

THE LOCAL GOVERNMENT ELECTIONS TRIBUNAL FOR THE CHINSALI DISTRICT HOLDEN AT CHINSALI
(Civil Jurisdiction)

2026/F/LGET/05

IN THE MATTER OF:	**ARTICLE 159 (3) OF THE CONSTITUTION OF ZAMBIA (AMENDEMENT) ACT NO. 2 OF 2016**
AND	
IN THE MATTER OF:	**LOCAL GOVERNMENT ELECTION FOR COUNCILLOR IN THE ITAPA WARD OF THE CHINSALI DISTRICT HELD ON THE 13TH, AUGUST, 2026**
AND	
IN THE MATTER OF:	**SECTIONS 97 (1) (2) AND 83 (1) OF ELECTORAL PROCESS ACT NO. 35 OF 2016**
AND	
IN THE MATTER OF:	**RULE 11(1) OF THE LOCAL GOVERNMENT ELECTION TRIBUNALS RULES, 2026**

BETWEEN:

KENANI MWILA **PETITIONER**

AND

NKWETO MILANDILE **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**



CORAM: CHRISANTOS. K CHANDI , CHONGO MVULA , HICKET. N NALISHUWA.

FOR THE PETITION:	***K. Kawana- Messrs Muleza Mwimbu and Company***
FOR THE 1ST RESPONDENT:	***M. Mweene, G.C Phiri, N Nyirenda, - M. Mweene and Partners Legal Practitioners A Malando - A.Aongola And Partners***
FOR THE 2ND RESPONDENT:	***J. Katati- Katati Newtons Legal Practitioners***

JUDGMENT

LEGISLATION REFERRED TO:

1. *Constitution of Zambia (Amendment) Act No.2 of 2016*
2. *Electoral Process Act No.35 of 2016 of the Laws of Zambia*
3. *Local Government Election Tribunals, Statutory Instrument No. 32 of 2026*

CASES REFERREDTO:

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

1.0 INTRODUCTION

This is a Petition filed by one KENAN MWILA challenging NKWETO MILANDILE'S election and declaration as elected Ward Councilor for ITAPA WARD pursuant to the Local Government Election Tribunals Rules, 2026 as read with the Electoral Process Act No.35 of 2016 of the Laws of Zambia.

2.0 BACKGROUND

This Petition follows the Local Government Election for ITAPA WARD within Chilinda Constituency of Chinsali District of the Muchinga Province of the Republic of Zambia held on the 13th August, 2026 in which the 1st Respondent was declared the duly elected Councillor for ITAPA ward by the

Returning officer of the said Chilinda Constituency in the Municipal town and District of Chinsali.

The ground upon which this petition is presented is that the election was not held in an atmosphere that was free and fair due to electoral malpractice.

The Petitioner petitioned on the grounds as follows:

I. the election was marred with wide spread illegality, corrupt practices and other misconduct in connection with Council election for Itapa Ward

II. There was widespread non-compliance with the provisions of the Electoral Process Act, No. 35 of 2016 by the 1st Respondent and 2nd Respondent and that such non-compliance affected the outcome of the election.

Accordingly the 1st and 2nd Respondents filed answers and accompanying affidavits.

ATTENDANT LEGISLATION AND JURISDICTION OF THE TRIBUNAL

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

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

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

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

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

Further , Section 97 (2) of the Electoral Process Act provides that "the election of a candidate as a Member of Parliament, mayor, council chairperson or councilor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be, that—

> ***(a) a corrupt practice, illegal practice or other misconduct has been committed in connection with the election—***
>
> ***(i) by a candidate; or***
>
> ***(ii) with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and***
>
> ***the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred;***
>
> ***(b) subject to the provisions of subsection (4), there has been non-compliance with the***

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

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

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

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

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

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

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

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

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

We now consider the evidence in this case:

THE PETITIONER'S CASE

The Petitioner testified and called four (4) other witnesses. The Petitioner was **Kenan Mwila**, hereinafter referred to as, "PW1." His testimony was that he stood as councilor for Itapa Ward in the 2026 elections under the United Party for National Development (UPND). He testified that on 11th of August, 2026, around 13:00 hours, he was distributing the voter's register to his polling agents, Evelyn Mulenga and Chrispin Chewe in an area known as Mulenga Adams.

He found, the 1st Respondent, Nkweto Milandile, who was also standing as Councilor for Itapa Ward holding a rally in Mulenga Adams. He narrated that the 1st Respondent was telling people gathered at the rally that they should not use pens provided by the Electoral Commission of Zambia (ECZ) because the Electoral Commission of Zambia had used magic on the pens and that if they vote for a UPND candidate using the pens, their vote would be multiplied by 10.

PW1 Testified that the 1st Respondent told the people that he, himself, was going to buy pens for everyone and he was going to have people give out the pens before voting on the 13th of August, 2026. It was also his testimony that after the conclusion of the Rally, the 1st Respondent gave out two bags of salt to the people he was campaigning with and instructed them to give the salt to the women that were present at the rally to share. The 1st Respondent gave a sum of K400.00 to men to share. PW1 stated that he did not know all the men that were present but only knew the person who received the money, Philip Kalela.

PW1 testified that at the time he was observing this, he was standing at a place not too far from where the rally was happening. It was also his testimony that he was not sure the number of people gathered at the rally but that they were many and that the number of registered voters in Mulenga Adams was 748.

PW1 further testified that around 14:00 hours, he left Mulenga Adams and headed to Kambwi Samika where he resides. Around 16:00 hours, the same day, the 1st Respondent held another rally at Kambwi Main, at his sister's home. PW1 stated that he was able to see because Kambwi is his village and he was nearby. According to PW1, the 1st Respondent continued telling people that they should not use pens provided by the Electoral Commission of Zambia. The 1st Respondent told them that if they use the pens provided by the ECZ, they were going to make PW1 win. The 1st Respondent also promised the people that if they vote for him, he would hold a big celebration. PW1 also stated that the 1st Respondent told the people

gathered that on the day of voting, they should not go after voting but should hang around near the polling station until the counting of votes was done.

PW1 also testified that the 1st Respondent's Ward Chairman also echoed the words of the 1st Respondent at the rally with regard to the pens issued by the Electoral Commission of Zambia. At the end of the rally, the 1st Respondent gave the women two bags of salt to share and gave the men K400 to share. PW1 stated that he did not know the number of people that were gathered at the rally but that the number of registered voters in Kambwi was 661.

PW1 further testified that on the 13th of August, 2026, around 06:00 hours, he went to cast his vote at Kambwi Polling station. He found people with pens in their hands and the people were whispering to each other that they should vote on the steering symbol and that he was able to hear because he was also on the Queue. He informed a police officer at the polling station about what he had observed. The Police officer advised the people that they were there to vote and not to campaign. Among the voters in the queue was the 1st Respondent's sister whom PW1 knew as Franco Mwamba's mother. The first Respondent's sister told the police officer not to intimidate them and their right to vote.

PW1 became scared and asked the police officer if he can be allowed to skip the queue and go inside to vote. After voting around 06: 00 hours, he went back home. A few minutes later, his polling agent Anthony Mulenga came to his house which was near the polling station and informed him that there were people at Kambwi polling station showing people posters and who to vote for. He went to the polling station to confirm and found Mr. Joseph Chanda and Mr. Collins Chipasha showing people posters and pointing that they should vote for the 1st Respondent. The posters had the name of the, party symbol and the face of the candidate. PW1 approached Mr. Joseph Chanda and told him that what he was doing was wrong but Mr. Joseph Chanda started insulting him, calling him a dog and a tick and that he was

nothing. PW1 was afraid that people will think he was there to cause confusion so he went back home.

At home, PW1 called Mr. Davies Nongo, the District Chairman for UPND. PW1 explained to him what was happening at Kambwi polling station and that Mr. Davies Nongo should help him report the matter to the police. Mr. Davis Nongo came around 14:00 hours and together, they went to Kambwi polling station and Mr Davies Nongo talked to Mr. Joseph Chanda, Collins Chipasha, Patrick Lesa and Mr. Joseph Chanda's child while PW1 remained in the vehicle. PW1 heard Davies Nongo admonish them about showing people who to vote for. PW1 stated that Mr. Joseph Chanda, Collins Chipasha, and Patrick Lesa and the other two whose names he did not know, were the 1st Respondent's people. Around 17:00 hours, they left Kambwi polling station and went to Kalela polling station.

According to PW1, at Kalela polling station, they found Mr. Kawaya, the 1st Respondent's person who was distributing pens to voters in the queues. The pens were glass pens, blue and black in colour.

In Cross-examination, PW1 stated that he knew that the people who were showing voters posters and giving pens to people in the queues were the 1st Respondent's people because they used to campaign for the 1st Respondent. He admitted that none of the people showed him documents to confirm that they were the 1st Respondent's people. He also admitted that during the training they had with Electoral Commission of Zambia, they were not prohibited from coming with their own pens and that none of the people who came with their own pens on voting day were chased.

PW1 also conceded that during their training with ECZ, they were told were to report any electoral irregularities and that he did not report in writing the issue of people distributing pens to voters on voting day. PW1 admitted that he did not see the 1st Respondent ferry voters. He also admitted that he did not know when Campaigns were supposed to close and that it was not wrong for the 1st Respondent to campaign on the 11th of August, 2026. He

admitted that he did not know the number of people that had gathered at the 1St respondent's sister's place and that he did not know whether they lived there or not. He conceded that apart from his oral testimony, he did not have video, audio or picture evidence that the 1st Respondent and his people were showing posters to people or giving pens to people.

The Petitioner's second witness was **John Katyeka**, PW2, whose testimony was that on the 13th of August, 2026, around 06: 00 hours, he went to vote at Kambwi Polling station. He left the polling station at 07:00 hours. He got a call from the PW1 asking him if he had seen what Chanda Magaiva was doing, to which he replied in the negative. PW2 started warning Chanda Magaiva who was at a short distance from Kambwi polling station to stop showing posters to voters. The posters were for Presidents, Members of parliament and Councilor. Chanda Magaiva started using abusive language towards him calling him a dog and that he was nothing. This was happening around 08:00 hours and that PW1 was also present at the time.

PW2 stated that he went to report Chanda Magaiva to a police officer who was at Kambwi Polling Station but the Police officer advised him to let Chanda Magaiva be. He also stated that he did not know the name of the police officer. He also testified that when Chanda Magaiva saw him approach the police officer, he and his friends moved from where they had camped to a junction. They were 6 in number and among them, he knew Chanda Magaiva, Chipasha and someone he knew as 'Bashi Chanda 6'. He stated that he knew these people because they were found together sometimes and that they were supporters for NRPUP.

He stated that the 6 were showing people who were coming to vote posters and who to vote for. He went to the junction and found a lot of people gathered and that the 1st Respondent was among them.

The 1st Respondent then got on a Motorbike and left in the direction of

Kalela polling station. Between 09:00 hours and 10:00 hours, PW1 and PW2 got on Motorbike and together with the rider of the Motorbike went to Mulenga Adam polling station. When they arrived at Mulenga Adam Polling station, they found people eating sugar cane and Philip Kalela giving out fritters to people. The People started booing them before they had even disembarked from the motor bike. He testified that Philip Kalela was a member of the Party represented by the lamp symbol and that he did not know the name of the party. He also stated that Philip Kalela used to be found with the 1st Respondent. When he asked the people what was happening, the people informed him that the polling station had not yet been opened.

Between 12:00 hours and 13:00 hours, PW2 and the PW1 proceeded to Mbesuma polling station where people were voting outside. There, they found the 1ST Respondent who was at a distance of 100 meters from the polling station. The people they found there told them that they had already been given something to motivate them and that they were going to vote for the party represented by the lamp. He stated that this made PW1 upset because people were not in order and he was being denied by the police officer to cross the boundary.

PW2 testified that around 15:00 hours, Mr. Davies Nongo came and found the same confusion which made him upset. PW2, PW1, and Davies Nongo, together with the people Davies Nongo came with left Mbesuma Polling station and went to Kambwi polling station. He testified that the 1st Respondent and Philip Kalela were on a motor bike and himself and the others were following behind in a vehicle.

They arrived at Kambwi polling station at 16:00 hours. There, they found Chanda Magaiva, Bashi Chanda 6, Chipasha and some of their friends he did not know telling a big crowd that they should vote on the steering symbol. Upon seeing them, Chanda Magaiva and his friends, scattered. He stated that the place where Chanda Magaiva and his friends were gathered was 200 meters away from the polling station and that it was near Chanda

Magaiva's house.

In cross examination, PW2 stated that at the time that Chanda Magaiva and his friends were telling people to vote on the party represented by the steering, their vehicle was parked 70 meters away from them and that he was able to hear because they were using signs. PW2 admitted that Chanda Magaiva is a member of the NRPUP and that NRPUP had its own candidate that stood as Councilor. PW2 stated that he was a Ward Chairman and Campaign Manager for UPND. PW2 admitted that at no point before or after the elections did he see Nkweto Milandile giving out salt, alcohol or money to people. He also admitted that Philip Kalela was a member of the NRPUP party and that the 1st Respondent stood as an Independent candidate. PW2 also confirmed that he did not make any report to the Electoral Commission of Zambia against Magaiva and his friends.

PW3 was **Vincent Mwansa** who testified that on the 13th of August, 2026, between 06:00 hours and 07:00 hours, he and others went to Kambwi polling station to vote. When they arrived, they found a demarcation before entering the polling station were people were gathered. Among the people gathered was Chanda Chileshe popularly known as Magaiva, the 1st Respondent, Chileshe Menso popularly known as Bashi Chanda 6 and Cosmas Chipasha. The people mentioned were displaying symbols to the people gathered and telling them that they should vote for the 1st Respondent. He testified that the 1st Respondent told the people not use the pens inside and promised them that when they vote for him and he wins, he will hold a big celebration. He entered the polling station and left the people outside. After voting, he went back home around 07:00 hours.

Sometime, before 08:00 hours, he received a phone call from PW1 asking him to escort him to Kalela polling station with his motorbike. Before they reached Kalela polling station, they met a group of people whom they by-passed and went straight to the polling station. The Petitioner then entered the polling station while PW3 decided to go back to the place where a lot of people had gathered. There, he found the 1st Respondent, Philip Kalela and

Kawaya giving pens to people and displaying their party symbol, the steering. He testified that he was given a pen. Philip Kalela then stated that they should not have given PW3 the pen as he resides and votes from Kambwi. According to PW3, when they attempted to get the pen back from him, he denied and a person by the name of Mutale pulled him from the crowd and took him to where he had parked his Motorbike.

The 1st Respondent then got on a Motor bike and left. A few minutes later, PW1 came out from the polling station. Then PW1 and PW3 got on the Motorbike and left for Kakongola polling station where they arrived at between 07:00 hours and 08:00 hours. PW1 went inside Kakongola polling station where the voters were voting from while PW3 went to a shop near the polling station where he found the 1st Respondent and Chanda Kalafwampuka drunk and the two started booing him. PW3 stated that the 1st Respondent was buying beer for people and telling them to vote on the steering symbol. He promised them that if they vote for him, and he wins, he would hold a big celebration. He stated that he and PW1 went back to Kambwi between 08:00 hours to 09:00 hours.

In cross examination, when asked as to whether he was aware that the 1st Respondent was an independent candidate with no political affiliation, he responded in the affirmative. When asked whether the pen he had received influenced his voting, he responded in the affirmative. He also admitted that he voted for a candidate of his choice. He conceded that apart from his oral evidence, he did not produce before the Tribunal any evidence to show that the 1st Respondent was buying beer for voters and giving out pens.

The Fourth witness was, **Davies Nongo**, PW4. His testimony was that he was selected by the Electoral Commission of Zambia to monitor elections on behalf of the UPND in Itapa ward. He testified that on the 13th of August, 2026 around 08:00 hours, he received a phone call from PW1 who was standing as Councilor for Itapa Ward. The Petitioner informed him that there was a problem in Itapa Ward. Around 14:00 hours, PW4 arrived with a vehicle at Mbesuma polling station accompanied by two boys. There, he

found a group of voters and among them were the 1st Respondent and his friend Philip Kalela. The 1st Respondent and Philip Kalela were distributing pens to voters. Upon seeing him, the 1st Respondent and Philip Kalela jumped on a motorbike and left heading in the direction of Mulenga Adam. PW4 managed to locate PW1 who was being assisted by Katyeka and together, they started off from Mbesuma polling station in a vehicle following the 1st Respondent and Philip Kalela who were on a motorbike.

According to PW4, the distance between Mbesuma and Mulenga Adam is 3 to 5 Kilometers. They arrived at Mulenga Adams between 15:00 hours and 16:00 hours and found a group of voters who were 60 meters away from Mulenga Adam polling station. Among them was the 1st Respondent and Kalela. PW4 testified that when the 1st Respondent and Kalela saw him, they scampered and as they attempted to get on the motorbike, the 1st Respondent dropped two pens. PW4 picked the two pens and went back to Mulenga polling station where he lodged a complaint with the Presiding Officer against the 1st Respondent on what he had observed. The Presiding officer failed to come out and attend to what was happening outside.

PW4 together with PW1 and Katyeka around 16:00 hours, proceeded to Kambwi polling station. As they were moving, he saw a motorbike at a distance on which the 1st Respondent and Philip Kalela were but they could not catch up as the state of the road was bad.

The Tribunal heard that PW4 then went to Kambwi polling station where he found the Petitioner's father who informed him that back at his village, there was a house nearby where people were seated on the road distributing pens to voters. PW4 went there to witness it for himself and he found Joseph Chanda and other people he did not know. He stated that he knew Joseph Chanda as a person who was campaigning for the 1st Respondent. He stated that he found Joseph Chanda giving pens to people and when Joseph Chanda saw him, he ran into the house. The people he did not know that remained outside carried the chairs back to their homes.

The Tribunal also heard that around 17:00 hours, PW4, the 1st Respondent and Katyeka visited Kalela polling station. PW4 entered the polling station and asked the Presiding officer whose name he did not know if people were coming with their own pens to vote. The presiding officer told him that a lot of voters were coming with their own pens and denying to use pens provided by the Electoral Commission of Zambia. He left the polling station around 18:00 hours and dropped the 1st Respondent and Kenan Katyeka at home.

During cross examination, the Tribunal heard that he admitted that he was aware that people were allowed to use any pens other than the ones provided by the Electoral Commission of Zambia. He also conceded that he was not shown any accreditation to confirm that Philip Kalela was an agent for the 1st Respondent.

When asked whether he would be surprised to hear that Philip Kalela was a member of the NRPUP, he responded in the negative adding that people lose memory. He also admitted that he did not receive any complaint about Mulenga Adam polling station opening late. He also admitted that no report was made to the police with respect to the issue of giving of pens to voters. When asked whether he was trained by the Electoral Commission of Zambia, he responded in the affirmative. He stated that they were told to report any Malpractice to the Conflict Management Committee. PW4 conceded that he did not report to the Committee the issue of showing posters to voters and giving pens to voters by the 1st Respondent and his people. He also conceded that apart from his oral testimony, he had no evidence to show that the 1st Respondent or his supporters were giving pens to voters and showing posters to voters on the voting day.

PW4's testimony marked the close of the Petitioner's case.

In addition to the testimonies the petitioner submitted inter alia that the Petitioner commenced his action against the Respondents on 28th August, 2026 seeking the following relief that the Election of the 1st Respondent be

declared NULL and VOID and any other Order as may seem just in the premises by this Honorable Tribunal.

The petitioners recounted through the evidence that we mainly that PW1 testified that on the 11th August, 2026 he saw the 1st Respondent holding a rally at Adam Mulenga were he was heard telling people not to use the pens for ECZ during the poll day and that the 1st Respondent was telling supporters that UPND has put magic on the ECZ pens as he promised to buy pens for his supporters on 13th August, 2026.

The petitioner further submitted that PW1 testified that he saw 1st Respondent giving bags of salt to women and money in the sum of k400 to men and that the witness knew the 1st Respondent's agent named Philip Kalela who was among the group.

We have not reproduced all the evidence recounted in the submissions since it is on record accordingly.

However, and to argue the case the Petitioner submitted he was fortified by Article 159 (1) (3) of the Constitution of Zambia provides that

> ***"A person may file an election petition with the Local Government Electoral Tribunal to challenge the election of a Councilor."***

He further reffered to Section 97 (2) of the Electoral Process Act which provides grounds upon which an election petition may be void.

The petitioner also submitted that that section 81 (1) (a) of the Electoral Process Act, No. 35 of 2016 Provides that

> **"A person shall not either directly or indirectly by oneself or another or with any other person corruptly give, lend, procure, offer or agree or agree or offer money to a voter."**

The Petition submitted that in the case of **Abuid Kanwangu vs. Elijah Muchima Appeal No. 8 of 2017 and Lewanika and others** it was held that **the standard of proof in elections is a fairly high degree of convincing clarity, and that the wrong complained about must be widespread to affect the majority of voters from electing the preferred candidate.**

The Petitioner contended that the elections in Itapa ward were not free and fair as the 1st Respondent conduct of giving out pens, bags of salt and money in the sum of k400 on the poll day 5 meters away from the polling stations influenced the majority of voters in choosing the candidate of their choice as the said electoral misconduct was widespread in all the polling station as testified by PW1, PW2, PW3 and PW4.

He submitted further that the decision in the case of **Mazoka v. Mwanawasa and Mubika Mubika v. Poniso Njeulu, SCZ Appeal No. 114 of 2007**, wherein it was stated that **the burden of proof lies upon the party who substantially assert the affirmative of the issue and that it must be established, with convincing clarity, that the malpractise complained of was widespread and affected the outcome of the election** and the Petitioner submitted that the electoral misconduct was widespread across the entire Itapa ward as evidenced by the testimonies which is consistent in all the polling stations.

The petitioner also submitted that the case of **Nkandu Luo (PROF) and Another v. Doreen Sefuke Mwamba and Another , Judgement No. 51 Of 2018** was instructive. He submitted that in that case the Constitutional Court held as follows:

> ***"In order for the Petition to successfully have an election annulled pursuant to section 97 (2) (a), there is a threshold to surmount. The 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 agent committed a corrupt practice or illegal practice or there 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."

He submitted that the 1st Respondent in the company of his authorized agents committed the acts of vote buying and display of party symbol of "STEERING" as the same can be inferred from the consistency of the testimonies given by PW1, PW2, PW3, PW4.

He further referred this Tribunal, to the case of **Bowman Lusambo vs Benard Kanengo and Others** and argued that the Court stated as follows:

"Clearly on the totality of the wrongful acts that have been connected to the appellant and having found that the wrongful acts were widespread, the inescapable conclusion is that the majority of the voters in Kabushi Constituency were or may have been prevented from electing their preferred candidate as found by the learned trial Judge."

And submitted that in **Bowman Lusamboa case**, the Court further treated consistently and corroborated testimony of witnesses as **"cogent and thus reliable".**

The Petitioner further drew the Tribunals attention to the case of **Herbert Shabula v. Greyford Monde (Constitutional Court Appeal No.13 of 2016,** in which it was held inter alia;

that section 97 (2) (a) (ii) of the Act as stated above is very clear as to when a misconduct can

be attributed to a candidate. This is where a candidate has knowledge of the misconduct and consents or approves of it or if the misconduct complained of was done by election agents or polling agent.

To that effect he submitted that the knowledge and consent or approval in the context it is used maybe express or by implication as was held in the **Nelson v. Bwalya and Another (No. 15 of 2021)** and submitted that the majority of voters in Itapa ward were prevented from electing a candidate of their choice due to the conduct of the 1st Respondent and such electoral misconduct was in all the polling stations.

THE 1ST RESPONDENTS'S CASE

RW1 was **NKWETO MILANDILE**, aged 35 residing at Mwenechinji village, Itapa Ward in the Chilinda Constituency of Chinsali District. He said that he was a rice farmer and recently elected Councillor of Itapa Ward in the Chilinda Constituency of Chinsali District.

The Tribunal heard that on the 13th of August, 2026 and about 07:00hrs he went where he registered to vote at Kambwi polling station adding he used his motor bike to get there. He said that upon arrival he was assisted to get in and cast his vote and that he returned home.

The tribunal heard that that he was an independent candidate and that he had earlier applied to stand on UPND but was not adopted; but the PW1, Mr Kenan Mwila was adopted. He said that he carried a mass of voters to his ticket. The Respondent told the tribunal that he left the polling station between 07.00 hours and 08.00 hours as he did not take long there. He said that about 09:00 hours his father called him to his residence within the same village; adding he was into the night. He said that about 22:00 hours his mother left home to go see what was happening at Kalela Polling station; whilst he remained home sleeping.

The Tribunal heard that about 24:00 hours he was awaken by a nock and his mother gave him the results from Kakongola polling station and that he was told he polled 104 votes and that at Kalela he polled 172.

He said that in the morning he woke up and started waiting for the other results the polling stations. The Tribunal heard that around 0700 to 0800hs he started receiving results from polling agents and that he calculated and that by 10:00 hours he had learnt that he had won the election against others Kenan Mwila for UPND and Tresford Mutale for NRPUP. He said that he polled 1240 votes from all polling stations whilst the said Tresford Mutale polled 660 and Kenan Mwila polled 215.

The Tribunal heard that he went to ISOKA the same day and came back to Mulilansolo totalling centre on the 15th of August, 2026. He said that the Returning officer declared the results for the Member of Parliament and the result for the Councillors and that even him was declared a winner for Itapa Ward.

The Tribunal heard that about the alleged voter buying he bought no votes nor sent any agents to do so. He said that the only agents he had are those who were his poling agents who he named as Musata Felix, Alan Kalela, Edgar Milandile, Joyous Lesa, Tresford and Enerst Mulenga who were in various polling stations. He said that others were Remmy Chipanta, John Chipanta, Sichela Aaron, Benjamin, Anna Kalela and that Philip Kalela was the election observer. He said that the said allegations were manufacture and were just lies. He said that he never ferried any voters nor issue any salt; adding he did not even have capacity to do so.

He told the Tribunal that he just won and by a big margin. He said that people just voted for him. He said they were sensitized by the ECZ on how to conduct themselves during campaigns and if any problems arose they were to report to the Conflict Management Committee. He said he had never been called about any incidence. The tribunal heard that the incidence advised to have happed on the 11th of August, 2026 was not true because his last date

of campaign was on the 10th of August, 2023 when he had two Rallies but that still the salt issue was a lie.

He said that he had a Honda during campaigns and that on poll day his Monitor Mr Philip Kalela was on the bike with Kangwa Morice.

When cross examined he confirmed inter alia that that before he was independent, he was a member of the UPND but was not adopted so he went independent. He also said that he went to vote using his motor bike around 07 to 08:00 hours and that he was only there for about 5 minutes. He said the polling station was about 4km to 5km.

He said he knew Collins Chipasha and Joseph Chanda. He said that these were just citizens of Macheleta village but not his polling or campaign agents. He however said that he did not know this Chanda Kalafwampuka. He said that Edgar Milandile was his brother and his agent; he said that he was not involved or being privy to any electoral malpractice. He also said that when he went to vote he had no posters with him. He said he only went to Kambwi polling station but was not at any other polling station not even Mbesuma. He said that he did hear Mr Katyeka saying people were showing the steering symbol. He said that he would not know if Katyeka saw people who were showing his symbol.

RW2 was Philip Kalela 52 of Mukanga Villege, Chief Mubanga, a farmer who said that he was an Election Observer in Itapa ward in this Election and that on the 13th of August, 2026 on his official assignment on behalf of the 1st Respondent who was a candidate to the office of Councillor in Itapa ward. He said that he went and cast his vote at 06:00hours and went back home.

He said about 08:30hrs he called Kangwa to avail the motor bike, for him to go and do his job of monitoring elections. He said he went to Mbesuma where he was told all was well and he left food for Nkweto's polling agents, then to Mulenga Adam with same routine, and reached Kambwi at 13 hours. He said that even there he asked ECZ officials who confirmed to him all was

well adding he left food for the agents of the 1st Respondnent. He said that he left Kambwi and went to Kalela polling where he approached the streams with officials saying all was well and he gave the food to Nkweto's agents.

He told the Tribunal that he then went home for lunch and about 15 hours approached Kakongola Polling station where he found all was well, left the food and returned to Kalela polling station. He said he remained there till vote counting adding that in Stream 1 the 1st Respondent won with 220 votes and that around 24:00hrs to 01:00 hours the polling station closed.

The witness said that he went to stream 2 where they found them counting and that Nkweto got 172 votes adding that Mr Felix Musata had also brought results from Kakongola with Nkweto having polled 104 and said that with other agents they walked to KAMBWI polling station and thereof they found they finished voting and counting adding they received the result with Nkweto having polled 233 votes adding they went to his home and slept.

The witness told the Tribunal that about 0600hrs he took Kangwa to Mulenga Adam where they were told Nkweto polled 258 votes adding they went to Mbesuma polling station and there got the results and they found he got 253 votes. He said he then called and told Mr Nkweto the results and that he got the G20 and signed it.

He said that ECZ displayed posters so that people would look at them before going to vote. He said he did not see any pens with people but that he was seeing polling agents with pens. He said that he is the one who went to various stations and that during campaigns he did campaign with Mr Nkweto Milandile but in most cases he campaigned alone. He said he was the UPND chairman and that their last campaign was on 10/08/26 not 11/08/26. He said this particular petition has shocked because the petitioner lost all five (5) stations.

On allegations of him buying beer for the voters, he said he was a pioneer in the catholic and he would be angry to see anybody buying beer.

In close examination he told the Tribunal that he was a UPND member and UPND ward chairman; only he refused to support the candidate they gave them. He said he wanted the 1st Respondent to win given that they started UPND together in 2015.

Regarding violence, he said he did not record any incident of violence in his book or complaints thereof. He told the Tribunal that instead they were being thankful for a good job. According to him the 1st Respondent was at his father's house until he left for Isoka in the afternoon. He said he knew Bashi Chanda Six(6) as a villager of Kambwi and not a supporter of the 1st Respondent.

The 1st Respondent who for most relied on the answer and affidavit verifying answer submitted that the **central question is whether, upon the evidence actually adduced, the Petitioner has proved the statutory grounds upon which the election and declaration of the 1st Respondent may lawfully be annulled under Section 97 of the Act and submitted that** that the Petitioner has failed to discharge that burden.

The 1st Respondent submitted that in accordance with the governing law and jurisdictional framework, **Section 97 of the Electoral Process Act No. 35 of 2016** provides that the jurisdiction to avoid an election is statutory; accordingly, the Petition must be determined by applying the evidence to the express requirements of the statute.

He argued that of particular importance to the allegations directed against the 1st Respondent, section 97(2)(a) provides for avoidance where a corrupt practice, illegal practice or other misconduct has been committed in connection with the election and that same has to be: **"by a candidate"** or: **"with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent".**

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

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

and that these words are central to the determination of the Petition against the 1st Respondent.

The 1st Respondent submitted that first, there must be proof of a corrupt practice, illegal practice or other misconduct. Second, where the Petition seeks to avoid the election of the successful candidate, the statute expressly identifies the basis upon which the relevant misconduct must be connected to that candidate.

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

He argued that the requirements are therefore cumulative and Proof that an incident occurred does not dispense with proof of the statutory connection to the 1st Respondent; and proof of a statutory connection does not dispense with proof of the required electoral effect.

The 1st Respondent argued that in applying to this Petition, the Petitioner was therefore required to establish that

a) the corrupt practice, illegal practice or other misconduct alleged;
b) b) that such misconduct was committed by the 1st Respondent, or that the statutory basis for attributing the conduct to him was established; and
c) c) that the majority of voters in the relevant district were or may have been prevented from electing the candidate whom they preferred.

The 1st Respondent submitted that the evidence brought forth did not satisfy those cumulative requirements.

He argued that the Petitioner separately advances allegations concerning the conduct and administration of the election by the 2nd Respondent. Those allegations engage section 97(2)(b) and must be distinguished from allegations directed against the 1st Respondent under section 97(2)(a) and that this Tribunal should therefore avoid conflating alleged candidate misconduct with alleged non-compliance in the administration of the election.

Regarding the burden of proof and standard of proof required in election petitions the 1st Respondent advance that ratio in the case of Mwiya Mutapwe v Shomeno Dominic, Appeal No. 19 of 2017; Saul Zulu v Victoria Kalima (AC No. 141 of 2013-14) ZMSC 24, in which the Constitutional Court reaffirmed that allegations in an election petition must be established to a "**fairly high degree of convincing clarity**"; the approach he argued was consistent with the earlier Supreme Court decision in **Akashambatwa Mbikusita Lewanika and Others v Frederick Jacob Titus Chiluba (1998) Z.R. 79 (S.C.).**

The 1st Respondent submitted that the Constitutional Court has repeatedly applied that heightened standard in election petitions, including **Steven Masumba v Elliot Kamondo - Appeal No. 17 of 2016**; **Sibongile Mwamba v Kelvin Sampa and Another - Appeal No. 2 of 2017**, **Chrispin Siingwa v Stanley Kakubo - 2016/CCA/A28; Appeal No. 7 of 2017** and **Njeulu v Mubika - Appeal No. 9 of 2017** and added that the heightened standard assumes particular significance where allegations of bribery, violence, intimidation, undue influence and manipulation of electoral records are made and that such allegations cannot be established merely by suspicion, assumption, political association or unsupported inference.

He submitted that the Tribunal must, therefore, scrutinize the quality, source, credibility, corroboration and probative effect of the evidence relied upon to establish each statutory ingredient.

He submitted that the precise language of **section 97(2)(a) of the Electoral Process Act No. 35 of 2016** assumes particular importance because a substantial part of the Petitioner's case concerns conducts allegedly committed by persons other than the 1st Respondent.

The 1st Respondent argues that the first statutory question is whether the relevant misconduct was committed: **"by a candidate".** The evidence must therefore establish whether any relevant corrupt practice, illegal practice or other misconduct was personally committed by the 1st Respondent or the alternative statutory formulation concerns misconduct committed: **"with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent".** These words require an evidential basis connecting the particular third-party misconduct to the First Respondent in the manner prescribed by the statute.

The 1st Respondent argued that he was fortified by the ratio in the case of **Mwiya Mutapwe v Shomeno Dominic, Appeal No. 19 of 2017**, wherein the Constitutional Court made the important observation that: ***"not everyone in a candidate's political party is his election agent"*** adding that the above referred to principle is directly relevant to the present Petition. He submitted that the Petitioner has failed to establish the statutory connection required by section 97(2)(a) merely by proving that an alleged wrongdoer belonged to, supported or was associated with NRPUP.

He submitted further that in **Chrispin Siingwa v Stanley Kakubo - Appeal No. 7 of 2017**, the Constitutional Court considered the statutory character of an election agent and emphasized the need to establish the relevant relationship before the conduct of another person can properly be attributed to the candidate. In **Chewe v Mucheleka and Another - CCZ/A 23 of 2021,** the Constitutional Court similarly reversed a nullification where the evidence did not establish the alleged malpractice to the required standard and aspects of the alleged attribution to agents were unsupported by evidence.

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

The 1st Respondent urged the Honourable Tribunal that in accordance with **Section 97(2)(a) of the Electoral Process Act No. 35 of 2016,** the Tribunal does not end with proof of misconduct or attribution. It further requires proof that: **"the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred".** He submitted that the statutory test is therefore not simply whether some voters encountered an irregularity. Nor is it sufficient merely to establish misconduct at one or more polling stations.

The 1st Respondent submitted that the Petitioner must establish the electoral consequence prescribed by the statute and that in the case **Mwiya Mutapwe v Shomeno Dominic - Appeal No. 19 of 2017**, the Constitutional Court treated proof of the alleged corrupt or illegal practice and proof of its effect upon the majority of voters as separate requirements and that in **Chrispin Siingwa v Stanley Kakubo - Appeal No. 7 of 2017** the Constitutional Court likewise held that section 97(2)(a) requires proof of the relevant malpractice together with proof of the prescribed effect upon the majority of voters.

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

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

The 2ND RESPONDNETS CASE

Rw3 was Mr Chomba Pule 51, of FTC compound in Chinsali. He said he was a teacher and was a Returning Officer for Itapa ward and Chilinda constituency of Chinsali , he said he conducted the other elections but at the level of an assistant returning officer. He said all the candidates were oriented including regarding grievances and complaint's procedure. He said they were told they could complain verbally to the presiding officer or in writing and submitting it to the presiding officer. The third way was that of filling in the objection form.

He said on the 13th August, 2026 he had no opportunities to get to all the polling stations but there were presiding officers and that on that day he had received no complaints of misconduct, electoral malpractice or illegal acts. He said the Gen 20 forms showed that the petitioner had received 215 votes, Mutale 660 and Nkweto Milandile 1240.

He said three stakeholders who attended also signed. He said that the Gen 20 forms were public documents and allowed the presiding officers were authorised to give out and that there was no report to ECZ regarding the refusal to give out the Gen 20 form.

When cross examined the witness said it was not prohibited for anyone to take pictures or videos of any pursued malpractice. He said the elections are not invalidated by one agent of refusing to get a gen 20 form. About pens he said during the orientation that question arose and that guidance that anyone can come with their pen but that there would be pens in each electoral booth. He said that it was not UPND the person who lost election but ECZ to declare who the winner is.

When cross examined by the petitioner's counsel, he said he had a role to play in Itapa ward, polling station through presiding officers. When asked if how he could know if there were complaints and yet he did not visit Itapa he said he would have known from presiding officers and that he had been talking to officers there was no report of malpractice. He said he did not know the about complaint made to Remmy Mulenga.

In addition to the testimony the 2nd Respondent also made submissions for which we are indebted.

In his submissions the 2nd Respondent strongly and vehemently opposed the petition on the ground that the petition lacks merit, that the reliefs being sought are not tenable at law and that the 1st Respondent was validly elected by the voters of Itapa Ward in Chinsali District.

Regarding burden of proof the 2nd Respondent submitted that it is trite that an election petition is not determined merely on the basis of allegations contained in the Petition. The allegations must be proved by evidence. The 2ND respondent argued that the Supreme Court in **Brelsford James Gondwe v Catherine Namugala, Appeal No. 175 of 2012, [2014] ZMSC 1**, stated as follows: ***"The burden of establishing any one of the grounds lies on the person making the allegation..."*** and that the Court further stated that the grounds must be established to a ***"fairly high degree of convincing clarity."***

The 2nd Respondent argued that same principle was reaffirmed by the Constitutional Court in **Nkandu Luo and Another v Doreen Sefuke Mwamba and Another, Selected Judgment No. 51 of 2018, [2018] ZMCC 254**, where the Court held that the burden lies upon the person making the allegation and that the grounds in an election petition must be established to a fairly high degree of convincing clarity.

ANALYSIS AND DETERMINATION

We warn ourselves that the Petitioner PW2, PW3, PW4 are UPND members and are partisan witnesses and in election matters witnesses from the Litigants own political party are generally witnesses who fall into the category of partisan witnesses. The evidence of such witnesses should be treated with caution and are required to be corroborated to eliminate the danger of exaggeration and falsehood; the reason being that such witnesses have a tendency to exaggerate claim to support their own political parties during election. The Tribunal is guided by the constitutional court in the

case of ***Steven Masumba V Eliot Kamondo (2023) Selected Judgment No 53 of 2017.***

Having considered the evidence the question for the Tribunal to answer is; whether 1st and 2nd Respondents or their agents engaged in illegal practices or corrupt practices and non-compliance of the electoral laws and whether the same affected the election results that they ought to be declared null and void.

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

Broadly, the Petitioner and his witnesses testified concerning events alleged to have occurred principally during voting and counting. Their evidence concerned, among other matters, alleged bribery and vote buying, violence and intimidation, campaigning or solicitation of votes around polling stations, interference with polling agents, and conduct attributed to persons associated with the 1st Respondent's political party.

It is therefore right to say collectively, the evidence of the Petitioner and his witnesses concerned what they heard, saw and what they were told. At the hearing, the Tribunal did not receive evidence, such as audio recordings, accreditation forms, videos, pictures, voters' cards, written complaints of malpractices activities addressed to ECZ, proof of the Monies and Pens, as well as affected voters.

It is also clear that and we agree with the 1st respondent's submission that other than the Petitioner's and his witness's oral testimones, no further evidence was adduced to corroborate the said oral testimonies.

We will now take each allegation in turn:

VIOLENCE DURING CAMPAIGNS AND ON THE POLLING DAY:

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

From the evidence of PW1 the only tone of violence that was brought to the record was that on polling day the 1st Respondent and some supporters namely Chanda Magayva and another who were confronted over the issue of posters and showing of the steering symbol did in fact in return insults PW1, PW2 and PW3. Conversely, and if it were not for the said confrontation, the exchange of insults would not have happened. We also leant that the said insults did not prevent the trio from casting the vote. They in fact did cast the vote.

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

For the avoidance of doubt **Section 97(2)(a) of the Electoral Process Act No. 35 of 2016, "the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred".** It is therefore not just proof of misconduct or non- compliance.

We note further that the 1st Respondent was an independent candidate and some of the Petitioner's witnesses identified the supporters they alleged to have committed such misconduct as members of NRPUP. We note on record that there was a candidate for NRPUP who in this election polled second with 660 votes and we are inclined to take the view that no sufficient evidence to prove that the people who committed the alleged acts were agents of the 1st Respondent.

The evidence on record shows that the violence complained of relates to the violence on the 13th of AUGUST 2026 and are in form of the insults against the petitioner and his ward chairman who went around confronting perceived supporters of the 1st Respondent. Meanwhile PW2 had described voters as generally happy; but flashing an annoying symbol for the independent candidate. The insults as described and mainly directed at UPND party operatives who went around confronting other members who they knew were supporting candidates other than theirs, cannot be said to be widespread and thus falls short of having effect on this election result.

In casu no violence was alluded to by any of the petitioner's witnesses during campaigns before the 13th August, 2026.

DISTRIBUTION OF SALT TO WOMEN AND K400 TO MEN:

'The Petitioner and his witnesses alleged that the 1st Respondent including his agent Philip KALELA indulged in the distribution of salt to women and k400 cash to men at two rallies, namely at Mulenga Adam and at Kambwi village on the 11th of August, 2026.

The claim of the Petitioner who is the eye witness stated that he was present and was seeing the salt given and was also at Kambwi where he saw the same thing happen. The Respondent denied this allegation but admitted that he did conduct these two rallies on the 10th of August 2026 and not on the 11th day of August, 2026.

We are of the view that if there is proof that the said salt distribution and

cash disbursements occurred and were something more than just what would be expenses involved in rallies then it would qualify as misconduct.

We have noted that apart from the claim by the Petitioner's oral testimony that this happened no further evidence was brought to prove that there was cash distribution on the alleged day or indeed on the 10th of August 2026. The petitioner's testimony shows that despite him alleging that he was present at both rallies no independent evidence was adduced to corroborate the story that he was giving out salt and money to the women and men.

THE GIVING OF PENS AT THE POLING STATION ON POLLING DAY AND CAMPAINGING ON POLL DAY

From the evidence on record the Petitioner and 4 of his witnesses alleged that the 1st Respondent was giving pens to voters within the polling station and that his agents were campaigning in the poling station or near the polling station. Accordingly, if this did occur, would be proscribed under section 89 (1) of the Electoral Process Act No 35 of 2026. Again no independent or concrete evidence was brought to the record to corroborate that the 1st Respondent and his agents were soliciting for votes at or near the polling station by giving pens to voters. With regards to showing of posters to voters PW1, PW2 and PW3 testified that they saw Chanda Magyver, chanda Ma 6 were near the polling station with posters showing the symbol for the 1st Respondent. The Tribunal is further aware that Section 2 of the Electoral Process Act defines an election agent "***as a person appointed as an agent of a Candidate for the purpose of an election and who is specified in the candidate's nomination paper***" while a polling agent is defined "***as an agent appointed by a candidate in respect of a polling station.***"

The Tribunal is further alive to the definition given for the polling agent by the Constitutional Court in the case of" ***Nkandu Luo and The Electoral Commission of Zambia V. Doreen Sefuke Mwamba and the Attorney General.8*** cited above. We note that the Petitioner's witnesses did not

establish that the People alleged to have committed the alleged electoral infractions were agents of the 1st Respondent or and that they acted with the knowledge and consent of the 1st Respondent.

FERRYING OF VOTERS

The allegation of ferrying voters in the petition was never argued with evidence at trial and thus ignored accordingly.

The evidence on record shows that the petitioner has not proved all his grounds with evidence to the required standard as per ratio in the case of ***Abuid Kawanga v. Elijah Muchimal as cited above.***

STANDARD AND BURDEN OF PROOF:

The above principle applies to the case in casu and further the case of ***Brelsford James Gondwe V Catherine Namugala.4,*** where the Supreme Court reiterated that:

> ***"The burden of establishing the ground lies on the person making the allegation and in election petitions, it is the petitioner in keeping with well settled Principle of Law in civil matters that he who alleges must prove/. The grounds must be established to the required standard in election petitions namely High degree of convincing clarity.***

NON – COMPLIANCE OF THE ELECTORAL LAW

The question we ask ourselves is that was there non-compliance and if there was, was it sufficient for us to avoid and nullify the election of the 1st Respondent as Ward Councilor for Itapa ward.

The answer is found in section 97 (2) (b) and (4) of the Electoral Process Act No. 35 of 2016 of the laws of Zambia that enacts as follows;

> ***(b)." Subject to the provisions of subsection (4), there has been non-compliance with this Act relating to the conduct of elections and it appears to the High Court or Tribunal that the election was not conducted in accordance with the principles laid down in such provision and that non-compliance affected the election***
>
> ***(4) An election shall not be declared void by reason of any act or omission by an election officer in breach of that officers official duty in connection with an election with an election if it appears to the High Court or tribunal that the election was so conducted as to be substantially in accordance with the provisions of this Act, and that such act or omission did affect the result of that election."***

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

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

We have come to the conclusion that that there are no electoral infractions that

have been proved and associated with the 2nd Respondent conduct of the 13th August 2026 elections. There is no evidence that an alleged infractions did occur with proof that they were reported.

The petition is unsuccessful and is hereby dismissed; and Pursuant to *section* ***108 (1) of*** *the* ***Electoral Process*** *Act No.35 of 2016* we therefore order that the 1st Respondent was duly elected to the office as COUNCILLOR for Itapa Ward in Chinsali District of the Muchinga Province of the Republic of Zambia. Given the Nature of these proceedings we order that each party will bear its costs.

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

DELIVERED IN OPEN COURT THIS ..26th.. DAY OF..Sept'..2026

HON. CHRISANTOS K. CHANDI

HONOURABLE CHAIRPERSON

REPUBLIC OF ZAMBIA JUDICIARY 26 SEP 2026 RESIDENT MAGISTRATE NDOLA SUBORDINATE COURT P.O. BOX 72930 NDOLA

MS CHONGO MVULA

HONOURABLE MEMBER

HICKET N. NALISHUWA

HONOURABLE MEMBER