IN THE LOCAL GOVERNMENT ELECTION TRIBUNAL FOR THE CHINSALI DISTRICT HOLDEN AT CHINSALI (CIVIL JURISDICTION) **2026/F/LGET/02**

IN THE MATTER OF: OF **ARTICLE 159 (3) OF THE CONSTITUTION ZAMBIA (AMENDMENT) ACT NO. 2 OF THE 2016**

AND

IN THE MATTER OF: **LOCAL GOVERNMENT ELECTION FOR COUNCILLOR FOR MILEMBA WARD OF THE CHINSALI DISTRICT HELD ON 13TH AUGUST, 2026**

IN THE MATTER OF: **SECTIONS 97 (1) (2) AND 83 (1) THE ELECTORAL PROCESS ACT NO. 35 OF 2016**

AND

IN THE MATTER OF: **RULE 11 (1) THE LOCAL GOVERNMENT TRIBUNAL RULES, 2026**

BETWEEN:

NGOSHE ENATHAN **PETITIONER**

AND

MICHAEL CHILESHE **1ST RESPONDENT**

THE ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

CORAM: NKONDE B (CHAIRPERSON) CHANSONGO Z (MEMBER)

AND MWILA K (MEMBER)

For the Petitioner:	Mr. K. Kawana, Messrs Muleza Mwiimbu & Co
For the 1st Respondent:	Mr. M. Mweene Mr. G. Phiri, Messrs. M. Mweene & Partners
For the 2nd Respondent:	Mr. J. Katati, Messrs. J. Katati Newtons Legal Practitioners

JUDGEMENT

Legislation

1. *The Constitution of Zambia, Chapter 1 of the Laws of Zambia.*
2. *Local Government Election Tribunal Rules, 2026*
3. *Electoral Process Act No. 35 of 2016 as read with Electoral Process Act No. 12 of 2026*

Cases referred to

1. *Nkandu Luo & Anor v Doreen Sefuke Mwamba & Another Selected Judgment 51 of 2018*
2. *Margaret Mwanakatwe v Scott & Another Appeal No.14/2016*
3. *Nelson v Bwalya & Another (15 of 2021) ZMLGEL 32*
4. *Bowman Lusambo v Bernard Kanengo & Other 2023/CCZ/A002*
5. *Christine Phiri Anor v Melessiana Phiri & Another CCZ/A 37/ 2021*
6. *Mutelo K. v Kangombe & Another CCZ/A 33 of 2021*
7. *Mulope v Shakafuswa CCZ 2021/34*

1.0 Introduction

1.1 On 13th August 2026, the Petitioner, Ngoshe Enathan, contested the Milemba Ward Councillor election in Chinsali District, Muchinga Province, on the United Party for National Development (UPND) ticket, against the 1st Respondent, Michael Chileshe, who stood under the National Reconciliation for Party for Unity and Prosperity (NRPUP). The 1st Respondent was declared the winner. Aggrieved by the result, the Petitioner filed this Petition on 28th August 2026, challenging the election, which is the subject of this judgment.

2.0 The Petition

2.1 In his Petition, the Petitioner alleged that, the Returning Officer declared the 1st Respondent duly elected as Councillor for Milemba Ward, having obtained a total of 1,377 votes, against the Petitioner's 600 votes. The Petitioner alleges that the 1st Respondent and his agents were involved in electoral misconduct, illegality and corrupt practices, which disadvantaged him. He alleged that the 1st Respondent was giving K10.00 notes and distributing ball pens to voters across various polling stations in Milemba ward with the intent to induce the voters to vote in his favour.

2.2. The Petitioner further alleged that the 1st Respondent acting together with Kalalwe Mukosa and Mpundu Laurent, both members of the NRPUP, were seen campaigning by showing party symbols to the voters indicating to them which candidate they should vote for contrary to the *Electoral Process Act* (EPA). The Petitioner further alleged that he and his agents were denied access to the Gen 20 forms by the 2nd Respondent from several polling stations for verification of results.

3.0 The Petitioner's Skeleton Arguments.

3.1 The Petitioner filed skeleton arguments in support of the petition wherein he relied on *Article 159 (1) (3)* of the *Constitution of Zambia* which gives authority to any person to file an election petition with the Local Government Election Tribunal to challenge the election of a Councillor. He further relied on *Section 97 (2)* of the *EPA* which provides for grounds upon which an election can be nullified. He also relied on the case of **Nkandu Luo & Another**

v Doreen Sefuke Mwamba & Another[1] wherein the Court established the important role the Gen 12 form (as it was called then) played in the electoral process. That the acts of the 2nd Respondent of failing to produce the Gen 20 form was a violation of his right as a candidate.

3.2 The Petitioner argued that the 1st Respondent's actions, and those of his agents, complained of in the Petition, are in direct violation of *Section 81 (1) of the EPA*. He alleged that 1st Respondent gave K10.00 and pens to the electorates. Further reliance was had on the case of **Margaret Mwanakatwe v Scott & Another**[2] that supporters of a political party intending to prevent members of another political party from exercising their right to solicit for votes from the general public, offends the spirit of *section 97 (2) (b)* of the said *Act*. He argued further that illegal acts of feeding camps near the road to the polling station were undeniable, sufficient and overwhelming evidence proving corrupt acts and misconduct so widespread that it swayed the majority of the electorates. He relied on the case of **Nelson v Bwalya & Another**[3] for this point.

3.4 The Petitioner concluded his skeleton arguments by placing reliance on the case of **Bowman Lusambo v Bernard Kanengo & Others**[4] where the court found that the wrongful acts connected to the appellant may have prevented the majority of voters from electing their preferred candidate.

4.0 The 1st Respondent's Answer

4.1 The 1st Respondent filed an Answer wherein he denied the averments contained in the Petition. He also filed an Affidavit in Opposition to the Petitioner's Affidavit wherein he averred that

neither he nor his agents were at any point during the elections involved in electoral malpractices or misconduct. He stated that he was declared Councillor of Milemba Ward on 15th August, 2026 where he obtained 1, 377 votes against the Petitioner 600 votes. He averred further that neither he nor his agents restrained voters from voting for a candidate of their choice. The 1st Respondent further denied intending to sway people, and telling them not to vote for the Petitioner by flashing party symbols or giving them pens or K10.00 notes. He averred that the Petitioner's grounds were baseless and were not enough to annul the election.

5.0 The 2nd Respondent's Answer and Affidavit in Opposition.

5.1 The 2nd Respondent filed an Answer wherein it denied the averments contained in the Petition. It alleged that Gen 20 forms were issued to all polling agents who were present at the time of counting votes. It alleged further that the declared results were announced as per the Gen 20 forms.

5.2 That the Petitioner is not entitled to any of the reliefs he was seeking. Further, that there was no report of the 1st Respondent or any of his agents conducting campaigns on the election day to the 2nd Respondent's Conflict Management Committee or any of its officials.

6.0 The Hearing

6.1 At the hearing, the Petitioner gave evidence on oath and called four (4) witnesses. The 1st Respondent called 1 witness. The 2nd Respondent also called 1 witness.

7.0 The Petitioner's Case

7.1 PW1 was Enathan Ngoshe, the Petitioner herein. He testified that he participated in the elections held on the 13th day of August, 2026 in Milemba Ward, Chinsali District. According to him, he started off from home to go and vote at 06:00 hours. He was voting from Charles polling station. On his way to Charles polling station, he saw agents of NRPUP cooking at a certain house near the polling station. As they were cooking, they were shouting *'pe lampi' 'pe lampi'*. He stated that the voters were given food to eat at that house before going to vote. In addition to the food, they were given pens and money amounting to K10.00 each.

7.2 PW1 testified that he stayed at a nearby house for some time. At 10.00 hours he saw a Member of Parliament for NRPUP come to the polling station with his agents. The Member of Parliament entered the polling station and from there he went to his vehicle and the leaders of NRPUP were shouting *"pe lampi!", "pe lampi!"*. PW1 testified that he saw the Member of Parliament visit the place where nshima was being cooked and left some money there.

7.3 PW1 explained that shortly after the Member of Parliament left, Mr. Michael Chileshe, the 1st Respondent herein, arrived. He stated that this was around 10.00 hours. According to him, he saw the 1st Respondent buy fritters and scones for the people that went to vote. The Petitioner testified that the 1st Respondent had a group of supporters who were shouting *"pe lampi", "pe lampi"*. He explained that this behaviour did not just happen at Charles polling station but in all five (5) polling stations in the ward. PW1

stated that this behaviour swayed the voters from voting for the candidate of their choice.

7.4 PW1 further testified that neither him nor his agents were given Gen 20 forms by the Electoral Commission of Zambia (ECZ). He added that ECZ did not stick the results against the walls as per practice.

7.5 In cross-examination, PW1 informed the Tribunal that ECZ arranged one meeting prior to the elections where guidelines were given on campaigns. He stated that they were guided on where to take complaints of malpractice or misconduct if they had any. PW1 acknowledged that they were not told by ECZ that they should only use pens provided by ECZ to vote. In further cross-examination, PW1 informed the Tribunal that he did not see the 1st Respondent giving out the said pens.

7.6 PW1 confirmed that the 1st Respondent was not cooking the nshima and that it was the alleged voters that visited the house to have the meal. When asked if he did anything about the people that were eating, PW1 responded that he did not do anything when he saw the voters being given nshima and fritters. The Petitioner informed the Tribunal that all agents of the UPND were not given Gen 20 forms despite being present at the polling stations. He further informed the Tribunal that despite the police and ECZ officials being present at Charles polling station, he did not report the malpractice he saw to them. He was further asked if these events were happening at other polling stations and he confirmed that they were happening.

7.7 During cross-examination by Mr. Mweene, the PW1 stated that the people that stayed at the house where food was prepared were allowed to eat and receive visitors on voting day. He added that the house where the food was being prepared was outside the ECZ boundary. When asked to confirm if he knew what happened at the polling station between the time he left and the time that the polls closed, PW1 said he did not know what happened. He was further questioned if the counting of votes was disrupted or whether people still voted at the polling station. PW1 responded that the voting was not disrupted and that the voters were still able to vote.

7.8 When cross-examined by Mr. J. Katati, counsel for the 2nd Respondent, PW1 stated that his agents were present at the time the Gen 20 forms were being filled but that they were not given the same. PW1 stated that he did not know whether everyone who was eating the food was going to vote or not. He also did not know whom the people who ate the food voted for as he did not witness their voting in the booth.

7.9 He was further asked if he knew of the ECZ Conflict Management Committee and that complaints against giving of pens, K10.00 notes or food were to be reported to that Committee. PW1 was further asked if had made such a complaint to that Committee. PW1 informed the Tribunal that he knew about the Committee but had not made any such complaint to them.

PW1 was not re-examined.

7.10 PW2 was Boyd Bwalya. He testified that on the 13th day of August, 2026, he started off from his home between 06:00 and

07:00hrs in the morning to Mikunku polling station to vote. When he reached Mikunku polling station but before entering the boundary that was set by ECZ, he saw a big group of people gathered and he went there to see what was happening. PW2 stated that he saw the 1st Respondent giving out ball pens and K10.00 notes. He also received a ball pen and a K10.00 note.

7.11 PW2 testified that the 1st Respondent was telling the people that had gathered that *"Do not forget, we going with the lamp."* PW2 added that the 1st Respondent was promising people that if they vote for him, there will be an extra ordinary celebration. According to PW2, after voting, he went back home.

7.12 In cross examination, PW2 stated that on the 13th day of August, 2026 when he saw the crowd, his mind was already made up on the candidate he was going to vote for. In further cross examination, PW2 stated that the pen he received was an ordinary pen, it had no party symbols. PW2 stated that he did not report to the police or to ECZ that he found the 1st Respondent giving out pens and K10.00 notes to the voters. He stated that he has no video or picture to show that the 1st Respondent was giving out K10.00 notes and pens to voters.

PW2 was not re-examined.

7.13 PW3 was Festus Chibeka. He testified that he was an election monitor representing the UPND in Chilinda Constituency. He informed the Tribunal that on 13th August, 2026 when he left the Mulilansolo Camping site where the UPND campaign team had camped during campaigns, he proceeded to Mwalule polling station between 07:00 hours and 08:00 hours. There, he saw a

group of people cooking at a nearby house about 40 meters from the polling station. He recognised some members of the NRPUP who were telling people to vote for NRPUP and were also displaying the symbol for NRPUP. He observed that once people ate the food, they would then proceed to the polling station to cast their vote.

7.14 PW3 further testified that he saw the 1st Respondent together with an unknown person shouting *"pe lampi"* and distributing pens to the voters who were on the queue. He stated that when he realised this, he reported to a police officer who was nearby. PW3 testified that the 1st Respondent was distributing pens and telling the people who were collecting the pens not to use ECZ pens as those were for satanists. When he noticed that nothing was being done by the police officer, he reported the same to the Presiding Officer who shared with him that he had already told them to stop but they were not doing so. He concluded that he left that polling station between 8:00 and 9:00 hours for Kaonga ward.

7.15 During cross-examination, Mr. Mweene for the 1st Respondent asked if the owners of the house where food was being cooked were entitled to receive visitors and cook for their visitors on that day. PW3 stated that they were. Counsel further asked if PW3 had visited any other polling station in Milemba Ward apart from Mwalule polling station to which PW3 responded that he did not. PW3 answered that he did not know if there was any malpractice at other polling stations.

7.16 In further cross-examination, PW3 was questioned if he would believe that another person saw the 1st Respondent at another polling station at the same time he saw the 1st

Respondent. PW3 informed the Tribunal that that person would be lying. PW3 further confirmed that when he entered the polling station, he observed that people were voting and that no one was being chased by ECZ for using a different pen apart from the one provided for by ECZ. Counsel asked if PW3 had put his complaints to the Presiding Officer in writing or took videos or photographs of the distribution of pens. PW3 confirmed that he did not.

PW3 was not re-examined

7.17 PW4 was Washen Mumbo. He testified that on the 13th day of August, 2026 he started off from his home around 16:00 hours to go to Mukanda polling station to vote. He explained that when he reached close to the polling station, outside the ECZ boundary, he found the 1st Respondent, with his agents shouting *"pe lampi, pe lampi."* PW4 stated that he could identify the people the 1st Respondent was with as they were many. He added that the 1st Respondent was distributing ball pens and K10.00 notes to the general public, the voters.

7.18 PW4 stated that when he reached where the 1st Respondent was, he found that all the pens had finished. He only received a K10.00. According to him, the 1st Respondent told the voters to use the pens he gave them. PW4 added that the 1st Respondent told the people that ECZ pens are for satanists and that President, Hakainde Hichilema, is a satanist. PW4 testified that the 1st Respondent and the crowd he was with, told them to vote *"pe lampi"*.

7.19 PW4 explained that when he reached the polling station, he asked the police officer if he had seen what was happening across

the ECZ tape but the police officer did not do anything. PW4 stated that when he entered the polling station, he voted using the pen provided by ECZ. After voting, he came out and asked the police officer if he had gone to see the 1st Respondent's group but the police officer shook his head. PW4 stated that when he met the Petitioner at the market, he informed him about the 1st Respondent distributing ball pens and showed him the K10.00 he had received.

7.20 In cross examination, PW4 stated that the ball pens that the Petitioner was distributing were ordinary ball pens. They had no party symbol. PW4 stated that he did not inform the Tribunal what the 1st Respondent was wearing that day. He also stated that he did not tell the Tribunal the serial number of the K10.00 note he had received. In further cross examination, PW4 stated that he did not take a video or picture of the K10.00 that he received from the 1st Respondent. When asked if there was any person who was chased from voting because he went with his own pen, PW4 stated that no one was chased for going to vote with their own pen.

PW4 was not re-examined.

8.0 The Respondents' Case

8.1 RW1 was Michael Chileshe, the 1st Respondent. He testified that on the 13th day of August, 2026, he left home and started off to go and vote between 10:00 and 11:00 hours. When he arrived at the polling station, he was ushered in the polling station without standing in the queue because he was a candidate under NRPUP. After voting, he went home to take care of his sick uncle. RW1 explained that he voted from Mukanda polling station. According to him, he found the station peaceful and he left it peaceful.

8.2 He stated that the following day between 01:00 and 03:00 hours, he started receiving results from his polling agents stationed at the polling stations. After receiving the results, he concluded that he had won the elections. On the 15th day of August, 2026, he went to the totalling centre at Mulilansolo where the results for Milemba Ward were announced and he was declared the winner.

8.3 RW1 denied distributing pens, K10.00 notes and fritters to the voters. He stated that he did not go to any other polling station apart from Mukanda where he voted from. He told the Tribunal that the issue of him distributing pens, K10.00 notes and food at Mikunku and Mwalule polling stations is not true. He added that the people that were cooking food are not his agents. He explained that the allegation that he was seen at Mukanda polling station distributing K10.00 notes and pens, and telling people to vote *"pe lampi"* is not true.

8.4 In cross examination by Counsel for the 2nd Respondent, RW1 stated that he had no personal polling agents. He explained that the agents that represented him were for the party, that is the NRPUP. RW1 stated that none of the polling agents informed him that the voting or the counting of votes was disrupted at any polling station. In further cross examination, RW1 stated that if there was any illegality, malpractice or bribery at any of the polling stations, people could have captured it on their phones. He stated that he followed all the ECZ regulations.

8.5 In cross examination by Counsel for the Petitioner, RW1 stated that he spent about 10 to 20 minutes at Mukanda polling station

when he went to vote. He stated that displaying party symbols or giving voters money to solicit for votes are electoral offences. RW1 stated that the elections were free and fair.

RW1 was not re-examined.

8.6 RW2 was Chomba Pule who was the Returning Officer for the 13th August, 2026 general election in Chilinda Constituency. He testified that ECZ had held various briefings prior to the elections. That the purpose of these briefings was to make people aware of the dos and don'ts at the polling stations. It was also to highlight a number of offences while at the polling station. The stakeholders were also told of the procedure to follow to report any issue that might arise should they not be happy. Specifically, to the polling agents, they were encouraged to stay in the polling station from opening, closing, counting and announcement of the results.

8.7 It was his testimony that on poll day, polling stations opened at 06:00 hours in Milemba Ward and voting went on smoothly up to the time the polling stations were closed. It was the testimony of RW2 that after the polling stations were closed, the ECZ staff counted the votes in the presence of all the stakeholders who were present at the time. He mentioned that the appropriate documents were filled in by the ECZ official including the Gen 20 form. He testified that no stakeholder was forced to sign the Gen 20 form.

8.8 He explained that where the Presiding Officer had sufficient forms, all the stakeholders present were expected to receive a copy and take to the candidate and to also make a follow up at the totalling centre. Where the Presiding Officer had insufficient Gen

20 forms, he allowed the same to be captured on stakeholders' phones or the contents can be jotted down in a notebook by stakeholders. According to him, the outcome of the results was still valid even if one person signs the form.

8.9 He further testified that at the totalling center, they received results from all the polling stations including Milemba Ward. The Presiding Officers would present a copy of the Gen 20 forms from the polling stations. RW2 informed the Tribunal that he would then use the same form to announce the election results. He testified that that procedure was done to ensure that the outcome of the poll at the polling station was the same at the totalling centre.

8.10 RW2 informed the Tribunal that an ECZ officer would proceed to copy the results exactly as they were appearing onto the computer. He testified that they printed the record of proceedings and produced a declaration form for Milemba Ward. The form showed what each candidate got from polling stations in Milemba Ward. The same form was used to announce and declare the winner in the Ward.

8.11 He further testified that Presiding Officers were trained and guided that they were the Commissions eyes in their respective polling stations because the Returning Officer could not manage to visit all polling stations. He informed the Tribunal that they were observing Milemba Ward through the Presiding Officer. He further testified that he did not receive complaints of people distributing pens, K10.00 or displaying party symbols from the Presiding Officers, the Conflict Management Committee or any other stakeholder in the election.

8.12 In when cross examined by counsel for the 1st Respondent, RW2 confirmed that stakeholders were not informed during ECZ trainings that voters were prohibited from using or carrying their own pens at polling stations. He stated that Presiding Officers were provided with diaries to record incidents and persons present, but he did not consider it necessary to peruse the diaries in the absence of a report of an incident. He confirmed that he had received no complaints concerning violence or the solicitation of votes in Milemba Ward and had received no report that the Conflict Management Committee was dealing with any such matters.

8.13 RW2 further stated that the fact that only NRPUP agents signed the *"CP1"* form did not, of itself, establish that the election was not free and fair, as the signatures merely indicated their presence when the form was completed. He also confirmed that stakeholders were permitted to record events at polling stations.

8.14 During cross-examination by counsel for the Petitioner, RW2 confirmed that he was stationed at the totalling centre and did not physically inspect any of the polling stations in Milemba Ward. He also confirmed that he did not inspect the polling station diaries and that they had not been produced before the Tribunal.

8.15 RW2 acknowledged that, apart from his own testimony, there was no other evidence before the Tribunal establishing whether incidents had occurred at the six polling stations in Milemba Ward. He maintained that a police report did not necessarily constitute a report to the ECZ and confirmed that only a Court or Tribunal could determine whether an election was free and fair. He explained that the Presiding Officers were effectively the ECZ's eyes

at the polling stations and that any person who witnessed electoral malpractice had the liberty to report it.

8.16 In re-examination, RW2 clarified that if the election was not free and fair, the stakeholders would have objected to the announced results and would asked for a recount of the votes.

9.0 Submissions

9.1 The parties filed written submissions, which we have carefully considered. We shall however not reproduce them herein.

10.0 Decision of the Tribunal

Undisputed Facts

i. On the 13th day of August, 2026 the Petitioner and 1st Respondent contested in the general elections for the position of councillor for Milemba Ward in Chilinda Constituency.

ii. The Petitioner contested on the UPND ticket while the 1st Respondent contested on the NRPUP ticket.

iii. The 1st Respondent was declared winner of the elections, having polled 1,377 votes, against the Petitioner's 600 votes.

Disputed facts

i. Whether the 1st Respondent induced voters through bribery

ii. Whether the 2nd Respondent failed to uphold and maintain the integrity of the election.

The Law

10.1 It is well established law that in election petitions, the standard of proof is higher than mere balance of probabilities. In the **Nkandu Luo v Mwamba** case, the Constitutional Court

pronounced itself on the burden and standard of proof required in election petitions when it held that:

> *"The burden of proof lies on the Petitioner to prove his allegation and that the standard of proof is a fairly higher degree of convincing clarity."*

It is therefore, the duty of the Petitioner in this case to prove his case to a fairly high degree of convincing clarity. The provisions of *section 97 (2) of the EPA* provides that:

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

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

(i) by a candidate; or

(ii) with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred;

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

down in such provision and that such non-compliance affected the result of the election; or

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

Whether the 1st Respondent induced voters through bribery

10.2 The Petitioner alleges that the 1st Respondent and his agents, distributed K10.00 notes, pens and food to voters at various polling stations, with the intention of inducing them to vote for the 1st Respondent. The law against inducements is provided for under *Section 81 (1)* of the *EPA*. The *section* provides that:

"A person shall not, either directly or indirectly, by oneself or with any other person corruptly—

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

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

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

10.3 The foregoing provision prohibits the giving of a bribe or any other form of inducement intended to influence a voter to cast his or her vote in favour of a particular candidate. Such inducement is not confined to the payment of money, but may extend to the provision of goods, articles, or other benefits where the purpose is to persuade or influence a voter in the exercise of his or her electoral choice.

10.4 The evidence adduced by the Petitioner's witnesses was that the 1st Respondent and his agents were observed distributing money and pens to voters at Charles, Mikunku, Mwalule and Mukanda polling stations. Further, PW1 and PW3 stated that, at Charles and Mwalule polling stations, they observed persons preparing nshima from a house near the polling station, and distributing it to voters prior to the voters proceeding to cast their ballots.

10.5 We have carefully considered this evidence, and note that the witnesses in question were partisan witnesses called by the Petitioner. Their testimony must therefore be approached with the requisite caution and, in the absence of independent corroborative evidence, this Tribunal would be slow to place reliance upon it as a basis for making a finding. In the case of **Christine Phiri Another v Melessiana Phiri & Another**[5] the Constitutional Court

echoed that in election petitions, evidence from partisan witnesses should be approached with caution and where necessary supported by independent evidence.

10.6 Upon consideration of the evidence, we find that the Petitioner failed to place before this Tribunal any independent evidence capable of corroborating the accounts given by PW1 and PW3 regarding the alleged distribution of money and pens, as well as the cooking and feeding of voters near the polling station. No photographs, video footage, documentary exhibits, or other objective evidence was tendered in support of these allegations. We are therefore not satisfied that the stated allegations were proved by sufficiently cogent and credible evidence.

10.7 More importantly, even if we were to accept that the alleged distribution of money and pens, as well as the cooking of food did in fact take place, that alone would not void the election. The Petitioner would still be required to demonstrate, through cogent and credible evidence, that the alleged electoral malpractice was sufficiently widespread to have deprived the majority of voters from choosing their preferred candidate. This was the guidance of the Constitutional Court in the case of **Mutelo K. v Kangombe & Another.**[6] The mere proof of an isolated act of electoral malpractice, without evidence demonstrating its impact upon the majority of voters, would not, in itself, satisfy that requirement.

Whether the 2nd Respondent failed to uphold and maintain the integrity of the election

10.8 The Petitioner further contends that the 2nd Respondent failed in its duty to safeguard the integrity of the polling stations by

permitting the 1st Respondent and his agents to distribute pens and money, as well as display or brandish party symbols, within the boundaries prescribed by the ECZ. The provision of the law governing the circumstances in which an election may be voided by reason of acts or omissions attributable to the 2nd Respondent is *Section 97 (4) of the Electoral Process Act.* It provides that:

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

10.9 The first question arising for determination under this ground is whether the conduct of the 2nd Respondent created or facilitated an environment in which electoral inducements, particularly through the distribution of K10.00 notes and pens, could take place. However, having regard to our earlier determination on the allegations of bribery and inducement, we consider it unnecessary to undertake a further examination of whether the 2nd Respondent created an environment conducive to such conduct.

10.10 In any event, with regard to the pens, the evidence before us does not demonstrate that the 2nd Respondent prohibited voters from using their own pens instead of those made available at the polling stations. This position was expressly confirmed by RW2 during cross-examination, when he testified that voters were

permitted to bring and use their own pens at the polling stations. It follows that voters were not constrained in the manner in which they exercised their electoral choice. In the circumstances, there is insufficient basis for concluding that the 2nd Respondent created or facilitated an environment conducive to electoral malpractice.

10.11 The second question under this allegation is whether the 2nd Respondent created an environment that encouraged flashing of party symbols by the 1st Respondent and his agents. Where an allegation that party symbols were flashed at a polling station, the Constitutional Court guided in the case of **Mulope v Shakafuswa**[7] that such an allegation must be proved by evidence. The mere assertion that a symbol was used or displayed does not establish electoral malpractice. In this matter, PW3 alleges that party symbols were flashed at the polling station but there is no independent evidence of this, other than the said assertion. There is further no evidence that the alleged flashing of the party symbol was done within the ECZ boundary, and that it was reported to the Presiding Officer for the 2nd Respondent to be held liable of facilitating an unconducive environment at the polling station. While some of the Petitioner's witnesses allegedly reported the incidents to police officers, RW2 testified that a report made to a police officer does not constitute a formal report to ECZ.

10.12 As regards the allegation that the 1st Respondent was distributing pens to voters on the queue, we have already found that there is no independent evidence, other than that of the Petitioner's witnesses, that this happened. In addition, no written report was produced in evidence to demonstrate that the alleged

incidents were reported, nor was there conclusive evidence that any verbal reports were made. The Petitioner's witnesses testified that they did not report the incidents they allegedly witnessed to the ECZ officials, which fact is corroborated by RW2's testimony that he did not receive any report, written or verbal, concerning any acts of electoral malpractice from the Presiding officers or stakeholders from the polling stations in Milemba ward. In the circumstances, the 2nd Respondent cannot be said to have failed to maintained the integrity of the polling stations in Milemba ward.

10.13 Regarding the assertion that the Petitioner's agents were not issued with Gen 20 forms, we note from the evidence on record that the Gen 20 forms could only be issued after the counting and announcement of the results. RW2 testified that where the Gen 20 forms are insufficient, the stakeholders are at liberty to capture the same on their phones or take note of the contents of the form in their notebooks. He also confirmed that the mere fact that only NRPUP agents signed *"CP1"* meant that they were the only agents present when the form was completed. We have no reason to refuse this evidence.

10.14 In the premises, the 2nd Respondent's failure to issue the Gen 20 forms to the Petitioner or his agents cannot be said to constitute non-compliance with the law or failure to maintain the integrity of the polling stations. We are fortified by the **Mwanakatwe v Scott** case where the Constitutional Court held that for *section 97 (2)* of the *EPA* to justify nullification of an election, it must be established by cogent evidence that there was none-compliance with the provisions of the *EPA* relating to the

conduct of an election and that the non-compliance affected the result of the election.

Conclusion

10.15 In conclusion, we find that the Petitioner has failed to prove his case to the requisite standard. Accordingly, we find no basis upon which to nullify the election of the Councillor for Milemba Ward and therefore dismiss the Petition. Each party shall bear their own costs.

10.16 The Parties are informed of their right to appeal against this Judgment to the Constitutional Court within 14 days of this decision. Security for costs is set at K1000.00 to be paid at the time of lodging the appeal.

Delivered at Chinsali on 27th September, 2026.

REPUBLIC OF ZAMBIA
JUDICIARY
27 SEP 2026
PRINCIPAL RESIDENT MAGISTRATE
P.O. BOX 410155, KASAMA

B. NKONDE
TRIBUNAL CHAIRPERSON

K. MWILA
TRIBUNAL MEMBER

Z. CHANSONGO
TRIBUNAL MEMBER