of Zambia, Judgment No. 2021/CCZ/A0019 (C.C.)**
18. **Richwell Siamunene v. Gift Sialubalo, Constitutional Court Judgment No. 86 of 2017 (C.C.)**
19. **Mubika Mubika v. Poniso Njeulu, Appeal No. 114 of 2007 (S.C.)**
20. **Herbert Shabula v. Greyford Monde, Appeal No. 13 of 2016 (C.C.)**
21. **Austin C. Milambo v. Machila Jamba, Appeal No. 6 of 2016 (C.C.)**
22. **Steven Masumba v. Elliot Kamondo (2017) 3 Z.R. 130; Selected Judgment No. 53 of 2017 (C.C.)**
23. **Mbololwa Subulwa v. Kaliye Mandandi, Selected Judgment No. 25 of 2018 (C.C.)**
24. **Subramaniam v. Public Prosecutor [1956] 1 W.L.R. 965 (P.C.)**
25. **Robert Chiseke Taundi v. Mwene Naluwa, Appeal No. 12 of 2017 (C.C.)**
26. **Brelsford James Gondwe v Catherine Namugala- Appeal No. 175 of 2012**
27. **Reuben Mtolo Phiri v Lameck Mangani Appeal No. 135 of 2012**
28. **Mutambo & Five Others v The People (1965) Z.R. 15**

Legislation referred to:

1. **The Constitution of Zambia Amendment Act No. 2 of 2016 of the laws of Zambia.**
2. **The Electoral Process, Act No. 35 of 2016.**
3. **Statutory Instruments No. 31 of 2026, the High Court (Electoral Petition) Rules, 2026.**

Other works referred to:

1. **Halsbury Laws of England, Volume 13, 14th Edition.**

1.0 INRODUCTION.

1.1 This is a Judgment on the Election Petition filed by F/Sibeso Kakoma Sefulo. The history of this petition is that the Electoral Commission of Zambia conducted elections on the 13th day of August, 2026 in various constituencies in Zambia. F/Sibeso Kakoma Sefulo was a Parliamentary Candidate for the Mwandi Constituency on the ticket of the United Party for National Development (UPND). F/Iris Kaingu was a Parliamentary Candidate for the same Mwandi Constituency as an Independent candidate. F/ Iris Kaingu was declared winner on the 15th August, 2026 with 6,595 votes against 6,110 votes for the Petitioner. Dissatisfied with those election results, F/Sibeso Kakoma Sefulo filed this petition.

1.2 I shall, therefore, refer to F/Sibeso Kakoma Sefulo as the Petitioner and to F/ Iris Kaingu and Electoral Commission of Zambia as the 1st and 2nd Respondents respectively which is what the parties to this petition actually are.

1.3 This was a hotly contested parliamentary election petition brought under **Article 73(1) of the Constitution of Zambia**[1] and **Section 97 of the Electoral Process Act No. 35 of 2016**[2] as read with Statutory Instrument No. 31 of the **High Court**

(Election Petition) Rules, 2026[3]. The grounds of the Petition were that:

a) The election was characterised by bribery, corruption and undue influence of voters by election agents of the 1st Respondent with her full knowledge, consent and approval.

b) The 2nd Respondent failed to comply with the provisions of the Act, relating to the conduct of elections, as the Presiding officers failed to supervise the proper counting and announcing of the election results in accordance with the laid down procedures.

c) The election in most polling stations was conducted in breach of the principles of secrecy and against a person's right to vote, in that the Presiding officers cast votes on behalf of elderly voters contrary to the wishes of those voters.

1.4 As a result of the foregoing, the Petitioner prayed for the following reliefs:

a) A Declaration that the election of the 1st Respondent was null and void.

b) A declaration nullifying the election of the 1st Respondent as Member of Parliament for Mwandi Constituency.

c) An Order that fresh elections be held.

d) In the alternative, the Court Orders for a recount of the votes.

e) Costs of this Petition;

f) Any other relief the Court may deem fit.

1.5 The petition was accompanied by an affidavit verifying facts and a list of authorities and skeleton arguments. In total defiance of

Rule 9 (3) of the High Court (Election Petition) Rules[3] no bundle of documents were filed.

1.6 The 1st and 2nd Respondents also filed in the answers to the Petition which were accompanied by affidavit verifying facts in answer and the skeleton arguments.

1.7 The petition was heard in open court sitting at Mongu starting on the 20th October, 2026.

1.8 My duty is to ascertain whether or not the allegations contained in the petition have been proved.

2.0 BURDEN AND STANDARD OF PROOF.

2.1 I now remind myself that the burden of proof rests on the Petitioner. In an election petition like this one, I have been well guided by the decision of Supreme Court in the case of **Levison Achitenji Mumba v Peter Mazyambe Daka**[1] which was affirmed in the case of **Saul Zulu v Victoria Kalima**[2] where the Supreme Court stated that in an election petition, the standard of proof required must fall between the civil standard of "**on a balance of probabilities**" and the criminal standard of "**beyond reasonable doubt**".

2.2 The standard of proof required in an election petition is higher because though the proceedings are civil, even criminal allegations are raised which must be proved to a fairly high degree of convincing clarity.

3.0 PETITIONER'S EVIDENCE.

3.1 The petitioner called 9 witnesses.

3.2 The evidence by the Petitioner who is PW1 in this case was that she was elected as member of Parliament for Mwandi Constituency in 2021. In the 13th August, 2026 elections, she

was adopted to recontest as a parliamentary candidate on the United Party for National Development (UPND) seat in Mwandi Constituency of Western Province.

3.3 She averred that though the 1st Respondent was declared winner, she was not legally and genuinely elected as a Member of Parliament for Mwandi Constituency. She stated that there were various reasons why she held this view. Among the reasons was that the 1st Respondent and her agents were involved in corruption, bribery and other malpractices which included distribution of money to youths and generally to other voters in various wards in Mwandi Constituency.

3.4 An example of some of the malpractices was that the 1st Respondent and her agents were involved in wearing the UPND regalia in an effort to influence the voters by pretending that she is a member of the UPND. This was done in all the wards in Mwandi Constituency. This led the Petitioner to file a complaint to the conflict management committee on the 6th July, 2026 on exhibit marked "**SKS 1**" attached to her affidavit in support of the reply to the 1st Respondent's answer which was filed on the 21st September, 2026 in this court. Following the lodging of the complaint, the 1st Respondent conceded and as such a mediation agreement was entered in which she agreed to refrain from such electoral misconduct as can be seen from the exhibit marked **"SKS2"** attached to the affidavit in support of the reply to the 1st Respondent's answer.

3.5 The 1st Respondent further engaged in activities aimed at influencing the voters in Mwandi ward, by purporting to donate a shelter as an independent candidate so that voters could vote

for her. The 1st Respondent requested the voters in Mwandi ward, to vote for her so that she could construct similar shelters throughout the constituency.

3.6 The Petitioner was further informed by members of her campaign team and other witnesses that the 1st Respondent and her agents were involved in corruption and bribery. The 1st Respondent and her agents with her full knowledge and consent were distributing money to people in areas such Kakulwani, Mabumbu, Alibuzwi, Aibelilwe, Mwandi, Limpumpu, among other wards in Mwandi constituency and that the bribing of voters affected wards and polling stations.

3.7 The Petitioner also believed that the 2nd Respondent failed to properly manage the voting process of counting and announcing results. For instance, there were a lot of anomalies at Mabumbu polling station where the Petitioner's agents informed her that the Presiding officer had earlier announced results without completing the Gen. 20 form. After hearing this, she went to the said polling station and complained against the manner the process was being managed. After the complaint, the agents of the 2nd Respondent recounted the results and later discovered that wrong results were allocated to her. The 2nd Respondent then changed the figures from 304 that was wrongly announced to 349. She noticed that the Gen. 20 forms and other relevant documents were not recorded but the assistant returning officer took all the uncompleted documents to the totaling Centre in Mwandi Ward.

3.8 The 2nd Respondent also failed to properly count and tally the votes based on the fact that there were unexplained differences

in the total votes cast at parliamentary level with votes recorded at different levels such as Presidential and local government level. She presented exhibits marked **"SKS3** to **SKS12"** attached to the affidavit verifying facts to buttress her point. She verily believed that the failure by the 2nd Respondent affected the outcome of the results, as the integrity of the entire counting process was compromised and marred with irregularities.

3.9 The 2nd Respondent equally failed to manage the principle of secrecy in that the agents of the 1st Respondent were deliberately and systematically pretending to help the elderly and the illiterate to vote and these agents cast votes in favour of the 1st Respondent contrary to the wishes of the voters. This was done several times in different polling stations among them Mabumbu, Mwandi and Mutuwapafa polling stations. At Mabumbu polling station among other polling stations, the Presiding officers were also volunteering to assist the elderly and the illiterate while casting votes contrary to the wishes of the voters during cross examination.

3.10 In cross examination, PW1 stated that she did not witness the irregularities of seeing the 1st Respondent wearing regalia for the UPND. She also stated that the regalia was being distributed without asking the recipients of their party affiliation and therefore could not tell who was UPND and who was not.

3.11 When asked if there was any document to show that Mr. Michel Kaingu was an agent of the 1st Respondent in the just ended elections, PW1 was evading the question until she was talked to by her counsel when she replied that there was no such document. She further said she did not see the said Mr. Kaingu

distributing money to the electorates. She however said she had evidence but she did not bring that evidence to court. She also admitted that she did not mention any agents for the 1st Respondent who were involved in malpractices and she did not mention the source of her information. She equally did not know the number of people who were alleged to have been bribed.

3.12 PW1 further answered that she had not named any of those involved and affected in illegal acts. She also stated that there were no other results on Gen 20 forms that were not matching with what was announced by the ECZ apart from what she brought to court.

3.13 When asked if she had done any community works in the constituency during her tenure, she replied that she had managed to get the radio license for the radio station in Mwandi, she had helped the elderly in the constituency especially when there was hunger, she donated to the elderly and the needy in the area.

3.14 On the shelter allegedly built by the 1st Respondent, she said she did not know that the shelter was built in 2025 and did not have any problem with the building of the shelter and that is why she did not report to the police or the ACC.

3.15 PW2 was M/Humphrey Mwinda Sifali aged 41 years, a businessman and resident of Mwandi royal village in Mwandi Constituency. The evidence of PW2 was that sometime in June, 2026 he received a call from Mr. Kennedy Lubinda, who is the elder from the New Apostolic Church in Mwandi district who indicated that Mr. Micheal Liwanga Kaingu wanted to meet with him so that he could join the campaign team for the 1st

Respondent who was contesting as member of parliament for Mwandi Constituency in the 2026 general elections. He further indicated that the said Mr. Kaingu would call him personally to formerly invite him to the campaign team.

3.16 On the 27th June, 2026 he received a call from Mr. Kaingu who invited him to meet him so that he could formerly invite him into his campaign team. He indicated that he would provide fuel logistics so that he could travel to Sesheke District to meet with him. Mr. Kaingu sent him K1000.00 for fuel.

3.17 On 28th June, 2026 he travelled to Sesheke and met Mr. kaingu at his lodge known as Meno'angweshi lodge. Other people who were present at the meeting were; Mr. Kenny Lubinda, Mr. Kelvin Kangumu (induna Mooka), induna Wamudwa and Mr. Banda.

3.18 During the meeting, Mr. Kaingu indicated that he would, on behalf of the 1st Respondent engage the Kuta so that they can instruct all area indunas and village indunas to influence the voters to vote for the 1st Respondent. It was further agreed that a WhatsApp group be created as well as a face book page for campaign purposes. They agreed that the WhatsApp group would be called **"MUNGULI"** where all discussions would be made. Mr. Kaingu tasked him with the responsibility of creating the WhatsApp group.

3.19 It was also agreed during the said meeting that money must be spent in the campaign and that people who would be requesting for money in exchange for votes should be given so as to ensure that the 1st Respondent won the elections.

3.20 It was further agreed that money would be distributed among the youths so that votes could be secured in favour of the 1st

Respondent. It was observed that youths were more inclined to vote for a particular candidate if they were paid something and as such, they strategized that they would find influential youths who would oversee the distribution of money.

3.21 On the same day of 28th June, 2026, he created a WhatsApp group where Mr. Kaingu, Mr. Kenny and induna Mooka among others were members of the group.

3.22 On the 2nd August, 2026 he received K500.00 via mobile money from Mr. Kaingu on transaction number PP260802. 0416. U37059. The purpose of this money was to ensure that it was given to different youths from different wards and polling stations so that those youths could vote for the 1st Respondent. The youths were given different amounts ranging from K10 and K20. The targeted wards for distribution of money were Sikuzu, Matoya, Sankalonga, Nakamba and Mwandi central.

3.23 On 8th August, 2026 he reminded Mr. Kaingu that there was an outstanding amount of K1000 that needed to be taken to the Resurrection Church Choir. Mr. Kaingu sent him the K1000 via Airtel mobile money transaction number PP260808.0835.Q33816. Mr. Kaingu emphasized that when giving the money to the church the members should be informed that the money was coming from the 1st Respondent and that they should vote for her on the 13th August, 2026. He proceeded and gave the money to Sikombwa Muyembi (PW5) who is the choir secretary and informed her that the money came from the 1st Respondent and requested that the members of the church be asked to vote for the 1st Respondent on the 13th August, 2026.

3.24 On 9th August, 2026 he received K600.00 from Mr. Kaingu via Airtel mobile money transaction number PP260809.1857. 123048 for the purpose of distributing it to the youths from different wards with emphasis that the recipients should vote for the 1st Respondent.

3.25 On the 12th August, 2026 he received K500.00 from Mr. Kaingu via Airtel mobile money transaction number PP260812.1341 .C42438 also for the purpose of distributing to youths from different wards.

3.26 On the same day of 12th August, 2026 under the instruction of Mr. Kaingu he held a meeting with about 30 youths from Sikuzu, Matoya, Sankolonga, Nakamba and Mwandi central wards. He chaired the meeting which was also attended by Jonathan Mubiana, Chanda Lisule as well as Misheck Kamuti.

3.27 In cross examination, PW2 admitted to being involved in electoral malpractices by bribing voters though he denied being a corrupt person.

3.28 PW2 denied ever contacting the 1st Respondent on his activities of bribing the electorates but that he was being given instructions by Mr. Kaingu. He also admitted that he never mentioned that he was an agent of the 1st Respondent. He also did not see the 1st Respondent giving instructions to Mr. kaingu.

3.29 PW2 admitted that he never showed the court any document or a screen shot of the WhatsApp group or the face book pages that were created for the campaign. He also did not produce any document for the money he received and given out to the electorates. He also did not mention any beneficiary.

3.30 PW3 was Kashweka Lisulo aged 43 years, a farmer and resident of Mutuwapafa Village of Mwandi Village who told court that on the 7th August, 2026 Induna Mutuwapafa Munene of Mutuwapafa area held a marriage ceremony for his son who was marrying on that day at his residence. The ceremony was attended by more than 500 people from different wards from within Mwandi Constituency.

3.31 During the ceremony, the 1st Respondent arrived at the place of the ceremony in the company of Ms. Gilnert Mufuti who was known to him as her campaign manager. There was tension when the 1st Respondent arrived among the people in attendance because the people contended that she was there two days earlier for campaigns and that the ceremony was not a campaign meeting. Following the fact that the people were upset, the 1st Respondent and Ms. Gilnert Mufuti decided to meet induna Mutuwapafa inside his house which meeting was attended by other people who included second induna Musaka. The induna and the 1st Respondent's team spent some minutes inside the house and later came out to rejoin the ceremony.

3.32 After coming out of the house, Ms. Gilnert Mufuti informed the people that the 1st Respondent wanted to give them K1000 to be used towards the ceremony. He then saw the 1st Respondent remove money from the hand bag which she gave to Ms. Gilnert Mufuti, who in turn handed over the said K1000 to Mrs. Chimbinde Kahilu. Ms. Gilnert Mufuti proceeded to tell the crowed that they should vote for the 1st Respondent on the 13th August, 2026. The 1st Respondent further removed another K1000 from her hand bag which she personally gave to the groom

in full view of the people who were present. After the money was given to the groom, Ms. Gilnert Mufuti emphasized that the people in attendance should vote for the 1st Respondent as area Member of Parliament on the voting day.

3.33 After the money was given to the mother to the groom, Mrs. Mubu Nchele, she publicly declared to the people in attendance that she would rather vote for 1st Respondent because of the money given to her son, as opposed to voting for a UPND candidate.

3.34 During the same ceremony, the 1st Respondent also addressed the gathering and asked them to vote for her and promised that she would kill a herd of cattle in celebration of her victory.

3.35 He recalled that there was still confusion because some people contended that the 1st Respondent went to campaign at a wedding ceremony when she had already campaigned in the area. The confusion continued until around 16.00 hours when the people started dispersing to go and watch a football tournament. The wedding ceremony did not even properly conclude due to the confusion as some people were still upset that the 1st Respondent and her team turned the wedding ceremony into a campaign meeting.

3.36 Between the 10th and 11th August, the UPND branch members held a meeting during which the chairlady for Mutuwapafu ward Mrs. Mubu Nchebe informed the other members that she was now supporting the 1st Respondent due to the fact that she had given some money to the people during the marriage ceremony. She said the gesture had motivated her to start supporting the 1st Respondent.

3.37 PW3 was also nominated as a polling agent for the petitioner and was stationed at Mutuwapafa polling station. On the 13th August, 2026 he observed that presiding officers were assisting the elderly and illiterate to vote. However, as the voting continued, he remembers receiving complaints from about 5 different voters that the presiding officers placed some votes against the wishes of the voters.

3.38 In cross examination, PW3 who admitted being the UPND youth chairman stated that the wedding was enjoyable until the 1st Respondent arrived as certain people including himself were not happy that the 1st Respondent attended the wedding. He said he had attended many weddings and it was normal for guests to offer gifts to the bride and groom.

3.39 PW3 also stated that even though Ms. Gilnet Mufuti told those in attendance to vote for the 1st Respondent, he did not vote for her. He later stated that he voted for the 1st Respondent because she gave her money. He however admitted not mentioning people who benefitted from the money given out at the wedding. PW3 did not mention any elderly person who was assisted in voting.

3.40 PW4 was Regina Likando aged 49 years, who testified that she was one of the people who were tasked to cook for polling agents for the United Party for National development (UPND). On the voting day, she was assigned to attend to the polling agents at Namizungu polling station.

3.41 On the 13th August, 2026 she reported at Namizungu Polling Station. At around 17:00 hours she took food for the polling agents stationed there and she stayed there afterwards waiting for the voting to end and announcement of results. By 23.00

hours people were still voting and it was at that point that she observed that Mr. Mapulanga Kanyemvu, a polling agent for the 1st Respondent, was going round giving money to voters who were on the queue and whispering something in their ears. During that time, she observed that he had given money to about 3 people who were standing in the queue.

3.42 She approached Mr. Mapulanga Kanyemvu and asked him why he was giving money to people on the queue to which he asked her why she was questioning him. He got upset and told her that she had no right to ask him any question as he was a polling agent and that he had every right to be at the polling station. She then threatened to report him to the Electoral Commission of Zambia (ECZ) officials inside the polling station which prompted him to give her K500 so that she could keep quiet. She received the K500 but still publicly told people standing on the queue that he was attempting to bribe her with money so that she could keep quiet.

3.43 The exchange of words between her and Mr. Mapulanga Kanyemvu prompted the ZAWA officer who was stationed at the polling station to ask what was going on. She explained to him that Mr. Mapulanga Kanyemvu was giving money to people on the queue, but the officer did not do anything. This prompted a person by the name of Namangwala Namangwala to threaten to beat Mr. Mapulanga Kanyemvu if he did not stop bribing people on the queue. This created further tension between people supporting Namangwala Namangwala and those associated with Mr. Mapulanga Kanyemvu. She left the polling station around

midnight and she was escorted by Namangwala Namangwala to her house.

3.44 In cross examination, she said she was very happy when she received K500 from Mr. Mapulanga Kanyemvu around 23:00 hours. When asked what time she had voted, she said that she voted at 16:00 hours.

3.45 PW5 was Sikombwa Muyembi aged 40 years who testified that she is the secretary of the Resurrection Church Choir which is located in Nakamba ward of Mwandi Constituency. Sometime between July and August, 2026 the church choir was visited by the 1st Respondent during which she said that she would give them a sum of K1000 provided that the members of the choir and the church voted for her on the 13th August, 2026. She emphasized that she would not release the K1000 if the members did not promise to vote for her on voting day.

3.46 On the 8th August, 2026 Mr. Humphrey Mwinde Sifali (PW2) went to the church and gave her K1000 and said that the money came from the 1st Respondent as promised at her last meeting with the church choir. Mr. Sifali further told her that the 1st Respondent promised to pay additional money if they voted for her. She presented the money to church elders and other members of the church as well as the choir, who were happy with the fact that the 1st Respondent fulfilled her promise.

3.47 She voted for the 1st Respondent on the 13th August, 2026 due to the gesture she made to the church which has a lot of congregants from various wards among them Mwandi, Nakamba and Simungoma wards of Mwandi constituency.

3.48 In cross examination, she stated that the money she was given came from Mr. Mwinda Sifali (PW2) who told her that the money came from Mr. Kaingu, though it was the 1st Respondent who made a promise when she visited the church in July 2026. She didn't see the 1st Respondent give money to PW2. She did not show the court any evidence of the money she allegedly received. She did not know how the members of the choir voted but she said the 1st Respondent is generally liked in Mwandi. She equally voted for the her and not because of the money given to the church.

3.49 PW6 was Kanandu Sinabu who testified that on 9th August, 2026 at about 11 hours, the 1st Respondent went to Mbaine Village in Kakulwani area for a campaign meeting. She was in the company of Mr. Jacob Sikufa who was known as her campaign manager as well as Mr. Mayungo and another woman whose name she did not know.

3.50 She and other people in the area attended the meeting to hear what she wanted to talk about. There were about 60 people altogether who attended the meeting. During the meeting, the 1st Responded got a K500.00 and gave it to Mrs. Lungowe Muyangwa who was also in attendance. The said Mrs. Lungowe is very well known in the area as she runs a grocery shop. The 1st Respondent said the money was for them to buy food and eat, further she told them to vote for her on the 13th August, 2026.

3.51 That the 1st Respondent further said in addition to the K500.00 that she had given them, she would also provide breakfast for the voters on 13th August, 2026. She further promised that she

would provide lunch and alcohol for the voters on the day after they had finished voting.

3.52 Mrs. Lungowe Muyangwa used the money to buy buns and fritters which were distributed to all the people in attendance. She was given one fritter and one bun from the food bought from the money.

3.53 On the 13th August, 2026 she arrived at Kakulwani Polling Station around 06.00 hours, she was informed by one of the voters that there was a house within the vicinity of the polling station belonging to a woman only known as Thabo where food was being served. When she went to that house, she found other people already there being offered rice, fritters and tea for breakfast. The said Thabo said the breakfast was being provided by the 1st Respondent and that she will also provide lunch for voters after they voted as well as alcohol to drink later in the night. She had no reason to doubt that the food came from the 1st Respondent.

3.54 In cross examination, she maintained that she saw the 1st Respondent produce the K500 which was used to buy fritters, buns and drink which were distributed to the people in attendance. She also stated that even though she did not know where the food people were eating on the 13th August, 2026 came from, she believed what she was told that the food was provided by the 1st Respondent.

3.55 PW7 was Kwenani Kabuku of Kakulwani village in Mwandi district who testified that on the 9th August, 2026 around 10:00 hours Mr. Kenneth Mukendwa, who was aspiring independent Councilor informed the people in Mbaine Village that the 1st

Respondent would be in the area for a campaign meeting. At around 11:00 hours, the 1st Respondent arrived at Mbaine Village of Kakulwani area accompanied by Mr. Jacob Sikufa among other people whom he did not recognise. The meeting was attended by around 50 people.

3.56 During the meeting, the 1st Respondent produced a K500.00 which she handed over to Mrs. Lungowe who was also in attendance. The 1st Respondent said that she was giving money so that they could buy alcohol and that they should remember her on the 13th August, 2026 when voting for the area Member of Parliament. The 1st Respondent further promised that she would also provide breakfast for them on the day of voting so that they could turn out in large numbers to vote for her. She also promised that after voting, they would have lunch and alcohol to celebrate.

3.57 The people in attendance agreed that the K500.00 would be used to buy food from the shop owned by Mrs. Lungowe, of which drinks, buns and fritters were purchased and given to the people in attendance.

3.58 At around 09:00 hours on 13th August, 2026 whilst he was walking towards Kakulwani Polling Station, he noticed that people had gathered at a house belonging to a woman known as Thabo. When he stood near the house, he saw people having breakfast from Thabo's house and when he asked what was happening, he was told that the food was provided by the 1st Respondent to the voters. He proceeded to Kakulwani Polling Station where he was a registered voter.

3.59 In cross examination, he stated that food was provided at Thabo's house on the 13th August, 2026 and that from the information he received, the food was provided by the 1st respondent. He admitted that Thabo's house was being used as a campaign Centre for independent candidates. He did not see the 1st Respondent at the house on that day. He also admitted having attended the meeting on the 9th August where the 1st Respondent gave out money to buy food, though he did not stay there for a long time.

3.60 PW8 was Namukolo Mwenda aged 56 of Mwandi Royal Village who stated that she was a polling assistant for the Electoral Commission of Zambia during the August 2026 Parliamentary Election. She was posted by the 2nd Respondent at Mabumbu polling station located in Mabumbu ward of Mwandi Constituency. Her role was to give out Presidential ballot papers at table two (2), she was also tasked to mark the voter's thumbs with indelible ink marker.

3.61 On the 13th August, 2026 during the voting period, there was a complaint from some voters that there was a group of youths who were insisting and forcing to assist elderly and illiterate voters. When the complaint reached Mrs. Gombwa Machai who was the Presiding Officer, she instructed the youths to stop helping the elderly and illiterate voters and she announced that she would be assisting them. The presiding Officer took over assisting the elderly and illiterate voters.

3.62 Later during the day, one elderly woman whose name she could not recall, raised a complaint that the Presiding Officer voted for a candidate who she did not want, this led to the presiding officer

instructing that another ballot paper be given to her. The returning officer however clarified that it was not possible to give a voter more than one ballot paper.

3.63 The Presiding Officer informed the members of staff at the polling station that she had stopped helping the elderly and illiterate because there was an increase in the number of complaints from the elderly and illiterate voters that she was voting against their wishes. When the Presiding Officer, stopped, the elderly and illiterate voters started coming with their relatives to assist them to vote and others were being assisted by other poll staff.

3.64 Around 07:00 hours on the 14th August, 2026, the Presiding Officer and the Polling Assistant whose name she could not remember, went outside and announced the results during which it was stated that the Petitioner had a total of 304 votes. She said this was irregular because at that time they were still counting the votes inside the polling station. Further, it was irregular because the standard form that were supposed to be filled before announcing the results were not yet completed namely, the Gen. 20 form, record of proceedings, ballot paper account form, the announcement of results form and the statement of rejected ballot papers form.

3.65 After announcing the results, the Presiding Officer and the Polling Assistant went back inside the Polling Centre and started completing the Gen. 20s. She and other Polling Assistants asked the Presiding Officer why she announced the results prematurely without finishing the counting process and recording the results on the necessary forms. She just kept quiet and did not give any response.

3.66 After the announcement of the results, the other interested parties started complaining that the results were not properly announced as the Presiding Officer and Polling Assistant did not announce the number of total voters and the number of rejected ballots. The situation outside became very tense because of the said anomalies. Shortly after the announcement, the Petitioner went to the polling station and complained that things were not being done correctly, and she requested that the votes that were earlier announced be recounted and verified. Between 07:00 to 08:00 hours on the same day, the Assistant Returning Officer went to the polling station and asked what the problem was. She informed him that the confusion outside was due to the fact that the Presiding Officer announced the results before the counting was completed and before the results were properly recorded.

3.67 In response, the Assistant Returning Officer started filling in the Record of Proceedings, ballot Paper Account Form and the Announcement of results form and the Statement of rejected Ballot papers form. He was filling in those forms based on the information that was already at the Polling station. After he gathered all the information, the assistant Returning Officer went outside and made a second announcement in which the votes awarded to the Petitioner were corrected from 304 to 349.

3.68 After the second announcement of results, the assistant returning Officer took the ballot papers and the unrecorded Gen. 20 Forms for Parliamentary, Council Chairperson and Councilor to the totalling centre in Mwandi ward. He went away with the Presiding Officer. However, at the time the Assistant Returning Officer was leaving, the ballot boxes containing all the materials

at the polling station were not properly sealed. This was an anomaly because they were supposed to be sealed from the polling station so that there were no tampering of the ballot papers or the other forms.

3.69 In cross examination, she stated her duty was to give out presidential ballot papers and mark the voters thumbs with indelible ink, and that her duty did not include announcing the results. She also said the results that were wrongly announced were subsequently corrected. She also stated that from where she was seated on the days of voting, she could see all voting booths and she did not see any irregularities. She also stated that there were no people who could force anyone to vote against their wishes.

3.70 PW9 was Kawana Muyunda aged 23 years of Naleli Village in Mwandi Constituency who stated that he was a polling agent for the United Party for National Development (UPND), he was stationed at Mutuwapafa polling station and was mainly operating from outside the polling station.

3.71 On the 13th August, 2026 he reported at the polling station around 06:00 hours and he was told that he would be outside the polling station by the Presiding Officer. At around 09:00 hours, he observed that there were three people at the polling station namely Mr. Makena Muyakwabo, Raymond Mufungulwa and Liseli Mushabati, who were collecting NRCs from elderly voters and those who did not know how to read and write. The three individuals would escort the voters inside the polling station on the basis that they would assist them to vote. He had identified individuals during the campaigns period that they

belonged to the 1st Respondent's campaign team. He recalled that there were three voters who were picked by Mr. Makena Muyakwabo, Raymond Mufungulwa and Liseli Mushabati and led them into the polling station. Mr. Makena Muyakwabo ushered in a lady by the name of Mwaka Liswaniso, he however did not identify the other two voters. When Mwaka Liswaniso came out of the polling station, she complained that Mr. Muyakwabo had placed a vote on the 1st Respondent and not the Petitioner against her wishes. Further, he also heard a complaint from the other voter who was accompanied by Mr. Liseli Mushabati.

3.72 He went to complain to a ZAWA officer whose name he could not recall who was stationed at the polling station. The officer only casually informed the said agents that it was wrong to collect voter's cards or NRC's belonging to the voters and nothing else was done about it. This caused an exchange of words between the supporters from the Petitioner and the 1st Respondent's sides.

3.73 In cross examination, PW9 stated that he was a polling agent for the UPND. He admitted that he did not mention any agents of the 1st respondent who was involved in electoral malpractices. He also said that the elections were taking place inside while he was assigned to work from outside.

4.0 RESPONDENT'S EVIDENCE.

4.1 At the close of the Petitioner's evidence, the 1st Respondent told Court through her Counsel that she was not calling any witness and that she was closing her case.

4.2 The 2nd Respondent equally did not call any witness and indicated that they were closing their case. However, this does

not mean that the Petitioner automatically succeeds. I am fortified by the case of **Khalid Mohamed v The Attorney General**[3] where the Supreme Court said on the burden of proof, that: -

"A Plaintiff cannot automatically succeed whenever a defence failed; he must prove his case. It follows that for the petitioners to succeed in the present petition, it is not enough to state that the respondents have completely failed to provide a defence or to call witnesses, but that the evidence adduced established the issue raised to a fairly high degree of convincing clarity in that the proven defects and the electoral flaws were such that the majority of voters were prevented from electing the candidate whom they preferred; or that the election was so flawed that the defects seriously affected the result which could no longer reasonably be said to represent the true free choice and free will of the majority of voters."

5.0 SUBMISSIONS BY THE PETITIONER

5.1 From the pleadings, the petitioner alleges against the Respondents the following: -

1. That the 1st Respondent was not genuinely elected because she and her agents with her knowledge and consent, were engaged in corruption and bribing of voters during campaigns and voting period.
2. That the 2nd Respondent failed to properly manage the voting and vote announcement process which led to inaccurate results being announced, making the entire process unreliable and void.
3. That the 2nd Respondent failed to ensure that the principle of secrecy was adhered to at the Polling Centers and that some

voter's right to freely vote for a candidate of their choice was violated thereby making the entire process void.

5.2 **FACTS NOT IN DISPUTE**

5.3 It is the Petitioner's position that after trial, the followings facts were confirmed and therefore are not in dispute as they were established both from the petitioner's pleadings, evidence in chief and in cross examination: -

1. That the 1st Respondent's agents were involved in electoral malpractice in Mwandi Ward during campaigns as they wore regalia belonging to the UPND with the aim of misleading voters into voting for the 1st Respondent. This was an established fact which was proven through documentary evidence presented as exhibit marked **"SKS1"** and **"SKS2"** which was a letter of complaint to the conflict management committee and a Mediation Agreement respectively.
2. That PW2 was not just known by the 1st Respondent but was under the control of both the 1st Respondent and her father Mr. Michael Kaingu, it was also not in dispute that he was in her campaign team. It was further not disputed that PW2 carried out acts of corruption and bribery in various wards of Mwandi. It was further not in dispute that whenever he would get in trouble, he would call the 1st Respondent for instructions as demonstrated in cross examination and that she would direct him on what to do. It was further not disputed that he received several amounts of money from Mr. Michael Kaingu during the campaign period.
3. That it is not in dispute that the 1st Respondent gave a sum of ZMW 1000.00 to the UCZ church and Choir but it was deemed

as a gift or gesture on the part of 1st Respondent and not corruption and bribery. This was corroborated by the testimonies of both PW2 and PW5.

4. It is not in dispute that the 1st Respondent did attend a wedding ceremony on 7th August, 2026 during which she gave out sums of money to the area Induna and the groom. She did not present any evidence to dispute this fact or come to tell this Court what was contained in the invitation card if it indeed required her to make this contribution.
5. That the 1st Respondent during her campaign trail handed over a Shelter to voters in Mwandi Ward as evidence from the exhibit marked as **"SKS3"** in the petitioners Affidavit in Support of Reply to the 1st Respondent's Answer.
6. That the 1st Respondent held a campaign rally/ meeting on 9th August, 2026 in Kakulwani area in Simungoma Ward, during which she gave out sums of money to voters which was used to buy food for them. This was corroborated both by **PW 6** and **PW7** and was established in cross examination. It was further established that the 1st Respondent provided food for the voters on the day of voting which was being served at a house belonging to a person identified as Thabo.
7. That there were complaints that individuals who are known agents of the 1st Respondent were interfering with the voter's rights to freely vote for a candidate of their choice. The affected Polling Stations included Mabumbu, Mutwapafwa and Kakulwani Polling Stations.
8. That PW4 received money whilst at Namuzinga Polling Station by a person known as an agent of the 1st Respondent.

5.4 **DISPUTED FACTS AFTER TRIAL**

5.5 It is Petitioner's considered view that the Respondents disputed facts that arose during cross examination can be summed up as follows: -

1. Whether the petitioner produced documentary evidence to substantiate her allegations, other than the oral testimony of all the petitioners' witnesses.
2. Whether the giving of a shelter to voters in Mwandi amounted to corruption or a gesture by a candidate.
3. Whether the giving out of sums of Money at the wedding ceremony in Mutuwapafa Ward amounted to a corruption or a gift from a politician invited at a wedding.
4. Whether the giving out of a ZMW 1000.00 to the UCZ Church Choir in Mwandi Ward amounted to corruption or a gesture of good will by a political candidate.
5. Whether giving out money used to buy food at a rally in Kakulwani area in Simungoma Ward amounted to corruption or a gesture of good will by a political candidate.

5.6 **ARGUMENTS IN SUPPORT OF THE PETITIONER'S CASE.**

5.7 As stated above, the petitioner is alive to the fact that she bears the onus of proving her case to the required standard. She begun by setting the grounds on which an election of a Member of Parliament may be nullified and as such she referred this Honourable Court to the provisions of **Section 97 (2) of the Electoral Process Act[2].**

5.8 It was her submission that the import of this provision of the law is that the commission of a corrupt act or illegal practice or misconduct must be done by either the candidate or by that candidate's agents with the candidate's full knowledge, consent and approval. The provision of the law also requires the petitioner to establish that the illegal acts or misconduct must have been widespread. This was the position that was taken by the Constitutional Court in the case of **Mutotwe Kafwaya v Chasaya Katongo** and **Two others**[4], in which the court held as stated below: -

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

5.9 In addition to the above cited case, she made reference to the case of **Nkandu Luo and the Electoral Commission of Zambia v Doreen Sefuke Mwamba and the Attorney General**[5].

5.10 It was her submission that the petitioner has provided cogent evidence to discharge her legal burden to the required standard. To augment this fact, she referred this Honourable Court to the oral evidence produced through the testimony of PW2, PW3, PW5, PW6 and PW7 which established that the 1st Respondent personally was involved in corruption and bribery.

5.11 The Record shall show, the 1st Respondent's counsel in cross examination claimed that the acts of giving out money at the

wedding ceremony and at the campaign rally amounted to gifts. Further it was suggested in cross examination that the shelter that was constructed for voters in Mwandi Ward amounted to a charitable contribution to the community. The 1st Respondent further indicated that the giving of money to the UCZ congregation and its choir was merely a gift from the 1st Respondent.

5.12 However, it was her argument that charitable gestures and gifts presented by a politician where an election is imminent amounts to a bribe. The learned authors of **Halsbury Laws of England, Volume 13, 14th Edition**[1], states as follows:

"The imminence of an election is an important factor to be taken into account in deciding whether a particular act of charity amounts to bribery. A charitable design may be unobjectionable as long as no election is in prospect but if an election becomes imminent, the danger of the gift being regarded as a bribe is increased. It may be said that a charity at election times ought to be kept in the background by politicians."

5.13 The record shall show that it was established and not disputed that the 1st Respondent gave out money to voters during campaign time which was termed as gifts. According to the authority cited above, the court should consider the imminence of the election in determining whether the said gifts were mere gifts and charitable acts or they amounted to bribes.

5.14 Further it was not disputed that the 1st Respondent also termed the shelter constructed for the voters in Mwandi Ward as an act of charity. The exhibit marked **"SKS3"** in the Petitioners Affidavit in Support of Reply to 1st Respondent's Answer clearly shows that she requested for votes in appreciation for the said shelter.

Therefore, this Honourable Court is requested to consider the imminence of elections to the time of construction and handing over of the said shelter. It must further be noted that no evidence in rebuttal was presented by the 1st Respondent to furnish an explanation to the contrary on the acts of charity and gifts offered by the 1st Respondent herself during election time.

5.15 Based on foregoing, it was her position that the 1st Respondent abrogated the law. She referred this court to the provision of **Section 81 of the Electoral Process Act**[2], which reads as follows:

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

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

5.16 In addition to the above cited authorities, she also wished to persuade this Honourable Court with the case of **Alphonso G. Chungu and Others v Anthony Kasandwe and Another**[6], wherein this court held that: -

"Due proof of a single act of bribery by or with the knowledge and consent of the candidate or by his agents, however insignificant that act may be, is sufficient to invalidate the election; for this reason. Clear and unequivocal proof is required before a case of bribery will be held to have been established."

5.17 The Petitioner wished to put forward that not only did the petitioner provide independent proof, but the 1st Respondent

established undisputed facts in cross examination that remain undisputed in the absence of any evidence in rebuttal.

5.18 In addition, the petitioner has also established that the actions of the 1st Respondent affected the outcome of the results. This is based on the fact in their examination in chief and in cross examination, the Petitioner's witnesses confirmed that they voted for the 1st Respondent due to the fact that she gave out money.

5.19 It was also established in cross examination that the witnesses betrayed the petitioner by voting for the 1st Respondent. It is therefore that the petitioner has established that act of corruption by the 1st Respondent had a great effect on the outcome in that the majority of the voters ended up voting for her and not the petitioner.

5.20 The Constitutional Court in the case **Chileshe Mpunga Chilufya v Jean Chisanga Ngandwe and the Electoral Commission of Zambia**[7], held as follows:

"It is our considered view that it was not enough for the Appellant to merely argue that the 1st Respondent undertook charitable works in Mambilima Constituency during campaign period. The Appellant needed to prove before the trial court that the said acts by the 1st Respondent prevented the electorate from voting for their preferred candidate."

5.21 In line with the guidance of the Constitutional Court, she wished to highlight the testimony of **PW.2** who confirmed that he voted for the 1st Respondent based on the fact that she was giving out money. He also confirmed that the modus operandi for the 1st Respondents campaign was to give out money to voters in various wards of Mwandi Constituency.

5.22 Further, PW3 gave evidence that following the money received during the wedding ceremony, Mrs. Mabu Nchela publicly announced that she would support the 1st Respondent. It is worth noting that the said Mrs. Mabu Nchela held the position of Chairlady of Mutuwapafwa ward. Further that the consequential effects were that she also relinquished her position as established during trial, which facts where never rebutted by the 1st Respondent.

5.23 As the Record shall further show, PW5 also confirmed that she too voted for the 1st Respondent following the ZMW 1000.00 received by the Church and the Choir. Further, this evidence was never rebutted by the 1st Respondents. It was also established that PW6 and PW7 equally confirmed that they voted for the 1st Respondent due to the fact they benefitted from the food that was purchased from the ZMW 500.00 given out by the 1st Respondent during the campaign rally in Simungoma ward.

5.24 The sum total of the evidence presented by the petitioner is that she proved that the illegal acts done by the 1st Respondent personally influenced the voters in the wards they occurred. Further it must be noted that no evidence in rebuttal was presented by the Respondents.

5.25 The petitioner through her evidence has provided sufficient proof which has provided convincing clarity that the majority of the electorate were or may have been prevented from voting for the petitioner due to the 1st Respondents illegal acts. She drew the authority from the case of **Giles Chomba Yamba Yamba v Kapembwa Simbao & Others[8],** in which the court held that:

"The onus is on the petitioner to establish with convincing clarity that the 1st Respondent was responsible directly or indirectly for the corrupt or illegal acts and that as a result, the majority of the electorate were or may have been prevented from voting for a candidate of their choice."

5.26 It is her contention that the petitioner has with convincing clarity proven that the 1st Respondent directly engaged in illegal acts of corruption. It must be mentioned again that the petitioner's witnesses who included PW2 gave evidence confirming that he and other agents of the 1st Respondent engaged in corrupt activities and that the 1st Respondent was aware of these acts to which she consented and approved. This fact is evidenced from the facts established by counsel for the 1st Respondent that when PW2 was summoned by the police over his illegal activities during campaigns, he first called the 1st Respondent for instructions on what to do, to which she instructed him to report himself to the police. From this it can be inferred that the actions of PW2 had the full consent and approval of the 1st Respondent. Therefore, it can also further be inferred that all named agents potentially had the consent of the 1st Respondent to perform all illegal acts highlighted.

5.27 In consolidating this fact, the Petitioner placed reliance on exhibit marked **"SKS2"** in the Petitioners Affidavit Verifying Facts filed on 28th August, 2026, which shows the number of voters in the affected Wards of Mwandi.

5.28 In view of the argument submitted above, they referred this court to the case of **Jonathan Kapaipi v Newton Samakayi**[9], in which the Constitutional Court held the following: -

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

5.29 She further wished to recite the case of **Mutotwe Kafwaya**[4] case cited above, where the court at page J. 83 and J.84 guided as follows: -

"We wish to re-emphasise that the widespread nature of the corrupt or illegal practice or other misconduct committed by a candidate or with the candidate's knowledge and consent or approval or that of his or her election agent and its effect on the electorate must be proved with cogent evidence adduced by the petitioner alleging an electoral malpractice."

5.30 It is again her strong position that the petitioner has reached the threshold required to nullify the election of the 1st Respondent. This is premised on the facts established that point the illegal acts and malpractice on both the 1st Respondent and her agents with her knowledge, consent and approval.

5.31 The petitioner's evidence further brings to light the misconduct of the 2nd Respondents agents and their failure to supervise and conduct an election. She wished to cite that the failure or omissions of the 2nd Respondent were an abrogation of **Section 38 of the Electoral Process Act**[2] which reads as follows: -

"38. (l) A presiding officer shall coordinate and supervise the voting at a polling station so as to ensure that the election at the polling station is free and fair.

(3) A presiding officer for a polling station or venue for the counting of votes shall coordinate and supervise the counting of votes and announcement of the result of the election at the polling station or venue."

5.32 Her understanding of the provision of the law cited above is that the 2nd Respondent has a duty to ensure that elections are free and fair through the proper counting of votes at various polling Stations. It is her submission that this duty was not diligently executed by the 2nd Respondent arising from the facts that there were a lot of discrepancies in the results that were announced by the agents of the 2nd Respondent in various polling Stations.

5.33 In support of this fact the petitioner places reliance on the documentation evidence produced as exhibit marked as **"SKS.3", "SKS.4", "SKS.5", "SKS.6", "SKS.7", "SKS.8", "SKS.9", "SKS.10", "SKS.11"** and **"SKS.12"**, contained in the Affidavit verifying Facts.

5.34 It is her submission that the 2nd Respondent failed to protect the voter rights to freely vote for a candidate of their choice. This is premised on the fact the evidence provided at trial established that 1st Respondents agents interfered with this right by imposing themselves on elderly voters and the illiterate voters. The evidence has highlighted various incidences at different polling stations where complaints arose against the 1st and 2nd Respondent's agents. The action of the Presiding Officers and the agents of the 1st Respondent was contrary to the provisions of the Act. **Section 61 of the Electoral Process Act**[2] has stipulated the following: -

5.35 ***(1) A person may assist a voter to vote where—***

(a) the voter requires assistance due to a physical disability;

(b) the voter has requested to be assisted by that person; and

(c) the presiding officer is satisfied that the person assisting the voter has attained the age of eighteen years.

(2) In the absence of a person referred to in subsection (1), the presiding officer or another election officer, at the request of a voter who is unable to read, shall assist that voter to vote.

5.36 She further wished to argue that it is the petitioner's position that the 2nd Respondent failed to adhere to the provisions of the Act which resulted in the elections not being free and fair. Further it is her submission that the 2nd Respondent failed to adhere to the steps guided under **Section 61 (3) of the Electoral Process Act**[2], which reads as follows: -

"(3) Subject to subsection (2), the presiding officer or election officer shall assist voters in the presence of—

(a) a person appointed by the presiding officer or an accredited observer or monitor, if available; or

(b) two election agents of different candidates, if available."

5.37 It must be stated that according to the evidence on record all the steps provided in the Act were not adhered to by the 2nd Respondent thereby making the election process unfair and void.

5.38 In Conclusion, it is her submission that the petitioner established her case and has discharged both her legal and evidentiary burden to the required standard. She has ably established that

the 1st Respondent personally involved herself in acts of corruption and bribery, and undue influence of voters and through her election agents with her full knowledge, consent or approval.

5.39 Further, the failure to comply to the Act by the 2nd Respondent compromised the integrity of the process which ultimately made it void.

5.40 On the strength of the evidence provided it is her submission that the petitioner is entitled to the reliefs sought.

6.0 1ST RESPONDENT'S SUBMISSIONS.

6.1 These are the 1st Respondent's Final Submissions, filed pursuant to the directions issued by this Honourable Court on 22nd October, 2026, at the close of trial. These final submissions are submitted in opposition to the Election Petition filed by **SIBESO KAKOMA SEFULO** (the "Petitioner"), challenging the election and declaration of **IRIS KAINGU** (the "1st Respondent") as the duly elected Member of Parliament for Mwandi Constituency, following the Parliamentary General Elections held on 13th August 2026.

6.2 Following the closure of the Petitioner's case on 22nd October 2026, both the 1st Respondent and 2nd Respondent elected to close their cases without calling witnesses, relying entirely on the devastating cross-examination and concessions extracted from the Petitioner's witnesses. The 1st Respondent submits that the issues for determination are therefore:

(a) whether any bribery, corruption and undue influence of voters was committed and if so, whether it was committed by the 1st Respondent, or by her election or polling agents

with the 1st Respondent's full knowledge, consent or approval;

(b) if so, whether the majority of voters in Mwandi Constituency were, or may have been prevented from electing a candidate they preferred; and

(c) Whether there was non-compliance with the **Electoral Process Act**[2] in the conduct of the election that affected the result, with reference to section 97(4) of the said **Electoral Process Act**[2].

6.3 **STANDARD AND BURDEN OF PROOF IN ELECTION PETITIONS.**

6.4 The law governing the standard and burden of proof in election petitions in Zambia is settled. The burden rests squarely on the Petitioner throughout the proceedings to establish allegations of corrupt practices, illegal practices, and electoral misconduct. This is because an election petition carries serious legal consequences, including potential voter disenfranchisement and criminal disqualification of candidates. Accordingly, the required standard of proof is significantly higher than a mere balance of probabilities. The Petitioner must establish her allegations to **"a fairly high degree of convincing clarity".** This was established in **Akashambatwa Mbikusita Lewanika and Others v Frederick Jacob Titus Chiluba**[10] and followed in **Michael Mabenga v Sikota Wina and Others**[11] and **Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Others**[12]**.** The Constitutional Court has affirmed this standard under the **Electoral Process Act**[2] in **Margaret Mwanakatwe v Charlotte**

Scott and Attorney General[13], and in **Austin Liato v Sitwala Sitwala**[14] on which **Mwanakatwe**[13] itself relies.

6.5 It is trite that a Petitioner who fails to prove his case cannot succeed merely because the Respondent's answer appears weak. Nor does a Petitioner succeed by default because a Respondent did not call evidence. This argument is supported by the Superior Court's precedent in **Khalid Mohamed v The Attorney General**[3] and **Wilson Masauso Zulu v Avondale Housing Project Limited**[15]**.** A petitioner is also bound by his pleadings and may not lead evidence on matters he has not pleaded. Specifically, in election petitions, the Constitutional Court in **Chanda v Lukonde**[16] reiterated that ***"the Petitioner must prove the grounds for nullification to a fairly high degree of convincing clarity. The Petitioner does not succeed merely because the Respondent has failed to call witnesses"***. It therefore goes without saying that, even though both Respondents in this case elected not to call witnesses at the trial, the burden rests solely on the Petitioner to prove her case with convincing clarity, which the 1st Respondent submits that the Petitioner has failed to do.

6.6 **THE CUMULATIVE REQUIREMENTS OF SECTION 97(2)(A).**

6.7 Section 97(2)(a) of the Electoral Process Act[2] provides that the election of a Member of Parliament shall be void if it is proved to the satisfaction of the Court that "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 ... were or may have been prevented from electing the candidate ... whom they preferred."

6.8 It is submitted that the requirements to warrant nullification of an election are cumulative and conjunctive. The Petitioner must prove (i) the misconduct, (ii) its attribution to the candidate or his agents, and (iii) its effect on the majority of voters. In **Nkandu Luo and Electoral Commission of Zambia v Doreen Sefuke Mwamba and Attorney General**[5], the Constitutional Court restated that, to succeed, a Petitioner must prove the candidate committed the misconduct personally or through a duly appointed election or polling agent, or with the candidate's knowledge, consent, or approval, and rejected attribution based on mere party membership.

6.9 On attribution, the Supreme Court in **Lewanika v Chiluba**[10] stated the law in terms that remain authoritative:

"A candidate is only answerable for those things which he has done or which are done by his election agent or with his consent. In this regard, we note that not everyone in one's political party is one's election agent ... An election agent has to be specifically so appointed."

6.10 Section 2 of the Electoral Process Act[2] 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"**, and a **"polling agent"** as **"an agent appointed by a candidate in respect of a polling station"**. In **Lusambo v Kanengo and Another**[17], the Constitutional Court, applying that definition, held that ***"a candidate is only answerable for those acts done by himself or herself or by someone else with the candidate's consent or that of his election or polling agent who are duly appointed"***. In **Siamunene v**

Sialubalo[18], it was affirmed that mere proof that a candidate's supporters were involved ***"could not warrant an inference that the Respondent had directly or indirectly incited"*** them, as that ***"would amount to speculation".*** These cases demonstrate that attribution requires strict proof of appointment or direct consent, and cannot rest on speculation or party affiliation.

6.11 In all the Petitioner's purported evidence before this Honourable Court, whether through documents or oral testimony, no single witness testified to having personally received money from the 1st Respondent as a bribe or otherwise. All witnesses who testified claimed they saw money given to others, but not to themselves. These witnesses particularly include PW3, who alleged that money was given at a wedding, and PW6 and PW7, who both alleged that money was given to a Mrs. Lungowe Muyangwa in Kakulwani Area at a meeting attended by no more than 60 people. The other people mentioned as having given money are Mr. Michael Kaingu, as alleged by PW2; Mr. Mapulanga Kanyamvu, as alleged by PW4; and Mr. Dexter Itwi, as alleged by the Petitioner in her Affidavit Verifying Facts and by PW2, as alleged by himself. It is not in dispute that none of these three people are election or polling agents of the 1st Respondent, as none of the witnesses, including the Petitioner herself, produced any documentation or accreditations to show that the named individuals were polling or election agents of the 1st Respondent. Most importantly, the alleged recipients of the monies were not named.

6.12 This Honourable Court notes that, in her Affidavit Verifying Facts filed before this Honourable Court on the 14th of September, the

1st Respondent produced all accreditation forms for her polling and election agents, and none of the people alleged to have committed illegal or corrupt practices is listed therein. Mr. Dexter Itwi's only relation to the 1st Respondent is that he was also an Independent Candidate for the Councilor position in Mwandi. Furthermore, the only relation that PW2 has with the 1st Respondent, as admitted by himself, is that he was a supporter of the 1st Respondent. Neither the Petitioner nor PW2 adduced evidence to show that PW2 was the 1st Respondent's agent. Therefore, even if there were proof that the 1st Respondent's supporters were involved in electoral offences, it would not warrant an inference that the 1st Respondent directly or indirectly incited them, as that is pure speculation.

6.13 In accordance with the Petitioner's own submissions in Paragraph 6.17, which cite the case of **Giles Chomba Yamba Yamba v Kapembwa Simbao & Others**[8], the onus lies with the Petitioner to show, with convincing clarity, that the 1st Respondent either committed the alleged illegal acts herself or that they were done with her consent and knowledge. This Honourable Court notes that, at no point in his testimony, contrary to the Petitioner's assertions in Paragraphs 6.18 and 6.19, did PW2 state that he distributed money with the 1st Respondent's consent and knowledge. PW2 testified that Mr. Michael Kaingu gave him money and that Mr. Michael Kaingu allegedly asked him to give money to the voters. However, even then, there is no proof that Mr. Kaingu instructed anyone to engage in electoral malpractice.

6.14 The mere allegation that PW2 claims he called the 1st Respondent for instructions when he was called by the Police, post-election, does not establish as a fact that PW2's actions prior to the elections had the 1st Respondent's full consent and approval. If he did, although it is submitted that he did not, PW2 would have said so in his testimony. Therefore, no reasonable inference can be drawn that PW2, or any of the alleged named agents, had the 1st Respondent's consent to commit the alleged illegal acts highlighted.

6.15 **WIDESPREAD EFFECT ON THE MAJORITY OF VOTERS.**

6.16 Even if an electoral offence were proved against a candidate or their agent, Section 97(2)(a) requires proof that the misconduct affected the majority of voters. The Petitioner relies on **Mubika Mubika v Poniso Njeulu**[19], in which the Supreme Court held that;

"[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".

6.17 Further, in the already cited case of **Mwanakatwe v Scott**[13], the Constitutional Court held that;

"It is not sufficient for a petitioner to prove only that a candidate committed an electoral offence ... without further proving that the electoral offence was widespread and prevented or may have prevented the majority of the voters from electing a candidate of their choice."

6.18 Similarly, in **Herbert Shabula v Greyford Monde**[20] and **Austin C. Milambo v Machila Jamba**[21] the Constitutional Court overturned High Court nullifications because no tangible

evidence showed that the alleged acts affected or reversed the majority vote.

6.19 It is submitted on this premise that the Petitioner has failed to demonstrate to a fairly high degree of convincing clarity that the alleged electoral offences committed by the 1st Respondent, even though there are none, were so widespread that they actually affected or could have reversed the majority vote. Firstly, the Petitioner called only 10 witnesses to come and support her claims and of these 10 witnesses, four (4), who are PW1 herself, PW3, PW4 and PW9, are all UPND members and are witnesses with an interest to serve. Two (2) of the witnesses, PW2 and PW5, admitted to being corrupt individuals. One (1) witness, PW4, also admitted to be a dishonest person (1) witness, PW10, had his entire witness statement expunged from the record for speaking to issues that happened after the Petition was filed; and two of the other witnesses, who are PW6 and PW9, are witnesses testifying to hearsay. The Petitioner's witnesses are such that their credibility is questionable, yet this is the evidence the Petitioner seeks to rely on to demonstrate widespread electoral offences in Mwandi, a constituency with 18,000 registered voters, 40 polling stations and 4 wards.

6.20 The Petitioner's case rests on the allegations set out in paragraphs 6, 9, 10, 12 and 15 of her witness statement. In paragraph 6, she alleges that the 1st Respondent and her agents wore UPND regalia to influence voters by pretending that the 1st Respondent was a UPND member. In support of this claim, the Petitioner produced only a purported complaint against one (1) person; the Petitioner herself did not lodge it, and the person who

lodged it was not called as a witness. The Petitioner did not mention in her witness statement, nor did she testify, which ward or how many people were affected. Therefore, the inference is that this allegation never occurred, as it is not supported by cogent evidence. But should this Honourable Court be inclined to find that such a thing happened, it is submitted that the evidence adduced is not cogent enough to demonstrate that this was a widespread electoral offence.

6.21 In paragraph 9 of the Petitioner's witness statement, the Petitioner alleges that the 1st Respondent built a shelter in Mwandi Ward. Yet the Petitioner brought no voter to testify that they voted for the 1st Respondent because of that shelter. Moreover, the Petitioner did not even know that the shelter was built in 2025, well before the elections. Even on this allegation, the Petitioner has failed to demonstrate that this was a widespread electoral offence that influenced voters to vote for the 1st Respondent to the Petitioner's detriment.

6.22 In paragraph 10, the Petitioner alleges that members of her campaign team and other witnesses informed her that the 1st Respondent and her agents were distributing money in Kakulwani, Mabumbu, Simungoma, Alibuzwi, Aibelilwe, Mwandi, and Limpumpu. To support her allegations, the Petitioner first relies on information she herself did not witness. Secondly, the Petitioner called only two (2) witnesses, PW6 and PW7, to testify that money was given at a meeting they both attended in Kalukwani. This is one area. Moreover, neither PW6 nor PW7 testified that they voted for the 1st Respondent because of the alleged money given at that meeting. In fact, they did not

even mention voting for the 1st Respondent, and even if they did, they presented no evidence that, at the very least, they were registered voters. The Petitioner brought no witnesses to testify that this happened in Mabumbu, Simungoma, Alibuzwi, Aibelilwe, Mwandi, and Limpumpu. Although she testified that she voted from Mabumbu, she conceded that she did not see either the 1st Respondent or Mr. Michael Kaingu there. Therefore, the inference to be drawn from this allegation is that such a thing never occurred in any of the areas mentioned, and even if this Honourable Court finds that it did, it was not widespread and the majority of voters were not affected.

6.23 In paragraph 12, the Petitioner alleges that on voting day the 1st Respondent and her agents, including Mr. Michael Kaingu, PW2, and others, bribed voters in Mwandi, Sankolongo, Nakamba, and Kakulwani. It is reiterated that, first, none of the people mentioned in that paragraph is an agent of the 1st Respondent. Second, the Petitioner herself conceded that she did not see Mr. Michael Kaingu at any polling station on voting day, let alone giving money. She also did not see the 1st Respondent or any of her agents distributing money at any polling station before, during, or after the elections. Third, the Petitioner brought only PW6 and PW7 to testify about Kakulwani. Again, this is just one area, and not a single witness testified that they voted for the 1st Respondent because she distributed money, nor did any witness testify that they voted for the 1st Respondent. The inference that can therefore be drawn is that, if at all these electoral offences happened, which we submit they did not because the Petitioner

adduced no cogent evidence, they were not widespread in such a manner that the majority of the voters were affected.

6.24 The only witnesses who alleged that they voted for the 1st Respondent are PW3, who stated that she voted for the 1st Respondent because she was a better candidate, and PW5, who alleged that she voted for the 1st Respondent because she allegedly gave money to PW2 for the UCZ Church Choir, although PW2 in fact testified that the money came from Mr. Micheal Kaingu. Neither witness adduced any proof that they voted for the 1st Respondent or that they are registered voters. In addition, the credibility of these two witnesses should be questioned. PW3 is a UPND Chairperson whose testimony requires corroboration, but none was given, and PW5 is a corrupt witness, as she admitted in her own testimony. Moreover, PW5's testimony speaks to only one church in the whole of Mwandi Constituency. Therefore, the inference to be drawn from this is that, if at all these events occurred, which it is submitted that they did not, their occurrence was not widespread in a manner that affected the majority of voters in Mwandi Constituency.

6.25 **PARTISAN AND HEARSAY EVIDENCE.**

6.26 In **Steven Masumba v Elliot Kamondo**[22], as restated in **Mbololwa Subulwa v Kaliye Mandandi**[23] the Constitutional Court held:

"... witnesses who belong to a candidate's own political party or who are members of the candidate's campaign team must be treated with caution and require corroboration in order to eliminate the danger of exaggeration and falsehood by such witnesses in an effort to tilt the balance of proof in favour of the candidate that they support."

6.27 In **Lusambo v Kanengo**[17], the Court added that the evidence of a partisan witness requires independent corroboration **"unless the Court is fully satisfied that evidence of that partisan witness is so credible and true, cogent and consistent that no further corroboration ... is necessary."** Furthermore, under the rule in **Subramaniam v Public Prosecutor**[24], applied in **Robert Chiseke Taundi v Mwene Naluwa**[25], statements made to a witness by third parties who are not called to testify constitute inadmissible hearsay.

6.28 It is not in dispute that, apart from the Petitioner herself, three of the Petitioner's witnesses, particularly PW3, PW4 and PW9, are members of the UPND political party, the party ticket on which the Petitioner stood. PW3, Kashweka Lisulo, admitted that he was the UPND Youth Chairman, had been a UPND politician for 10 years, and had subsequently held the position for 5 years. His testimony regarding a wedding on the 7th day of August 2026 was not corroborated, to eliminate the danger of exaggeration and falsehood, insofar as he alleged that the 1st Respondent told people at the wedding to vote for her after allegedly making a donation at a wedding, he himself admitted the 1st Respondent was actually invited to attend. In addition, PW3 alleged that he was a polling agent at his polling station (Mutuwapafa), but he did not present anything before the Honourable Court to show that he was indeed a polling agent for the Petitioner. This testimony also requires corroboration, especially because PW3 further conceded that he brought no evidence, nor did he tell the Honourable Court the particulars of the 5 elderly women he alleged the Presiding Officer had assisted to vote against their wishes.

6.29 As a UPND member himself, PW3's testimony suggests exaggeration and falsehood, intended to tilt the balance of proof in favour of the Petitioner, a candidate whom PW3 supports. It is submitted that PW3's testimony should be treated with caution. This submission is supported by the fact that during cross-examination, PW3 also confirmed that he could not read or write, and when asked whether he knew what was in paragraph 1 of his witness statement, he stated that he did not know and that the same applied to the entirety of his witness statement. The risk of relying on a witness statement written on behalf of PW3, who does not know its contents, is that it may contain exaggerated or false facts intended to tilt the balance of proof in favour of the candidate the unknown author supports.

6.30 Similarly, **PW4** Regina Likando testified that she was a UPND Chairlady, and her claim that she accepted a bribe from one Mapulanga Kanyemvu at 23:00 hours on voting day also requires corroboration, although the Petitioner presented none. In fact, PW4 also admitted she was dishonest with her party about how she voted. It is submitted that such a dishonest witness' testimony requires more than her words to be relied upon. Moreover, PW4 also testified that she had in fact been paid **ZMW 500.00** to appear before the court and testify for the Petitioner. On this premise, it is submitted that PW4's testimony should be treated with caution, as it is likely exaggerated and false, in an effort to tilt the balance of proof in favour of the Petitioner, a candidate PW4 supports. On the other hand, PW9 confirmed that he was an agent of the UPND and that he was stationed outside. However, his testimony that he was told by some people that

certain named persons, who are not the 1st Respondent's agents, were helping the elderly to vote for the 1st Respondent against their wishes, inside the polling station, requires corroboration on the premise that he is a suspect witness whose testimony must be treated with caution.

6.31 Furthermore, it is undisputed that most of the allegations raised by the Petitioner herself are hearsay. For instance, the Petitioner in her Affidavit Verifying Facts alleges that Mr. Micheal Kaingu and Mr. Dexter Itwi were distributing money on the voting day. However, the Petitioner herself admitted that she in fact never saw Mr. Michael Kaingu or Mr. Dexter Itwi at any polling station in Mwandi Constituency on the voting day or any other day for that matter. To add insult to injury, the Petitioner never called any witness who testified that they saw the two named gentlemen distributing money on behalf of the 1st Respondent at any polling station on voting day or anywhere else in Mwandi Constituency before the elections.

6.32 The Petitioner also alleges in her Reply to the 1st Respondent's Affidavit Verifying Facts that the 1st Respondent built a shelter to persuade voters to vote for her. However, it is worth noting that, during her testimony at trial, the Petitioner conceded that she did not know when the shelter was built, where the money came from, or that she was not even present at the handover of the said shelter. The only thing she has produced before this Honourable Court is video evidence, which she has not explained to this Honourable Court how she obtained it, what device was used to obtain it and has not even explained or proven the authenticity of the said video so as to rule out any possible

tampering or altering of what exactly was said at the handover. The Petitioner's testimony, so far as the shelter is concerned, is pure hearsay evidence.

6.33 In a similar fashion, of all of the Petitioner's witnesses who testified that they had seen elderly people and the illiterate being assisted to vote by either the 1st Respondent's agents or the 2nd Respondent's agents against their will, none of the witnesses was able to name any of the people who were alleged to have been assisted. In fact, no witness testified that they had been assisted to vote against their will. This allegation hinges solely on hearsay and uncorroborated evidence of interested parties. Therefore, it is submitted that, so far as these allegations are concerned, the same have not been proven with any cogent evidence.

6.34 **ALLEGATIONS OF BRIBERY, CORRUPTION, AND ILLEGAL PRACTICES ATTRIBUTABLE TO THE 1ST RESPONDENT OR HER DULY APPOINTED AGENTS**

6.35 The Petitioner's allegations of widespread bribery rest on vague assertions in her pleadings, where she did not name any single person or the number of people who had been bribed or corrupted. In fact, the Petitioner conceded in cross-examination that her pleadings contained bare assertions with no specific polling stations, and no names of election agents or recipients. While the Petitioner alleged in paragraph 10 of her Affidavit Verifying Facts of the Petition that Mr. Michael Kaingu and Mr. Dexter Itwi distributed ZMW 20 and ZMW 50 notes at Kakulwani and Mwandi Primary Schools, PW1 conceded under cross-examination that she did not personally witness any money being distributed; she was not present at Kakulwani Primary School; she did not see Mr. Michael Kaingu at Mwandi School and she

did not see any money change hands nor did she hear any instructions being given to vote for the 1st Respondent. The Petitioner even conceded that she possessed no accreditation form or document showing that Mr. Michael Kaingu or Mr. Dexter Itwi were election or polling agents for the 1st Respondent.

6.36 While PW2 admitted to corrupting voters himself, he also admitted that he was never appointed an agent of the 1st Respondent, possessed no accreditation, and received no written or verbal instructions from the 1st Respondent to corrupt voters. In addition, PW4 claimed to have received a bribe at 23:00 hours on election day but admitted she had already voted at 16:00 hours. It is submitted that her testimony was demonstrably false and incapable of supporting any claim of electoral influence, as she had already voted for a candidate of her choice at the time she alleged to have received money from a named person who is not even the 1st Respondent's election or polling agent, as evidenced by the 1st Respondent's evidence in her Affidavit verifying Facts of the Answer to the Petition.

6.37 The 1st Respondent reiterates that no single witness testified to have personally received money from the 1st Respondent as a bribe or otherwise. All witnesses who testified claimed they saw money being given to other people, but not to themselves. These witnesses include PW3, who alleged that money was given at a wedding, and PW6 and PW7, who both alleged that money was given to Mrs. Lungowe Muyangwa in Kakulwani Area at a meeting attended by no more than 60 people. The other witnesses claimed that persons who are not the 1st Respondent's agents gave them money. In applying **Lusambo v Kanengo**[17] and **Nkandu Luo v**

Mwamba[5], the 1st Respondent cannot be held vicariously liable for unproved acts alleged against unaccredited third parties. It is submitted that the Petitioner has failed to satisfy Section 97(2)(a)(i) or (ii).

6.38 **CONSTRUCTION OF A COMMUNITY MARKET SHELTER AS AN ELECTORAL OFFENCE OR CORRUPT PRACTICE.**

6.39 The Petitioner complained about a shelter the 1st Respondent constructed in Mwandi Ward. It is not in dispute that the Petitioner herself did not know when the shelter was built, but the uncontroverted evidence that came out at trial is that the shelter was built in 2025 and the Petitioner herself expressly conceded that the building of the said shelter was not a problem and that is why she never reported the construction to the Police, the Anti-Corruption Commission, or the Conflict Management Committee. It is submitted on this premise that, in fact, community development projects undertaken prior to an election do not constitute bribery or corrupt practices under **Section 81 of the Electoral Process Act**[2], which has been cited by the Petitioner, unless constructed as a direct, corrupt inducement to specific voters as provided under the said provision. In the case in *casu*, no such inducement was pleaded or proved. The Petitioner did not bring any single witness who testified that they voted for the 1st Respondent because of the said shelter she had built. In fact, the Petitioner did not even plead this fact in her Petition and Affidavit save to say that it was an afterthought brought in by way of reply to the 1st Respondent's Answer and Affidavit.

6.40 The Petitioner asserts in Paragraph 6.6 of her submissions that the 1st Respondent presented no rebuttal evidence to explain the construction of the shelter as a gift during election time. However, it is reiterated that it is not for the 1st Respondent to prove that such shelter was not a gift, but it is, in fact, the Petitioner's burden to prove with a fairly high degree of convincing clarity that the 1st Respondent built the shelter as a way of bribing or corrupting voters to vote for the 1st Respondent and not the Petitioner. It is submitted herein that the Petitioner has failed to do so, as the only evidence brought on record was a video showing that the 1st Respondent built a shelter. At no point in her testimony, or in that of the Petitioner's witnesses, was it proved that the said shelter was meant to bribe or corrupt voters, nor did any witness testify that, if not for the shelter built by the 1st Respondent, they would have voted for the Petitioner. It is therefore the 1st Respondent's position that, contrary to the submission made by the Petitioner, this unsubstantiated act of building a shelter in 2025 does not abrogate the law, as it was an act performed well before any of the parties were even duly nominated as candidates for the Parliamentary election in Mwandi Constituency. The 1st Respondent reiterates that this was an afterthought by the Petitioner, meant to discredit the 1st Respondent's election as the candidate of choice of the voters in Mwandi Constituency.

6.41 Moreover, the Petitioner conceded that she herself had undertaken development projects in her personal capacity in Mwandi Constituency. The Petitioner disclosed that she had "helped" the elderly in the constituency financially and through

other material gifts, and also helped lobby for a license for an unnamed community radio station in Mwandi Constituency.

6.42 **WEARING OF CAMPAIGN REGALIA AS AN ELECTORAL OFFENCE OR ILLEGAL PRACTICE.**

6.43 It is a notorious fact that during the campaign period, several people were given regalia by the candidates. As admitted by the Petitioner in her testimony at trial, she distributed UPND political party regalia to constituents in Mwandi without asking which political party they were from or which one they supported. The Petitioner also conceded that she could not say whether she gave the UPND regalia only to UPND supporters. In light of the foregoing testimony by the Petitioner, it is submitted that many voters, including those supporting the 1st Respondent, may have received regalia from the Petitioner herself. Moreover, this Honourable Court notes that no single piece of evidence was brought, whether by way of the alleged regalia itself or by way of picture or video evidence, to show what the alleged regalia looked like or whether it even existed. This Honourable Court will never know whether the regalia in issue had the face, name or initials of the Petitioner alone or even whether the regalia in issue in fact only had the face, name or initials of the UPND Presidential Candidate whom supporters of the 1st Respondent could have also been supporting but elected not to support the UPND Parliamentary candidate. After all, the Petitioner admitted in cross-examination that voters were at liberty to support presidential and parliamentary candidates separately.

6.44 It is submitted that the issue of the UPND regalia was not proven with a fairly high degree of convincing clarity. Moreover, voters'

political choice to wear party regalia while splitting votes between presidential and parliamentary candidates is a fundamental democratic right under the **Constitution of Zambia**[1], which gives every eligible voter the right to vote for a candidate of their choice and does not constitute an electoral offence under the **Electoral Process Act**[2].

6.45 It is further submitted that the only evidence purporting to substantiate the issue of the UPND regalia was the purported complaint, which is alleged to have been lodged with the Conflict Management Committee (Exhibit SKS1) and named one individual, Miyanza Kawina, regarding regalia misuse, and was administratively resolved by the Committee. The 1st Respondent submits that, contrary to the assertion in the Petitioner's witness statement at paragraphs 7 and 8, the Petitioner never lodged any complaint with the Conflict Management Committee concerning this allegation. In fact, the only complaint alleged to have been filed is a mere document having the UPND symbol on its face. The said document bears no signature or acknowledgement of receipt to show that it was indeed filed. In addition, the purported Mediation Agreement Form bears no signature of the 1st Respondent or any of her duly accredited agents to show that they in fact attended the Mediation following the alleged report. The inference is that no such complaint existed, because neither the 1st Respondent nor her agents wore regalia to influence voters by pretending the 1st Respondent was a UPND member.

6.46 **ADMINISTRATIVE AND ARITHMETIC DISCREPANCIES IN FORM GEN 20'S.**

6.47 In Ground 3 (b) of the Petition, the Petitioner alleged non-compliance with statutory procedures regarding the counting

and announcement of results. However, in cross-examination, the Petitioner disclosed that, out of 40 Polling Stations in Mwandi Constituency, the Petitioner produced only 12 GEN 20 forms. It is submitted that, in fact, the Petitioner produced only 10 GEN 20 forms, which include only 4 GEN 20 forms for the Parliamentary election, even though the Parliamentary election is the basis of the Petition herein. Three GEN 20 forms were for the Presidential election, three other GEN 20 forms were for the Councilor election, and one GEN 20 form was for the Council Chairperson election. Of the 4 GEN 20 forms produced by the Petitioner for the Parliamentary election, the Petitioner won in 3 and lost in only 1 constituency. It is submitted that the 10 GEN 20 forms produced by the Petitioner are insufficient to substantiate that the alleged discrepancies occurred across the entire constituency and negatively affected the Petitioner.

6.48 Moreover, this Honourable Court notes that of the 10 GEN 20 forms produced, 6 were duly signed by her own UPND polling agents, certifying the accuracy of the counts, and in the 2 that were not signed by the Petitioner's UPND polling agents, the Petitioner won in those constituencies. The inference is that the accuracy of the count was certified even by the Petitioner's own UPND polling agents, thereby certifying and giving credibility to the proper counting and announcement of election results, contrary to Ground 3 (c) of the Petitioner's Petition. Furthermore, the Petitioner herself admitted that the only polling station where discrepancies were alleged was Mabumbu Polling Station. It is submitted that an initial verbal mis- announcement of 304 votes was immediately corrected on the official GEN 20 form to 349

votes, and the Petitioner won that polling station. This demonstrates that, contrary to the Petitioner's assertions that the 2nd Respondent's agents announced many discrepancies in the results, the Petitioner brought evidence of only 1 polling station, Mabumbu, where the 2nd Respondent rectified the alleged discrepancy.

6.49 The Petitioner further alleges in Paragraph 6.27 of the Petitioner's submissions that the 1st Respondent's agents interfered with voters' right to vote freely for a candidate of their choice by imposing themselves on elderly and illiterate voters. The 1st Respondent submits that no evidence was produced before this Honourable Court to substantiate this allegation. Even in her own submissions, the Petitioner failed to mention any witness or piece of evidence adduced to substantiate this. In fact, the only witness who purported to substantiate these allegations was PW9, who himself admitted that he operated outside the polling station and had no direct knowledge of what transpired inside. PW9 further admitted under cross-examination that all allegations of voter interference in paragraph 6 of his Witness Statement were pure hearsay told to him by third parties.

6.50 Moreover, the only ECZ official called, PW8, confirmed that all polling booths were secure, and she did not see any youth influencing voters to vote against their wishes. It is further submitted that, contrary to the Petitioner's submissions, the evidence has highlighted various incidents at different polling stations where complaints arose against the 1st Respondent's agents; the Petitioner has again failed, even in her own submissions, to point at any such evidence or any other polling

station apart from Mabumbu where such allegations are purported to have been made. It is submitted that the Petitioner is merely casting aspersions at the 1st Respondent without proof whatsoever and has therefore failed to show that any alleged discrepancies could have affected the final results.

6.51 In addition, the Petitioner explicitly admitted that she could offer no mathematical formula or calculation showing that any alleged discrepancy affected the overall election result. The position of the law is very clear in Section 97(4) of the Electoral Process Act[2] that ***"No election shall be declared void if it appears to the High Court that the election was conducted in accordance with the principles laid down in this Act, and that such non-compliance did not affect the result of the election".*** In applying Section 97(4) and **Mubika Mubika v Poniso Njeulu[19]**, it is submitted that minor administrative errors corrected at the polling station level do not invalidate an election where the result reflects the electorate's true will.

6.52 **Effect of alleged act on majority of voters in Mwandi Constituency.**

6.53 Section 97(2)(a)[2] explicitly mandates proof that "the majority of voters in a constituency were or may have been prevented from electing the candidate whom they preferred". The total registered electorate in Mwandi Constituency stood at 18,000 voters. The 1st Respondent won by a margin of **485 votes**. The Petitioner produced no voter to testify that they intended to vote for the Petitioner but were prevented, coerced, or bribed into voting for the 1st Respondent. On the contrary, PW2, PW3, PW6, PW7, and PW9 all testified that they voted freely for candidates of their

choice. PW8 confirmed that security was present inside polling stations, voting secrecy was preserved, and no third parties interfered with voters; PW1 admitted under cross-examination that she had no witness or evidence showing voters came to her stating they failed to vote for her because of malpractice. In applying **Mwanakatwe v Scott**[13], **Shabula v Monde**[20], and **Milambo v Jamba**[21], the complete failure to prove widespread voter disenfranchisement is fatal to the Petition.

6.54 **CONCLUSION.**

6.55 In conclusion, the 1st Respondent submitted that the Petitioner has failed to discharge the required burden of proving her allegations to a fairly high degree of convincing clarity, relying instead on uncorroborated hearsay, partisan testimony from interested witnesses, and unsubstantiated claims. The evidence on record demonstrates that the alleged acts of bribery, corruption, and electoral malpractices were neither committed by the 1st Respondent nor by any duly accredited election or polling agents acting with her knowledge, consent, or approval. Furthermore, the construction of the community market shelter in 2025 long preceded the election period; the wearing of party regalia was not proved to constitute an electoral offence, and the minor administrative counting error at Mabumbu Polling Station was corrected immediately without affecting the overall election result. Most critically, the Petitioner failed to produce any cogent evidence or voter testimony to demonstrate that the majority of the 18,000 registered voters in Mwandi Constituency were prevented from freely electing the Petitioner as their candidate of choice. It is further submitted that the Petitioner is not entitled

to any of the reliefs sought in her Petition. Consequently, the 1st Respondent prays that this Honourable Court dismiss the Election Petition in its entirety with costs to the 1st Respondent, and uphold that Iris Kaingu, the 1st Respondent, is and was the duly elected Member of Parliament for Mwandi Constituency.

7.0 2ND RESPONDENT'S SUBMISSIONS.

7.1 These are the submissions of the 2nd Respondent herein. The Petitioner's claim against the 2nd Respondent as articulated in the two grounds contained in the Petition states;

"The 2nd Respondent failed to comply with the provisions of the Act relating to the conduct of elections, as the Presiding Officers failed to supervise the proper counting and announcing of the election results in accordance with the laid down procedures."

7.2 For the Petitioner to succeed in her claim against the 2nd Respondent, she must prove to a standard higher than or a mere balance of probability that the 2nd Respondent Officials failed to supervise the proper counting and announcing of the election results in accordance with the laid down procedures.

7.3 In the case of **Michael Mabenga v Sikota Wina Mafo Wallace Mafiyo and George Samulela**[11], the Supreme Court had the following to say on the standard of proof required in an election petition. At page 111 Chirwa J as he then was stated thus:

"An election petition is like any other than Civil claim that depends on the pleadings and the burden of proof is on the challenger to that election to prove "to a standard higher than on a mere balance of probability. Issues raised are required to be established to a fairly high degree of convincing clarity".

7.4 They contended that although the Petitioner asserts in her Affidavit Verifying Facts and Witness Statement that there was

no compliance of the provisions of the Act relating to the conduct of election on the part of the 2nd Respondent in that Presiding Officers failed to supervise the proper counting and announcing of election results in accordance with the law laid down procedures, the Petitioner failed to prove that allegation at trial as required by law.

7.5 **Section 38(1) and (31) of the Electoral Process Act**[2] imposes on a Presiding Officer a duty to coordinate and supervise voting and in respect of counting to coordinate and supervise the counting of votes and announcement of results so as to ensure that the election is free and fair. It is submitted that the 2nd Respondent discharged this duty.

7.6 The 2nd Respondent's Affidavit in Support of Answer avers that the counting and tallying of votes at every Polling Station in Mwandi Constituency, including at Mabumbu, Mwandi 1 to 4, Simungoma and Lusinina was conducted in the presence of the Petitioner who counter signed the resulting Gen 20 Forms without recorded objection by the said agents of the Petitioner, the 1st Respondent and other candidates present. The Petitioner cannot now be heard to dispute results to which her own agents raised no objection.

7.7 During cross examination it became evident that the Petitioner had no first-hand information on the assertion that the agents of the 2nd Respondents failed to supervise the proper counting and announcing of election results in line with the procedures. It is submitted that out of the 40 Polling Stations in Mwandi Constituency the incident where her votes were wrongly announced happened at Mabumbu Polling Station. The

Petitioner conceded during cross examination that when she brought the issue to the Presiding Officer, the votes were corrected from 304 to 349 as evidenced by exhibit marked as **"SKS3"** to the Affidavit Verifying Facts a copy of the Gen 20 Form.

7.8 It is further submitted that the correction of votes was done by the agents of the 2nd Respondent promptly and transparently. The Petitioner when questioned further during cross examination on the incident at Mabumbu Polling Station admitting the same was not widespread. In any event exhibit "**SKS3**" a copy of the Gen 20 Form indicated that the Petitioner won at the aforesaid Polling Station by 349 votes and 204 for the 1st Respondent.

7.9 The so-called unexplained differences in the total of votes cast at different levels namely Presidential Parliamentary and Local Government Level referred to in paragraph 17, 18, 19, 20 of the Petitioners Affidavit Verifying Fact in paragraph 17 and 18 of the Witness Statement does not help the Petitioners case. When cross examined by Counsel for the 2nd Respondent the Petitioner conceded that the said differences could occur owing to the fact that a voter may cast his vote for a Presidential candidate and abstain to cast their vote for either Parliamentary or Local Government candidates. They contended that such differences are a normal occurrence and not evidence of failure by the agents of the 2nd Respondent to properly count the votes.

7.10 PW8 asserted in paragraph 20 and 21 of Her Witness Statement that at the same time the assistant returning officer was leaving Mabumbu Polling Station, the ballot boxes containing all the materials were not properly sealed. She stated that this amounted to an anomaly because they were supposed to be

sealed from the polling station so that there is no tempering of the ballot papers or other forms. They submitted that the aforesaid evidence by PW8 does not help the Petitioner's case in that there is no indication that the ballots were tempered with to the disadvantage of the Petitioner.

7.11 In any event when cross examined PW8 testified that she could not identify any ballot papers which were tampered with. Further PW8 also conceded that whatever alleged irregularities happened at the aforesaid polling station same did not change the results.

7.12 **The Second ground is that the election in most polling stations was conducted in breach of the principles of secrecy and against a person's right in that the Presiding Officers cast votes on behalf of elderly Voter's contrary to the wishes of those voters.**

7.13 It was the 2nd respondent's submission that for the Petitioner to succeed in her claim she must prove per required standard of proof that the election in most polling stations was conducted in breach of the principles of secrecy and against a person's right to vote in that the Presiding Officer's cast votes on behalf of elderly voters contrary to the wishes of those voters.

7.14 The alleged facts constituting the second ground are contained in paragraph 23, 24 and 25 of the Petitioner's Affidavit Verifying Facts and paragraph 23 and 24 of the Witness Statement.

7.15 During cross examination of the Petitioner, it became quite evident that the alleged misconduct on the part of the agents of the 2nd Respondent with regard to the breach of secrecy of the votes was based on hearsay. She did not witness any of the events alleged for instance as regards the contents of paragraph 22 of

Affidavit Verifying Facts, she was unable to tell the Court who gave her the information. She failed to name the 2nd Respondent's agents who misconducted themselves. Further she failed to name the voters who were allegedly affected by the aforesaid misconduct of the 2nd Respondent's agents.

7.16 The same goes for the contents of paragraph 23, 24 and 25 of the Petitioner's Affidavit Verifying Facts are all based on hearsay evidence. The Petitioner was not present in the aforesaid polling station when the alleged misconduct on the part of the agents of the 2nd Respondent happened. They submitted that the aforesaid fact is confirmed by the contents of paragraph 24 of the Petitioner's Affidavit Verifying Facts wherein she undertook to provide proof of voters who complained of Presiding Officers placing votes on candidates who were not of their choice at trial which she failed to do.

7.17 Equally in paragraph 24 of Her Witness Statement the Petitioner does not state that she witnessed the alleged misconduct on the part of the agents of the 2nd Respondent. The contents of paragraph 24 aforesaid are also based on hearsay. She conceded during cross examination that she did not name the elderly or illiterate voters whose choices of candidates were affected by the alleged misconduct of the agents of the 2nd Respondents.

7.18 The assertion contained in paragraph 14 of PW3's Witness Statement is not helpful to the Petitioner's claim owing to the fact that same is based on hearsay. PW3 did not witness the Presiding Officer's allegedly placing some votes against the wishes of the voters on that account his evidence should be discounted.

7.19 As regards PW3 assertion that on 13th August 2026 he observed the Presiding Officer assisting the elderly and the illiterate to vote, they contended that the law permits the aforesaid Officers to assist the voters Section 61 [1] [2] [3] of the Electoral Process Act.

7.20 Section 61 [1] to [3] of the Electoral Process Act[2] cited above expressly permits the presiding officer or other election officers to assist a voter who is unable to vote without assistance including by reason of physical disability, illiteracy or old age at that voter's request and requires such assistance to be rendered in the presence of an accredited observer or monitor or two election agents of different candidates where available.

7.21 The 2nd Respondent in its Affidavit in Support of Answer particularly paragraph 18, the deponent avers that any assistant rendered to elderly voters at Mwandi School 1 to 4 Lwazamba School and Mushulenla School was rendered lawfully at the request of and with the consent of the voters in accordance with the Act and denied that any votes were placed for a candidate other than the voter's choice.

7.22 At trial the Petitioner failed to prove that there was a breach of the secrecy of the ballot and therefore the second ground against the 2nd Respondent must fail.

7.23 The election was conducted in substantial compliance with the Act and ought not to be nullified. They submitted that the Petitioner has not met and cannot meet either limb of the threshold under Section 97 [2] [a] [b] of the Act[2] as against the 2nd Respondent, no corrupt practice illegal practice or misconduct or non - compliance with the provisions of the Act to the conduct of election attribute ed to the 2nd Respondent or its

offices that had been proved and no widespread malpractice affecting the majority of voters Mwandi Constituency has been shown.

7.24 Section 97 [4] of the **Electoral Process Act**[2] is very instructive. The Subsection provides as follows;

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

7.25 The Supreme Court in the matter of **Akashambatwa Mbikusita Lewanika and Others vs Fredrick Titus Jacob Chiluba**[10]had occasion to interpret Section 18 (1)(2) (a) (b) (3)(4) of the repealed Electoral Act 2006 which has been replicated in Section 97 (1)(2) (a) (b) (3)(4) of the **Electoral Process Act No. 35 of 2016**[2]. The facts of the aforesaid case were that it was alleged that the Electoral Commission neglected its statutory duty to superintend the election process and thereby allowed a fraudulent exercise favoring the respondent. The petitioners sought a declaration that the election of the respondent was null and void.

7.26 Ngulube CJ as he then was had this to say on behalf of the Court;

"We were asked to declare that the election process was not free and fair and that the election was rigged and therefore null and void. The election process had flaws and irregularities as we have already pointed out. The bottom line however was whether given the national character of the exercise where all the voters in the country formed a single electoral college, it can be said that the proven defects were such that the majority of the votes were prevented from electing the candidates whom they preferred, or that the election was so flawed

that the defects seriously affected the result which could no longer reasonably be said to represent the true free choice and free will of the majority of voters.

We are satisfied on the evidence before us that the elections where not perfect and in the aspects discussed quite flawed were substantially in conformity with the law and practice which govern such elections, the few examples of isolated attempts at rigging only served to confirm that there were only a few superficial and desultory effects rather than any large scale comprehensive and deep rooted rigging as suggested by the witnesses who spoke of aborted democracy".

7.27 The election for Mwandi Constituency was conducted freely, fairly transparently and in substantial compliance with the **Electoral Process Act no. 35 of 2016**[2] and that the alleged acts or omissions on the part of the officers the 2nd Respondents which acts or omissions are denied did not affect the results of the election in Mwandi Constituency.

7.28 For the aforesaid reasons it is admitted that the Petitioner has failed to prove the allegation to the required standard against the 2nd Respondent.

7.29 The 2nd Respondent respectfully urges the Honourable Court to dismiss the Petition in its entirety with costs to the 2nd Respondent.

8.0 FACTUAL FINDINGS, ANALYSIS OF EVIDENCE AND THE APPLICATION OF THE LAW.

8.1 I have considered all the evidence of the witnesses who were called by the Petitioner. Regard will also be had to the submissions which I received from the parties and I am greatly indebted to counsel for the parties herein.

8.2 I have looked at the Provisions of **Section 97(2) (a) (b) of the Electoral Process Act No. 35 of 2016**[2]. That law is very clear; it provides circumstances under which a parliamentary election may be nullified. Section 97 (2)(a)(b) reads as follows:

"The election of a candidate as a Member of Parliament, Mayor, Council Chairperson or Councilor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or 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 the 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 sub-section (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."

8.3 I have also looked at several authorities which guides on the circumstances under which a parliamentary election result may be nullified. In doing so, I am guided by the decisions of the

Constitution Court in the case of **Nkandu Luo and Another v Doreen Sefuke Mwamba and Another**[5] where it was held;

"In order for a petitioner to successfully have an election annulled pursuant to section 97 (2) (a) of the electoral Process Act, 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 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. In addition to proving the malpractice or misconduct alleged, the Petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was widespread that it swayed or may have swayed the majority of the electorates from electing the candidate of their choice." (underlining for emphasis).

8.4 The above decision was affirmed in the case of **Margarete Mwanakatwe v Charlotte Scott and Attorney General**[13]. This case went further and stated that;

"In order for the non-compliance with the law to result in the invalidation of an election under section 97 (2) (b), it must be established that the non-compliance affected the result of the election and must be attributable to the Electoral commission of Zambia (ECZ) as the conductor of the elections. This is evident from the fact that section 97(2)(b) is made subject to section 97(4) of the Act.

8.5 I also remind myself that the Petitioner's evidence must support the pleadings which are in the petition. The Petitioner is not allowed to bring in any evidence other than the evidence which is connected to the pleadings and goes to support those pleadings. Put simply, pleadings in an election petition are allegations by the Petitioner against the Respondent(s). What this

means is that the Petitioner cannot go at sea, the Petitioner is restricted only to the evidence which is supportive of the allegations outlined in the petition.

8.6 If the Petitioner or indeed any witness for the Petitioner adduces evidence which does not support the pleadings then that evidence is irrelevant and inadmissible to the extent of its irrelevancy. I have looked at the case of **Michael Mabenga v Sikota Wina and Others**[11] where it was stated that the claim in an election petition depends on its pleadings. In the case of **Brelsford James Gondwe v Catherine Namugala**[26] it was stated that in an election petition, pleadings must give sufficient details of the specific wrongs alleged. I have also looked at the case of **Anderson Mazoka v Levy Mwanawasa**[12] which showed that pleadings must be specific in order to give the other party sufficient notice of any wrongs alleged. What this means is that I must look out only for evidence which support the pleadings in the petition.

8.7 The pleadings in this petition were outlined in paragraph 3 under three sub-heads. In order to show which Petitioner's evidence, support the pleadings, I shall do so by looking seriatim at the three sub-heads of paragraph 3 of this petition. I shall now begin with paragraph 3(a) of the petition. That paragraph reads as follows:

"The election petition was characterized by bribery, corruption and undue influence of the voters by election agents of the 1st respondent with her full knowledge, consent and approval."

8.8 I have looked at the pleadings in the foregoing paragraph. Witnesses were called to support these pleadings. The witnesses gave evidence of various acts of alleged bribery, corruption or

other malpractice that they witnessed being committed by the 1st Respondent and by her agents. I shall therefore proceed to analyse each alleged act of bribery, corruption or malpractice complained of.

8.9 Firstly, PW1 gave evidence that the 1st Respondent and her agents were wearing the UPND regalia in an effort to influence the voters by pretending to be UPND members. This complaint was reported to the conflict management committee on the 6th July, 2026. In the unsigned letter of complaint, the Petitioner's agent namely Lubinda Siyandwa complained that the 1st Respondent and her supporters Particularly Ms. Miyaze Kawana were using the UPND regalia which was causing confusion among the electorate, it was causing unnecessary tension between the UPND members and the independent candidate and that there was a breach of political identity and respect for other parties' symbols as provided for in the Electoral code of conduct[2].

8.10 The Petitioner alleged that these actions were contravening the Electoral Code of conduct particularly clause 8 which states that parties and candidates shall not use symbols, colours or regalia in a manner that misleads, intimidates or provokes other political actors. She prayed that the committee should ensure that there should be a fair playing field by allowing candidates to campaign freely on their own identity and not on the name, colour or material of another party without authority.

8.11 On the same date, the District Conflict Management Committee of the 2nd Respondent mediated on the complaint where the agreement reached was stated as follows;

"The independent candidates have agreed to advise their supporters not to use regalia belonging to another political party as they conduct their campaign. They have agreed to respect other political players' symbols and regalia as they conduct their campaigns. The UPND has likewise agreed to also advise their supporters not to wear other player's regalia in their campaigns."

8.12 Section 113 of **Electoral Process Act**[2] provides for the 2nd Respondent to constitute conflict management committees to resolve conflicts such as the one that was presented by the Petitioner. From the wording of the last paragraph of the mediation statement, it appears that there were accusations and counter - accusation by the parties of wearing each other's regalia. This was mainly caused by the Petitioner who admitted distributing the regalia to anyone without regard to their party affiliation.

8.13 The Petitioner did not state if the violation continued even after the date of the mediation. Since she did not lead any other evidence that it did continue, I believe that the conflict was resolved. This was on the 6th July, 2026 which is one month and one week before the day of voting. I believe at the date of voting; the issue of regalia had no effect on the way the voters were voting or put simply, it did not sway the majority voters to vote for the 1st Respondent. In any case if they continued using the petitioner's regalia, it is my considered view that it would be to the detriment of the 1st Respondent who was using a different symbol on the ballot other than what was on the Petitioner's regalia as it would mislead her own voters.

8.14 The Petitioner also alleged that the 1st Respondent purported to donate a shelter she had constructed in Mwandi Ward so as to

influence voters, and that the 1st Respondent requested voters in Mwandi to vote for her so that she could construct similar shelters throughout the constituency.

8.15 No other witness alluded to this building. Furthermore, this allegation is unsupported, there is no documentary, photographic, or video evidence of the alleged shelter produced before this Court. There are also no details regarding the cost of the shelter and when it was constructed to enable this Court to determine whether it falls within the exempt threshold of a charitable / philanthropic activity. It should be noted that it is not every philanthropic activity that is sanctionable. In the case of **Reuben Mtolo Phiri v Lameck Mangani**[27], the Court stated:

"Philanthropic activity is the practice of helping the poor and those in need, especially by giving money and services: See Oxford Advanced Learner's Dictionary, 7th Edition, page 1089. In Zambia, philanthropic activities include developmental projects, and even when they have some influence on the voters, they do not constitute a corrupt or illegal practice, and hence are not impeachable, unless the philanthropic activity went beyond acceptable limits."

8.16 Moreover, during cross-examination, the Petitioner conceded that she had not disclosed how many voters were allegedly influenced to vote for the 1st Respondent as a result of the said shelter. She was also evasive and reluctant to disclose how many similar projects she herself had carried out in Mwandi, despite having earlier stated in her evidence-in-chief that she is a philanthropist who has initiated many developmental projects and had assisted many elderly and poor people in Mwandi Constituency. She equally did not report this alleged act of corruption to any law enforcement agency or the conflict

management committee. Further she did not indicate the dates of her philanthropic activities.

8.17 In the absence of any particulars as to when it was constructed, its cost, scale, or proof of inducement, and in light of the Petitioner's own admission that she is engaged in similar philanthropic activities, this Court finds that the alleged construction of a shelter does not amount to a corrupt or illegal practice.

8.18 On the issue of bribery and other corrupt activities, the Petitioner did not specify which acts she personally witnessed as she stated at paragraph 10 of her witness statement that **she was informed** by members of her campaign team and other witnesses that will appear before court that the 1st Respondent and her agents were involved in corruption and bribery with the full knowledge and consent of the 1st Respondent. I will therefore address the issues of alleged bribery and corruption through the lenses of the witnesses who allegedly witnessed the alleged acts of bribery.

8.19 PW2, Humphrey Mwinda Sifali led evidence that he was recruited by Mr. Micheal Kaingu to help campaign for the 1st Respondent. He was told to create a WhatsApp group called "Munguli" and face book pages where all campaign activities will be posted. He stated that he received money through Airtel Mobile money from Mr. Micheal Kaingu in order to pay youths in the constituency as bribes to influence them to vote for the 1st Respondent. He said he received money for that purpose on the 2nd August, 2026 amounting to K500.00 on transaction number PP260802.0416.U37059, on 9th August, 2026 he received K600.00 on transaction number PP260809.1857.T23048 and on

the 12th August, 2026 he received K500.00 on transaction number PP260812.1341.C42428. All these amounts totaling K1,600.00 were for the purpose of giving it to different youths from different wards as bribes.

8.20 On the 8th August, 2026 PW2 received K1000.00 on transaction number PP260808.0835.Q33816 from Mr. Kaingu. This was meant to be given to the Resurrection Church Choir. PW2 said that he was told by Mr. Kaingu that it should be emphasized when handing over the money that the money was coming from the 1st Respondent.

8.21 Before I discuss the money that was meant for distribution to the youths, let me first address the K1000.00 that was allegedly given to the Resurrection Church Choir. On paragraph 14 of PW2's witness statement, PW2 stated that he received the K1000.00 from Mr. Kaingu he then stated at paragraph 15 that he gave the money to Ms. Sikombwa Muyembi, who is the choir Secretary.

8.22 The K1000.00 alleged bribe / gift to the church was not given in the presence of other choir members in church or a group of them but to one person, PW5 (Sikombwa Muyembi).

8.23 Ms. Sikombwa Muyembi stated that she received the money from PW2 on the 8th August, 2026 and he told her that the money came from the 1st Respondent. At the time of handing over the money, they were just the two of them. There is no record of transfer of the money from Mr. Kaingu to PW2 and from PW2 to Ms. Sikombwa Mushemi (PW5), the secretary of the Resurrection Church Choir. There is also no record of transfer of money into the Resurrection Church choir account. There is also no proof provided on the WhatsApp group or face book pages that PW2

allegedly opened on instructions from Mr. Kaingu. PW2 was also being untruthful or relying on hearsay by telling PW5 that the money came from the 1st Respondent when he had acknowledged that he received the money from Mr. Kaingu via Airtel mobile money, where he even stated the transaction number though he exhibited no proof.

8.24 The Petitioner relies heavily on the evidence of PW2, who claims to have received money from one Mr. Kaingu to vote for the 1st Respondent, and in support thereof recites certain mobile money transaction numbers amounting to K1600.00 meant for bribes to youths in the Constituency and K1000.00 meant for the Resurrection Church Choir. This evidence suffers from three fatal defects.

8.25 First, there is lack of proof. PW2 alleges receipt of money and cites transaction IDs, yet no mobile money statement, printout, or record from the service provider was produced before this Court. Transaction numbers without the corresponding transaction record are mere numbers. They prove nothing. In election matters where bribery must be proved with cogent evidence, the failure to produce the primary document is fatal.

8.26 Secondly, it is hearsay and there is lack of nexus to the 1st Respondent. By his own admission under cross-examination, PW2 never met, spoke to, or received any instructions directly from the 1st Respondent. His entire dealing was with the said Mr. Kaingu. He then makes a leap, stating that the money "**came from the 1st Respondent**". That is speculation, not evidence. There is no evidence of any linkage between Mr. Kaingu and the 1st Respondent, there was no instruction, no authorization and

no funding trail. It cannot therefore be inferred that Mr. Kaingu was an agent of the 1st Respondent. Agency cannot be inferred from mere mention of a name. The Petitioner in this case failed to prove the agency relationship of Mr. Kaingu to the 1st Petitioner and she equally failed to prove that the 1st Respondent had knowledge of and approved or consented to the alleged corrupt or illegal practice or misconduct of the said Mr. Kaingu. It is trite that a **candidate cannot be held liable for the independent acts of a third party unless agency is proved**, as was held in the case of **Lewanika and others v Chiluba**[9].

8.27 Thirdly, the alleged distribution of the alleged bribes is vague and unsubstantiated. PW2 further alleges that after receiving the said money, he distributed it to various youths. Conspicuously, he never disclosed the identities of these youths, nor did he produce any list of beneficiaries. No such youth was called to corroborate his claim. In the absence of names, numbers, or corroborating witnesses, the alleged distribution remains a bare assertion. A Court cannot nullify an election on the strength of ghosts or unnamed recipients who are never brought before it. For these reasons, the Court finds PW2 to be an unreliable witness who made serious allegations without any documentary backing and sought to rope in the 1st Respondent on the basis of rumor. His evidence on bribery is rejected in its entirety.

8.28 PW5's statement is equally based on hearsay that the money came from the 1st Respondent without any proof or any corroborating evidence, her evidence is equally rejected.

8.29 PW3, Kashweka Lisulo testified that on the 7th August, 2026 during a wedding ceremony of Induna Mutuwapafa's son, the 1st

Respondent gave K1000 to the groom after which Ms. Gilnert Mufuti emphasized that the people in attendance should vote for the 1st Respondent as area Member of Parliament.

8.30 During cross examinations, PW3 had difficulties explaining how he saw that the money given to the groom was K1000 and was meant to bribe those in attendance. At first, he said he came to learn of the amount through someone who was with the groom by the name of Kasaka Matondo. Later he said the money was handed over in an envelope so he did not know the amount. Later again he changed and said he was told by the mother to the groom that the amount was K1000.

8.31 This allegation rests on the evidence of PW3 only. From his own demeanor and testimony, this Court observed that PW3 was a witness with an interest of his own to serve looking at his aggressiveness as he testified. it was like he was fighting. He admitted that he is the Youth Chairperson of the political party to which the Petitioner belongs, and his evidence was laced with open disdain and hostility for the mere presence of the 1st Respondent at the wedding, because according to him, she had been in the area two days earlier for campaigns and she was not supposed to appear at the wedding. He is therefore not a disinterested or neutral witness, but a partisan witness whose evidence must be treated with great caution.

8.32 It is clear that the money was given in privacy, it was in an envelope and the people in attendance did not even know how much was inside the envelope. The assertion that it was a K1000 and was offered as bribe is based on hearsay brought about by PW3. There is nothing on record to show that the said donation

was made as an inducement to vote for the 1st Respondent. The event was a social event, a wedding and not a political rally. The recipient was the groom, not a voter being canvassed, and there is no evidence that the money was given on condition that the groom or those present should vote for the 1st Respondent. A donation at a wedding is a normal Zambian cultural and social practice of goodwill and solidarity. To criminalize every act of generosity or social interaction during the campaign period would be absurd and would make it impossible for any candidate to live a normal social life. Bribery under the **Electoral Process Act**[2] requires proof that a gift, money, or benefit was given for the purpose of inducing a person to vote or to refrain from voting. The intent to corrupt the electoral process must be established.

8.33 In this case, no such corrupt intent has been proved. The Petitioner has not shown any nexus between the K1,000 donation to the groom and the electoral process. Secondly, even if one were to assume, which this Court does not, that the donation was ill-advised, it cannot meet the threshold under **Section 97(2) of the Electoral Process Act**[2]. Section 97(2) is clear: an election shall not be voided by reason of a corrupt or illegal practice unless it is proved that the said practice prevailed to such an extent that it swayed the majority of voters from voting for the candidate whom they would have otherwise voted for. A single donation of K1,000 to a groom at a wedding, wrapped in an envelope, witnessed by a few wedding guests, cannot in any reasonable stretch of imagination be said to have swayed the majority of voters in the entire constituency. Especially that the guests were and indeed did not benefit from the money given to

someone else. It doesn't make sense that they can vote for the donor when they were not beneficiaries. The scale, reach, and effect are negligible. It has no capacity to affect the overall outcome of the election. For these reasons, this Court finds that the alleged K1,000 wedding donation does not constitute bribery or a corrupt practice, and in any event, does not satisfy the statutory threshold for nullification under **Section 97(2) of the Electoral Process Act**[2]. The allegation is dismissed.

8.34 PW3 further alleged that the 1st Respondent gave K1,000 to Ms. Gilnert Mufuti, whom he described as an agent of the 1st Respondent, who later gave it to Mrs. Chimbinde Kahilu for distribution to other persons who attended the wedding, as an inducement to vote for her. There is no further evidence of distribution of this money after it was given to the said Mrs. Chimbinde. PW3 did not state how many people got a share of this money especially that the guests were and indeed did not benefit from the money given to someone else. It doesn't make sense that they can vote for the donor when they were not beneficiaries. This allegation rests solely on the uncorroborated evidence of PW3. As this Court has already found, PW3 was not a neutral witness. He is a partisan witness with a clear interest to serve in these proceedings, and his evidence must therefore be approached with caution and treated with circumspection, corroboration of his evidence is therefore a must.

8.35 I find that the alleged act of bribery was never reported to any law enforcement agency and is not capable of independent verification or substantiation. Moreover, he didn't name the recipients of the said money as even himself did not acknowledge

being a recipient. I am unable to place reliance on the evidence of PW3, as it is evident that he harbors a personal grudge against the 1st Respondent, which colours his testimony. The evidence of PW3 is therefore taken with a pinch of salt. In my considered view, the Petitioner has failed to prove the allegation of bribery to the satisfaction of this Court, to the required standard of a fairly high degree of convincing clarity as enunciated in **Lewanika and Others v Chiluba**[10] and **Anderson Mazoka and Others v Levy Mwanawasa**[12]. It is therefore unnecessary for this Court to consider the second tier of the inquiry, namely, whether as a result of the alleged bribery, the majority of the electorate were or may have been prevented from electing the candidate of their choice, Within the meaning of Section 97(2)(a) of the Electoral Process Act[2]. This allegation is accordingly dismissed.

8.36 PW4, Regina Likando was one of the people who were tasked to cook food for the polling agents of the UPND on the day of voting at Namuzinga Polling Station. At around 23.00 hours when people were still voting she observed that a Mr. Mapulanga Kanyemvu, a polling agent for the 1st Respondent was going round giving money to voters. She observed that he had given money to three people. She however did not name any of the recipients, and none was called to corroborate the statement. She approached him and threatened to report him to ECZ officials inside the polling station. This prompted him to give her K500.00 so that she could keep quiet. Despite receiving the money, she publicly told people that the said Mr. Mapulanga was attempting to bribe her. the exchange of words between her and Mr. Mapulanga Kanyemvu prompted a ZAWA officer who was

stationed at the station to talk to him that what he was doing was wrong but did not take any other action. This prompted one Namwangala Namwangala to threaten to beat Mr. Mapulanga Kanyemvu.

8.37 Earlier in the cross examination, she told court that she got influenced by the K500 bribe given to her by Mr. Mapulanga Kanyemvu who had requested her to vote for the 1st Respondent. When asked what time she had voted, she responded that she voted at around 16:00 hours and that she met the said Mr. Mapulanga Kanyemvu around 23:00 hours. She was reminded that she was lying that she was influenced by the alleged bribe to vote for the 1st Respondent because she had already made her choice in the ballot box before she received the alleged bribe.

8.38 According to her own admission under cross-examination, she cast her vote at 16:00 hours on 13th August 2026 at Namuzingu polling station. Yet, the bribe she alleges to have influenced that vote - a sum of K500 was only received by her at 23:00 hours, **seven hours** after she had cast her vote. Logically, a voter cannot be influenced to do that which she has already done. An inducement received after the act cannot have been the cause of the act. This is a clear case of post hoc reasoning. The Court finds this witness to be not only inconsistent but incredible. Her evidence is self-defeating and amounts to an afterthought, possibly rehearsed to bolster the petition. Consequently, the evidence of PW4 on bribery is rejected in its entirety and cannot support a finding of undue influence under **Section 97(2) of the Electoral Process Act[2].**

8.39 PW6 Kandandu Sinabu stated that on the 9th August, 2026 she was in attendance at a meeting called by the 1st Respondent at Mbaine village of Kakulwani area. There were about 60 people in attendance. The 1st Respondent produced a K500 and gave it to Mrs. Lungowe Muyangwa who owns a grocery shop in the area. The 1st Respondent said the money was meant for food for the people in attendance. Mrs. Lungowe bought fritters, buns and drinks from the money and distributed it to those in attendance. The 1st Respondent allegedly further promised those in attendance that she will provide food and alcohol for them on the 13th August, 2026.

8.40 On the 13th August, 2026 people were seen at Thabo's place eating breakfast. PW7 corroborated the testimony of PW6. PW6 and PW7 separately asked the people around as to who had provided the food, the people there told them that it was provided by the 1st Respondent.

8.41 I have carefully considered the evidence of PW6 and PW7. Both witnesses were consistent, credible, and not shaken in cross-examination. There are two alleged incidents of bribery and inducement, the first involves the K500 that was given to Mrs. Lungowe Muyangwa in which she bought fritters, buns and drinks which she distributed to those in attendance at the meeting on the 9th August, 2026 and the alleged food that was being shared at the house of one Ms. Thabo on the 13th August, 2026.

8.42 Their testimony that the 1st Respondent gave K500 to Mrs. Muyangwa Lungowe who in turn bought food which she distributed to the people in attendance. The food was meant to

be an inducement for them to vote for the 1st Respondent. Section 81 (1) (c) of the Electoral Process[2] provides that:

"(1) A person shall not, either directly or indirectly, by oneself or with any other person corruptly— (c) make any gift, loan, offer, promise, procurement or agreement to or for the benefit of any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election;"

8.43 Section 83(1)(c) of the Electoral Process[2] is on undue influence and states as follows:

"(1) A person shall not directly or indirectly, by oneself or through any other person;

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

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

(ii) to vote or not to vote

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

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

(v) .....

8.44 The allegation has been proved to the satisfaction of this Court on the balance of probabilities. I therefore find as a fact that the 1st Respondent engaged in a corrupt practice of bribery at that meeting by producing a K500 and using it to buy fritters, buns and drinks for those in attendance. However, that is not the end of the matter. The question is not merely whether a corrupt practice was proved, but whether it should lead to nullification of the election. This is governed by Section 97(2) of the Electoral Process[2]. Section 97(2) provides that;

"An election shall not be voided on account of a corrupt practice, illegal practice, or other misconduct, unless the Court is satisfied that such practice prevailed or was so extensively done that it swayed the majority of voters from voting for the candidate whom they would have otherwise voted for."

8.45 In this case, while bribery has been proved on this one isolated incident involving a few individuals at a single meeting of between 50 – 60 people, there is no evidence that this practice was widespread, systemic, or extensive throughout the constituency. The evidence relates to one meeting and a limited number of people in attendance. The Petitioner has not adduced any evidence to show that the majority of voters in the constituency were swayed from voting for the candidate they would have otherwise voted for by this purchase of food worth K500. The scale of this incident, though reprehensible, cannot be said to have affected the overall outcome of the election in a constituency with thousands of voters. Accordingly, while this Court finds that though the allegation of bribery with K500 worth of food has been proved, it does not meet the threshold set under Section 97(2) of the **Electoral Process Act**[2] for nullification. The election result therefore cannot be set aside on this ground alone. The allegation is dismissed.

8.46 In the second alleged incidence on the 13th August, 2026 both PW6 and PW7 stated that they passed through the house of one Ms. Thabo separately where they found people eating food. They didn't see the 1st Respondent. But they were told that the breakfast / food was provided by the 1st Respondent. There is no record that the 1st Respondent provided the food, but they

believed the information they were given that the food was provided by the 1st Respondent.

8.47 This evidence suffers from fatal infirmities. First, it is pure hearsay. In the case of **Mutambo and Others v The People**[28] the Supreme Court held that:

"Evidence of a statement made by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and admissible when it is proposed to establish the evidence, not the truth of the statement, but the fact that it was made."

8.48 PW6 and PW7 did not see the 1st Respondent at the scene. They did not see her deliver, cook, or distribute any food. Their entire allegation hinges on what unnamed persons allegedly told them. The persons who are said to have told them that the food was from the 1st Respondent were not called as witnesses. Those persons remain unnamed, untraced, and unsworn. This Court cannot rely on hearsay evidence of this nature, which is inadmissible and of no probative value.

8.49 Second, there is no proof whatsoever that the food, if any, was provided by the 1st Respondent. No receipt, no evidence linking the source of the food to her. The fact that people were eating at Thabo's place, in itself, proves nothing. People eat food every day. It may as well have been provided by the Petitioner as PW4, Regina Likando, stated that she was one of those who were employed to cook food for the polling agents and members of the UPND and she confirmed having cooked and given food to the agents and members of the UPND on the 13th August, 2026.

8.50 Third, even if it were true that the 1st Respondent provided food, there is no evidence that it was given as a bribe to induce voters. Providing food without proof of corrupt intent or a condition to vote does not amount to bribery. The evidence of PW4 cited above show that even the Petitioner's camp was preparing the food for its members. Hospitality, in our Zambian culture, cannot be equated to electoral corruption, unless intention to do so is shown. Finally, this allegation does not meet the threshold under Section 97(2) of the Electoral Process Act[2]. There is no evidence that a few people eating at Thabo's place swayed the majority of voters in the constituency. In the circumstances, the evidence of PW6 and PW7 on this point is hearsay, uncorroborated, speculative, and is accordingly rejected and dismissed.

8.51 The second allegation of the petition is contained in paragraph 3(b) of the petition. That paragraph reads;

"The 2nd Respondent failed to comply with the provisions of the Act relating to the conduct of the elections, as the Presiding Officers failed to supervise the proper counting and announcing of the election results in accordance with the laid down procedures."

8.52 On paragraph 15 and 16 of the Petitioner's (PW1) witness statement, it is stated that there were a lot of anomalies in the way the 2nd Respondent managed the election process at Mabumbu polling station. Her polling agent informed her that the Presiding Officer had earlier announced results without completing the Gen. 20 form. After the Petitioner heard this, she went to the polling station and complained against the manner the process was being managed. After her complaint, the agents of the 2nd Respondent counted the results and later discovered that wrong results were allocated to the Petitioner. The 2nd

Respondent then changed the figures from 304 that was wrongly announced to 349. She noticed that the Gen 20 form and other relevant documents were not recorded but the Assistant Returning Officer took all these uncompleted documents to the totaling centre in Mwandi ward.

8.53 The above scenario was explained by PW8, Namukolo Mwenda, she was a polling Assistant employed by the 2nd Respondent. She was stationed at the same Mabumbu polling station. She testified that around 07:00 hours on the 14th August, 2026, the Presiding Officer and one Polling Assistant whose name she could not remember, went outside and announced the results during which it was stated that the Petitioner had a total of 304 votes. She said this was irregular because at that time, they were still counting the votes inside the polling station. Further, it was irregular because the standard forms that were supposed to be filled before announcing the results, namely the Gen. 20 form, record of proceedings, ballot paper account form, the announcement of results form and the statement of rejected ballot paper form were not yet completed at that time.

8.54 After announcing the results, the Presiding Officer and the Polling Assistant went back inside the polling Centre and started completing the Gen. 20 forms. She and other polling Assistants asked the Presiding Officer why she announced the results prematurely without finishing the counting process and recording the results on the necessary forms. She just kept quiet and did not give any response.

8.55 After the announcement of the results, the other interested parties started complaining that the results were not properly

announced as the Presiding Officer and Polling Assistant did not announce the number of total voters and the number of rejected ballots. The situation outside became very tense because of the said anomalies. Shortly after the announcement, the Petitioner went to the polling station and complained that things were not being done correctly, and she requested that the votes that were earlier announced be recounted and verified. Between 07:00 to 08:00 hours on the same day, the Assistant Returning Officer went to the polling station and asked what the problem was. She informed him that the confusion outside was due to the fact that the Presiding Officer announced the results before the counting was completed and before the results were properly recorded.

8.56 In response, the Assistant Returning Officer started filling in the Record of Proceedings, ballot Paper Account Form, the Announcement of results form and the Statement of rejected Ballot papers form. **He was filling in those forms based on the information that was already at the Polling station**. After he gathered all the information, the Assistant Returning Officer went outside and made a second announcement in which the votes awarded to the Petitioner were corrected from 304 to 349. Exhibit **SKS3** attached to the affidavit verifying facts confirms the results that the Petitioner got 349 votes while the 1st Respondent got 204 votes and was signed by the agents of both parties.

8.57 The issue to be addressed is whether the 2nd Respondent had powers to change results after the wrong results were earlier announced. **Section 76 of the Electoral process Act**[2] provides;

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

8.58 This allegation has not been substantiated and was based on hearsay and has in fact been disproved by her own witness, PW8, called by the Petitioner herself, who explained what transpired and what led to the announcement of the wrong results, and candidly admitted that the situation was subsequently corrected. Her evidence was clear that the error was detected and rectified through the proper procedure before the final declaration.

8.59 This Court finds PW8 to be a truthful and credible witness on this point. As a witness called by the Petitioner herself, her evidence is binding on her, and she cannot be heard to disown it. She cannot call a witness and then ask the Court to disregard her evidence when it is unfavourable to her case. An inadvertent error that is immediately identified and corrected in the course of results management cannot be elevated to an electoral malpractice. The law is concerned with the final results as declared, not with a transient error that was corrected. The Petitioner has not shown that the final results as declared were wrong, nor has she shown any prejudice suffered as a result of the initial erroneous announcement which was subsequently corrected. Having been explained and corrected, and the correction having been confirmed by PW8 herself, this allegation collapses. It does not disclose any non-compliance, let alone one that could trigger Section 97(2) of the **Electoral Process Act**[2]. This ground therefore fails and is dismissed.

8.60 The Petitioner's further testimony was that the election was void because the 2nd Respondent failed to manage the entire election as it failed to properly count and tally the votes. She based this fact on the unexplained differences in the votes declared as

having been cast at different levels. She placed reliance on the documents exhibited in her Affidavit Verifying Facts collectively marked as **"SKS.3", "SKS.4", "SKS.5", "SKS.6", "SKS.7", "SKS.8", "SKS.9", "SKS.10", "SKS.11"** and **"SKS.12"**.

8.61 To put the picture right, the above exhibits are as follows:

1. **SKS3** -is the announcement of results of the poll for Member of Parliament at Mabumbu 01 polling station which showed that a total of 556 votes were cast.
2. **SKS4** – is the announcement of results of the poll for Council Chairperson at Mabumbu 01 polling station which showed total votes cast as 558.
3. **SKS5** is the announcement of results of the poll for Councilor at Mabumbu 01 polling station which showed total votes as 555.
4. **SKS6** is the announcement of results of the poll for President at Simungoma 01 polling station which showed total votes cast as 486.
5. **SKS7** is the announcement of results of the poll for Member of Parliament at Simungoma 01 polling station which showed a total number of votes cast as 485.
6. **SKS8** is the announcement of results of the poll for Councilor at Simungoma school 01 polling station which showed total votes cast as 484.
7. **SKS9** is the announcement of results of the poll for President at Mwandi 1 polling station which showed total votes cast as 566.

8. **SKS10** is the announcement of results of the poll for Member of Parliament at Mwandi 1 polling station which showed total votes cast at 558
9. **SKS11** is the announcement of the results of the poll for Member of Parliament at Lusinina Polling Station which showed total votes cast of 472.
10. **SKS12** is the announcement of results of the poll for Councilor at Lusinina Polling Station which showed total votes cast of 465.

8.62 The Petitioner alleges irregularities on the ground that the total number of votes cast for Presidential, Member of Parliament, Mayoral and Councilor elections were different at the same polling station. According to her, this shows that the 2nd Respondent failed to count and tally the results properly.

8.63 This Court takes judicial notice of the fact that under the electoral law, certain persons on official election duty, including polling staff, police officers and accredited monitors, are permitted to vote for the Presidential election and, in some instances, for the Parliamentary election, but may not be permitted to vote for the Mayoral or Councilor elections if they are deployed outside the local authority or ward where they are registered to vote. Others may just abstain from voting on certain categories. This is a lawful and well-known feature of our electoral system and fully explains why the total votes cast may differ across the different categories at the same polling station.

8.64 Section 44 of the **Electoral Process Act**[2] provides;

"A commission may allow a person to apply for a special vote if that person cannot vote at a polling station in the

polling district in which the person is registered as a voter due to the persons –

(a) Physical infirmity or disability;

(b) Pregnancy;

(c) Absence from that polling district while serving as an election officer in the election concerned; or

(d) While on duty as a member of the security services in connection with the election."

8.65 The role of the 2nd Respondent is to count and tally the ballot papers that are found in each ballot box for each election category and tally with the number of ballot papers issued and those remaining in the ballot paper booklets after the vote. A variation in the totals across categories is therefore not evidence of inefficiency, negligence, or irregularity on the part of the 2nd Respondent.

8.66 The Petitioner appears to be misleading the Court by insinuating that such differences amount to malpractice. The exhibits cited in support of this allegation add nothing to the results obtained by the candidates at parliamentary level and are of no probative value to this petition. This allegation is misconceived, has no merit and is accordingly dismissed.

8.67 The last allegation is contained in paragraph 3(c) which states **"the election in most polling stations was conducted in breach of the principles of secrecy and against a person's right to vote, in that the Presiding Officers cast votes on behalf of the elderly voters contrary to the wishes of those voters."**

8.68 The Petitioner as the first witness testified that she believed that the outcome was affected by the 2nd Respondent's failure to effectively manage the principles of secrecy in that the agents of

the 1st Respondent were deliberately and systematically pretending to help the elderly and the illiterate to vote and these agents cast votes in favour of the 1st Respondent contrary to the wish of those voters. This was done in several different polling stations among them Mabumbu, Mwandi and Mutuwapafa polling stations. At Mabumbu polling station, the presiding officers were volunteering to assist the elderly and the illiterate while casting votes contrary to the wishes of the voters.

8.69 The 3rd witness for the Petitioner also stated that he was a polling agent for UPND and was assigned to Mutuwapafa polling station where he observed the presiding officer assisting the elderly women and stating that the presiding officer placed some votes against the wishes of the voters. He remembered hearing complaints from about 5 women. As stated earlier, this is a witness with an interest of his own to serve. He did not enter the polling booths with the complaints. He was testifying to what he did not see but to what he was told by the alleged complainants who were not brought to this court as witnesses to substantiate his claims. His evidence on this aspect is inadmissible hearsay and will be treated as such.

8.70 The 8th Petitioner's witness, Namukolo Mwenda, testified that during the period of voting, there was a complaint from voters that there was a group of youths who were insisting and forcing to assist elderly voters and the illiterate to vote despite not being related to them. These things were allegedly happening outside the polling station. When the complaint reached the Presiding Officer whose name was Gombwa Machai, the Presiding Officer instructed the youths to stop helping the elderly and illiterate

voters. The presiding officer took over in assisting the elderly and the illiterate voters.

8.71 She recalled that during the day, one elderly woman whose name she could not recall, raised a complaint that the Presiding Officer voted for the candidate who she did not want. This led to the Presiding officer instructing that another ballot paper be given to her. The Returning Officer later clarified that it was not possible to give a voter more than one ballot paper. The Presiding Officer then informed all the members of staff at the polling station that she had stopped helping the elderly and illiterate because there was an increase in the number of complaints from the elderly and illiterate voters that she was voting against their wishes. When she stopped helping them, the elderly and illiterate voters started coming with their relatives and others were being assisted by the polling staff.

8.72 The 9th Petitioner's witness, Kawana Muyunda testified that he was stationed at Mutuwapafa polling station on the 13th August, 2026. At around 09.00 hours, he observed three people at the polling station among them Mr. Makena Muyakwabo, Raymond Mufungulwa and Liseli Mushabati who he claimed were agents of the 1st Respondent assisting voters to cast their votes. He observed them usher in three voters among whom one (01) voter by the name of Mwaka Liswaniso who publicly complained after coming out of the polling station that Mr. Makena Muyakwabo made her cast a vote for the 1st Respondent against her wishes. The other two voters whom she did not know were accompanied by Liseli Mushabati also made similar complaints. The

complaints were never reported to the police, conflict management committees or any law enforcement agency.

8.73 What has come out from PW1, PW3, PW8 and PW9 is that the presiding officers and some youths some of whom may have been agents of the 1st Respondent were assisting the elderly and illiterate voters to cast their votes. What has not been pleaded under the allegation on paragraph 3(C) in the petition is how the principle of secrecy was violated during the voting on the 13th August, 2026 election. I will therefore restrict myself to what has been pleaded, namely that the Presiding Officers and some youths were assisting some voters to cast their votes, suffice to mention that at Mabumbu polling station where PW8 was based, she mentioned that the booths were in close proximity to where the polling assistants were and she saw no one interfering with the way the voters were voting.

8.74 Section 61 of the Electoral process Act[2] provides;

"(1) A person may assist a voter to vote where—

(a) the voter requires assistance due to a physical disability;

(b) the voter has requested to be assisted by that person; and

(c) the presiding officer is satisfied that the person assisting the voter has attained the age of eighteen years.

(2) In the absence of a person referred to in subsection (1), the presiding officer or another election officer, at the request of a voter who is unable to read, shall assist that voter to vote.

(3) Subject to subsection (2), the presiding officer or election officer shall assist voters in the presence of— (a) a person

justify the nullification of an election pursuant to section 97(2) of the Electoral Process Act[2]?

8.76 In interpreting the above provision, the case of **Margarete Mwanakatwe v Charlotte Scott and Attorney General**[13] stated; ***"In order for the non-compliance with the law to result in the invalidation of an election under section 97 (2) (b), it must be established that the non-compliance affected the result of the election and must be attributable to the Electoral commission of Zambia (ECZ) as the conductor of the elections. This is evident from the fact that section 97(2)(b) is made subject to section 97(4) of the Act*** which provides:

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

8.77 PW3, PW8 and PW9 stated that they heard of a few complaints from the elderly and illiterate voters after having their votes allegedly cast on the candidates who were not of their choice which was done for them by some Presiding Officers, Assistant polling agents and some youths some of whom were alleged agents of the 1st Respondent. Assuming that the allegation that some of these may have been agents of the 1st Respondent my focus is on the overall effect of those malpractices on the election as a whole if it were true. PW3 and PW9 were both at Mutuwapafa Polling Station where they reported 5 and 3 complaints respectively of elderly and illiterate voters having their votes cast wrongly. It is not clear however if the complainants are the same, but will assume that they are different.

8.78 There were 313 out of the 439 registered voters who cast their votes at Mutuwapafa according to the register of the 2nd Respondent. The 8 registered complaints from the two witnesses (PW3 and PW9) represents 2.5% of the total of those votes were cast on candidates the voters did not wish to vote for, meaning that there was at least 97.5% compliance in terms of the voters who cast their votes on their preferred candidates. At Mabumbu polling station, PW8 mentioned having received only one complaint which is insignificant when compared to the total number of voters who cast their votes at that polling station. In short, the irregularities where not widespread or substantial as to affect results of the election. There was substantial compliance as regards to Section 97(2) and (4) of the Electoral Process Act[2] and therefore these anomalies cannot be the cause for the nullification of results for Mwandi Constituency.

8.79 **ORDERS / DECISION OF THE COURT.**

8.80 By way of disposal, having found that the Petitioner has failed to prove all of the allegations set out in the Petition to the required standard of a fairly high degree of convincing clarity, the Petition herein is dismissed.

8.81 In consequence of the foregoing, I find that the elections in Mwandi Constituency were held in substantial conformity to the **Electoral Process Act[2]** and that the election of the 1st Respondent, **Iris Kamwi Kaingu** as Member of Parliament for Mwandi Constituency was valid and in accordance with section 108(1) of **Electoral Process Act No. 35 of 2016[2]**.

8.82 The Petitioner seeks an order for costs in her favour. The 1st and 2nd Respondent prays that the Petition be dismissed and costs

awarded in their favour. In order to prevent injustices and promote access to Courts when it comes to matters involving Constitutional and governance issues affecting the country such as the present election petition, parties must not easily be condemned in costs.

8.83 Therefore, costs should not be ordered as a punitive measure. I am guided by the Supreme Court in the case of **Saul Zulu v Victoria Kalima**[2] and in the case of **Lewanika v Chiluba**[10] where it was elucidated that:

"However, it is clearly in the proper functionality of our democracy that challenges to the election of President which are permitted under the Constitution and which are not frivolous should not be inhibited by unwarranted condemnation in costs."

8.84 I adopt the cited passage as it is in my view that it is applicable to this Petition, albeit that it is for the election of a Member of Parliament. The parties herein shall bear their own costs.

Leave to appeal is granted.

Delivered in Open Court at Mongu this 19th day of November, 2026.

.....

W. Sinyangwe
HIGH COURT JUDGE