IN THE HIGH COURT FOR ZAMBIA **2026/HL/EP/0001**
AT THE DISTRICT REGISTRY
HOLDEN AT LIVINGSTONE
(Civil Jurisdiction)

REPUBLIC OF ZAMBIA
JUDICIARY
29 OCT 2026
HIGH COURT
DISTRICT REGISTRY - CIVIL
P. O. BOX 60170, LIVINGSTONE

BETWEEN

CLIVE DARIUS MIYANDA **PETITIONER**

AND

EMELDAH MUNASHABANTU **FIRST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA **SECOND RESPONDENT**

Before the Honourable Mr Justice K. Chenda on 29th October 2026, in open Court.

For the Petitioner : Mr C.Z. Zulu of Linus & Partners
For the First Respondent : Ms M. Kamwi of Kamwi Andeleki Legal Practitioners
For the Second Respondent: Mr M.D. Lisimba of Mambwe, Siwila & Lisimba Advocates

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JUDGMENT

The Supreme Law:

(1) The Constitution, Chapter 1 of the Laws of Zambia as amended by (*inter alia*) Act No. 2 of 2016 and Act No. 13 of 2025

Primary Legislation:

(1) The Electoral Process Act No. 35 of 2016, as amended by Act No.12 of 2026

Subsidiary Legislation:

(1) The Electoral Process (General) Regulations S. I. No. 63 of 2016, as amended by S.I No. 39 of 2021

Case Law:

(1) *Lewanika & Ors. v FTJ Chiluba* - SCZ Judgment no. 14 of 1998
(2) *Nkandu Luo & ECZ v Doreen Sefuke Mwamba & AG* - Selected Judgment No. 51 of 2018 at p. J50-51

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(3) *In Re Clare, Eastern Division Case* (1892) 4 O'M & H 162 at 164
(4) *Morgan & Ors. v Simpson & Anr.* (1974) 3 All ER 722 at 731 from line h
(5) *Sibongile Mwamba v Kelvin M. Sampa & Anr.* Vol 3 (2007) ZR 284 at 316 -317
(6) *Galaunia Farms Limited v National Milling Company Limited* (2004) ZR1 at pages 9-10
(7) *Mwalimu Simfukwe v Evaristo David Kasunga* - Appeal No. 50 of 2013
(8) *Abiud Kawangu v Elijah Muchima* - Appeal No. 8 of 2017 (2016/CC/A039)
(9) *Joseph Malanji v Charles Abel Mulenga & Anr.* - 2021/CCZ/A0021 at J24
(10) *Richwell Siamunene v Sialubalo Gift* Vol. 3 (2017) ZR 335 at 354;
(11) *Ndola Energy Co. Ltd v Lamamuda Ltd.* – Appeal No. 62/2014 at p.J20
(12) *AG v LAZ* (2008) Vol. 1 ZR 21
(13) *AG v Chishimba Kambwili AG v Chishimba Kambwili* - SCZ/8/15/2020 ruling dated 29th December 2021 at p.R15-R17
(14) *Afrope Zambia Limited v Anthony Chate & Ors* - Appeal No. 160/2013 at p. J16

Authoritative Texts:

(1) Halsbury's Laws of England, 4th edition (2007) Reissue Vol. 15(3) (Elections and Referendums) para. 344
(2) Halsbury's Laws of England 5th edition (2013) Vol. 38A (Elections and Referendums), Lexis Nexis: London at p. 176, footnote 4
(3) Oxford Advanced Learner's Dictionary, 10th edition (2020), Oxford University Press: Oxford
(4) Black's Law Dictionary in Bryan A. Garner ed. 8th Edition (2004), Thomson West Publishing Co.: Dallas

1. INTRODUCTION AND BACKGROUND

1.1 Zambia is a constitutional democracy and has three primary organs of government. Two of them derive their mandate directly from the citizenry through periodic elections, held every 5 years.

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1.2 The said two organs are firstly the Executive for election of a Republican President as its head (and also for election of part of the local government office bearers). Secondly, is the Legislature for election of members of Parliament (singular "**MP**", plural "**MPs**") for all 226 constituencies in the country. The rest of the MPs and local government office bearers are selected through the newly introduced proportional representation system. This is in accordance with arts. 47 and 68 of the **Constitution of Zambia**[1] (the "**Constitution**").

1.3 When there are grievances over the electoral process, the stakeholders can have recourse to the Judiciary as an independent primary organ of government.

1.4 If it is a parliamentary election case, they typically arise from acts alleged to have been committed during the campaign period (when candidates are locked in a contest to sway the electorate), or allegedly committed on voting day itself. Common grievances are a losing party accusing the victor of engaging in improper tactics (such as bribery and violence) and that it made the playing field uneven, ultimately influencing the voters and / or outcome of the election.

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1.5 However, this petition is a novelty of sorts. It centres not on the acts of the parliamentary contestants but more on specific functions of the public officers entrusted to manage the electoral process. They are from the Electoral Commission of Zambia ("**ECZ**"), which is the Second Respondent herein. The ECZ is a creature of, and mandated by the **Constitution**[1] (in art. 229) to conduct and manage the electoral process.

1.6 Building from that, in execution of its mandate **in parliamentary elections**, the arms and legs of the ECZ include election officers. Election officers are further classified into *inter alia* presiding officers - in charge of polling stations and returning officers - in charge of the entire constituency. This is provided for in the **Electoral Process Act**[1] (the "**EPA**") in ss.37A and 37B.

1.7 What is called into question before Court are the parameters of a returning officer's power to ascertain the result of the poll (in terms of which candidate has received the majority of the votes) and to declare them as duly elected MP.

1.8 In the case at hand, the Petitioner and First Respondent were the parliamentary election contestants for Mapatizya constituency, located in Zimba district of the Southern Province of Zambia. The constituency had a total of 74 polling stations spread out across

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12 wards. Following election day on 13th August 2026, the First Respondent was declared winner based on results from 64 out of the 74 polling stations. Aggrieved by that, the Petitioner took out this action on 18th August 2026 by petition filed in the High Court at Livingstone.

1.9 The Petitioner alleged in the main that the post-voting processes of the Second Respondent were affected by violence and procedural irregularity. The First Respondent was accused of having a hand in both, and that it ultimately tipped the outcome in her favour. The petition was accompanied by an affidavit verifying facts and arguments, both filed on 18th August 2026.

1.10 In her answer filed on 27th August 2026, the First Respondent denied involvement in any violence or interference with the Second Respondent and denied any wrongdoing whatsoever on her part. She asserted that she was lawfully elected as MP. Her answer was supported by an affidavit and arguments of even date.

1.11 The Second Respondent tendered its answer on 27th August 2026, denied any wrongdoing and insisted that there was adherence to the law, which resulted in the declaration of the First Respondent as victor. The answer was accompanied by an affidavit and arguments of same date.

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1.12 As proponent of the case, the Petitioner closed the pleadings with a reply filed 7th September 2026 in respect of the First Respondent's answer and a reply filed 8th September 2026 relating to the Second Respondent's answer. The replies were accompanied by affidavits and arguments (of corresponding dates), reacting to the Respondents' affidavits. The Petitioner reiterated the grievances which he had introduced in the petition.

1.13 I heard the petition at Livingstone from 21st September 2026 to 25th September 2026 and this is the reserved judgment, divided into the following parts -

(i) introduction and background (above);
(ii) outline of parliamentary electoral system
(iii) summary of the material facts;
(iv) summary of the evidence;
(v) closing submissions by counsel;
(vi) outline of the law on parliamentary election petitions;
(vii) analysis and findings; and
(viii) conclusion and orders.

2. OUTLINE OF THE ZAMBIAN PARLIAMENTARY ELECTORAL SYSTEM

2.1 This part is necessary to give proper context to this judgment, given the specific tier of election that is in issue.

2.2 The constitutional and legislative changes of 2025 and 2026, respectively, also reformed the parliamentary electoral system. It

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changed from a purely constituency based system to the following under art.47(2) of the **Constitution** as it now stands:

> *"(2) **Elections to the National Assembly shall be conducted under a mixed-member proportional representation electoral system, as follows**:*
>
> *(a) **first-past-the-post electoral system for Members of Parliament contesting for constituency-based seats**; and*
> *(b) proportional representation electoral system for women, youths and persons with disabilities, as prescribed.;"*(Emphasis added)

2.3 For purposes of this case, the relevant limb of the new mixed-member proportional representation electoral system is the one for MPs with constituency based seats. Art. 47(2)(a) reproduced above makes it clear that the electoral system for them shall be 'first -past-the-post'.

2.4 A useful description of the first-past-the-post voting system can be found in the **Halsbury's Laws of England**(1):

> *"344. Elections taking place in a constituency or electoral area*
>
> ***Contested elections for the return of a member to represent a parliamentary constituency**, a local government electoral area (including London Assembly constituency) or a Welsh Assembly constituency **take place under a voting system where the result is ascertained by counting the votes given to each***

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candidate and the candidate to whom the majority of votes has been given is declared to have been elected." (Emphasis added)

2.5 As well as in the footnote thereto wherein it is stated:

> "***This voting system is known variously as the*** *'simple majority', 'relative majority' or* ***'first past the post' system***. *In none of these terms is it to be implied that the successful candidate has to receive more than a certain number (or more than 50%) of the votes cast before he can be declared to be elected."* (Emphasis added)

2.6 Evidently, it is a system that requires that every vote must be accounted for and that the one who gets a simple majority of those votes carries the day. That is the system which is relevant to the determination of this case.

2.7 Turning now to the role of the ECZ, part XVIII of the **Constitution**[1] covers commissions and in art. 229 re-creates the ECZ and prescribes its functions in the following wording -

> "***229.(1) There is established the Electoral Commission of Zambia*** *which shall have offices in Provinces and progressively in districts.*
>
> ***(2) The Electoral Commission shall-***
> ***(a) implement the electoral process;***
> ***(b) conduct elections*** *and referenda;*
> *(c) register voters;*
> *(d) settle minor electoral disputes, as prescribed;*
> ***(e) regulate the conduct of voters and candidates;***

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(f) accredit observers and election agents, *as prescribed;*
(g) delimit electoral boundaries; and
(h) perform such other functions as prescribed."
(Emphasis added)

2.8 Quite clearly, the ECZ has the constitutional mandate to *inter alia* conduct and manage the electoral system for selection of constituency based MPs. It also extends to managing the key stakeholders who include voters, candidates, accredited agents and observers.

3. SUMMARY OF MATERIAL FACTS PLEADED

3.1 The crux of the Petitioner's grievance, as pleaded, was that post-election day, the work of the ECZ was disrupted by violence orchestrated by the First Respondent; that it resulted in loss of some of the election materials; and that the First Respondent coerced the ECZ to declare her as winner despite some votes being unaccounted for. The Petitioner's position was that it is he that actually received the majority of the votes and should have been declared victor.

3.2 The essence of the First Respondent's opposing pleading was that she had no hand in the violence nor did she interfere with the post-voting work of the ECZ. She also asserted that she was the

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victor based on her computation of votes from all 74 polling stations.

3.3 In its pleadings, the ECZ conceded that its facility had suffered a violent attack causing the votes to be unascertained in 10 of the 74 polling stations in the constituency. It was also stated that the declaration of the First Respondent as victor was based on the ascertained results from 64 polling stations, a step that the ECZ refutes to have been done at the behest of the First Respondent. The ECZ pleaded that the declaration was clothed with the agreement of stakeholders, including the Petitioner and First Respondent as contestants.

4. SUMMARY OF EVIDENCE

4.1 *PW1 was Mr Clive Darius Miyanda, the Petitioner herein who testified in chief* that he contested in the general elections as an independent candidate for the Mapatizya constituency parliamentary seat.

4.2 The only other contestant was the First Respondent, under the ticket of the UPND, as his competitor.

4.3 It was his testimony that that he filed a petition challenging the First Respondent's election because of anomalies.

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4.4 It was his evidence that on 13th August 2026, he voted at Kabanga primary School and returned home to follow the results announcements through radio broadcast.

4.5 On 14th August 2026 he went to the ECZ totalling Centre, Kabanga Secondary School to follow the proceedings and about 13:00 hours, the First Respondent's cadres stormed the place, causing the Police to disperse them with teargas. At the time, the Second Respondent had announced results for 49 polling stations. After the fracas, he went home, traumatised whilst ECZ moved the totalling centre to Zimba Secondary School which was 75Km away.

4.6 He continued to follow proceedings on radio as he had Gen 20 forms and what was being announced tallied with the forms.

4.7 On 15th August 2026 about 64 polling stations results had been announced and on 16th August 2026, the First Respondent was declared winner, which was shocking for the Petitioner given the computation of the Gen 20 forms he had.

4.8 He met his polling agents to compare the record of proceedings he thought they had with the Gen 20 forms. None of his agents had the record of proceedings.

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4.9 Infact, he only saw it on 20th September 2026 from his lawyer after the Second Respondent filed a bundle of documents post-petition.

4.10 After comparing the record of proceedings, he noticed a number of inconsistencies in relation to Gen 20, in particular for 7 polling stations.

4.11 The issues in summary are that the figures in the record of proceedings are swapped between him and the First Respondent when compared to the corresponding Gen 20. Also, that some figures in the record of proceedings bear no tally with those on the Gen 20 forms.

4.12 The Gen 20 forms are featured as copies in his bundle and he also has the originals.

4.13 The particular issues for the 7 polling stations are as follows:

4.13.1 Chalinga Basic School, stream 2 shows him with 369 and the First Respondent with 75 in the Gen 20 forms at p.54 of his bundle. However, the record of proceedings at p.1 of 6 shows him with 28 and the First Respondent with 490 votes;

4.13.2 Chitumbi, Gen 20 form is at p.39 of his bundle and shows him with 19 and the First Respondent with 179 and yet in

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the record of proceedings at p.2 of 6 it shows the votes the other way round;

4.13.3 the swap is the same with Jokwe where Gen 20 form at p.23 of his bundle shows the Petitioner with 462 and the First Respondent with 77 votes while in the record of proceedings at p.2 of 6 it is the other way round;

4.13.4 Mapatizya stream 1 Gen 20 form is at p.59 of his bundle shows him with 305 and the First Respondent with 125. The record of proceedings at p.3 of 6 does not match it as the Petitioner is reflected as 78 while the First Respondent shows as 336 votes;

4.13.5 Mapatizya stream 2, Gen 20 form is at p.56 of his bundle and shows him with 286 while the First Respondent has 132. The record of proceedings at p.3 of 6 does not match as it shows the Petitioner with 28 and the First Respondent with 389;

4.13.6 Njabalombe stream 2 has Gen 20 form at p.48 of his bundle. It shows the Petitioner with 324 and the First Respondent with 220 and there are 15 rejected ballots. The record of proceedings at p.4 of 6 shows the Petitioner with

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25, the First Respondent with 694 and 0 ballots rejected; and

4.13.7 Simundivwi stream 1 Gen 20 form is at p.12 of the Petitioner's bundle and shows the First Respondent with 324 and the Petitioner with 94 votes. The record of proceedings at p.5 of 6 shows it the other way round.

4.14 According to the record of proceedings, the totals are: the First Respondent 14,812 and the Petitioner 14,330.

4.15 According to the Gen 20 forms which he has, the totals should be 15,450 for the Petitioner and 13,470 for the First Respondent.

4.16 He would like the Court to declare him as winner.

4.17 *When cross examined by Ms Kamwi for the First Respondent, the Petitioner testified* that his computations of totals were based on polling stations for 64 out of 74.

4.18 He testified that he had been a parliamentary election candidate twice. There are a number of copies of Gen 20 forms for each polling station. The polling agents for the candidates get copies and the returning officer gets the originals from the presiding officers.

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4.19 He agreed that the returning officer announces results based on what is received from the presiding officers not those from polling agents.

4.20 The Gen 20 forms in his bundle are certified by the ECZ logo on the top right-hand corner.

4.21 He admitted that the violence only occurred at the totalling centre. The people that caused the violence were not dressed in party regalia, he did not see the First Respondent instructing them to do so and he did not see her at the totalling centre.

4.22 He did not see the First Respondent instructing the returning officer to announce the results.

4.23 He also agreed that he did not see the First Respondent interfere with the returning officer.

4.24 He knows Mr Batwell Muntanga but does not know if he was there at the Zimba totalling centre. He is also not aware that Mr Muntanga acted as his agent to agree to results being announced for 64 polling stations.

4.25 The Petitioner was not cross examined by the Second Respondent but testified when questioned by the Court that according to him the following polling stations still had missing results when the First Respondent was declared as winner:

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(i) Simwami;
(ii) Mafumbo Stream 1
(iii) Mafumbo stream 2
(iv) Manyemunyemu
(v) Chalinga stream 1
(vi) Njabalombe
(vii) Malamfu stream 1
(viii) Malamfu stream 2
(ix) Chilobe
(x) Simundivwi

4.26 The Petitioner was not re-examined

4.27 *The Petitioner's second witness was Maj. Josphat Kapika (Rtd) ("**PW2**"). He testified in chief* that he was an alliance partner for the Petitioner to monitor the polling agents and represent the Petitioner at the totalling centre.

4.28 It was his evidence that he coordinated the Petitioner's polling agents on voting day, 13th August 2026 and received Gen 20 forms from them. On 14th August 2026 he was at the totalling centre at Kabanga and the returning officer had announced about 49 polling stations and the Petitioner was leading.

4.29 Then some people stormed the place and demanded returning officer to announce the results or face chaos.

4.30 Police officers dispersed the thuggish mob and the returning officer continued to announce results until the district electoral

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officer arrived and stopped it saying it was not safe. He directed that the totalling centre be moved to Zimba Secondary School.

4.31 The ballot boxes were loaded onto two light trucks and moved in a convoy to Zimba and he followed.

4.32 However, at the bridge one ballot box dropped and broke. The delegation arrived in Zimba about 18:00 to 19:00 hours and the materials were secured in a container at the Council.

4.33 The district electoral officer and returning officer said the process would resume on 15th August 2026, which it did.

4.34 On 16th August 2026, the ECZ announced votes were still tallying with the Gen 20 forms but the ECZ told them as agents to leave the totalling centre as they prepared for the declaration.

4.35 PW2 and others resisted but the Police were used to eject them and they remained outside the main hall.

4.36 The returning officer inquired who wanted to receive the results he was going to declare. PW2 and others expressed interest but the results were not given to them. Instead the First Respondent was seen arriving with her cadres at the same time the returning officer was coming out to announce.

4.37 The First Respondent was declared winner, based on 64 polling stations. There was no record of proceedings given and he only

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saw it on 20th September 2026 after the Second Respondent filed a bundle post-petition.

4.38 The record of proceedings showed errors on 7 of the 64 polling stations announced. Some had wrong figures, while others had results swapped.

4.39 The Second Respondent's affidavit in support of answer filed 27th August 2026 lists the 10 polling stations with missing results. It is in a Zambia Police incident report.

4.40 He does not agree with the incident report as the information was not told to them.

4.41 After he tallied the Gen 20 forms for 64 polling stations he found the Petitioner with 15,450 and the First Respondent with 13,470 votes.

4.42 *When cross examined by Ms Kamwi for the First Respondent, Mr Kapika testified as follows.* The Petitioner's bundle had 74 Gen 20 forms and they were not verified by the returning officer.

4.43 He admitted that the Zimba totalling centre was free from violence and that the contents of the ballot boxes were properly secured in containers on 15th August 2026.

4.44 He denied having pushed ECZ to announce on 16th August 2026 or that he intimidated the returning officer.

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4.45 He denied that ECZ called for a meeting of all stakeholders over the missing results for the 10 polling stations.

4.46 He however admitted that he verbally consented to the results of the 64 polling stations being announced verbally at the totalling centre.

4.47 *When cross examined by Mr Lisimba for the Second Respondent, Mr Kapika testified* that the ECZ announced results from 64 polling stations. Out of the 74 Gen 20 forms in the Petitioner's bundle, 64 were verified.

4.48 *Mr Kapika was re-examined by Mr Zulu and clarified* that 64 of the Gen 20 forms were verified. On that note the Petitioner closed his case.

4.49 *Mrs Emeldah Munashabantu (the "**First Respondent**" or "**RW1**"),* testified on her own behalf.

4.50 *In her evidence in chief* she relied on her affidavit filed on 27th August 2026 accompanying her answer to petition and on her bundle of documents filed on 17th September 2026.

4.51 She testified that on 13th August 2026, she cast her vote at Luyaba polling station and later checked on her agents at two other polling stations. She spent the rest of the day at home.

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4.52 It was her evidence that on 14th August 2026 her plans to visit the totalling centre were aborted because her agent Chipo Malavwe informed her by telephone that there was a security problem there. He informed her that the totalling centre was later moved to Zimba.

4.53 On 15th August 2026 her polling agent informed her that there were some missing documents and it occasioned a delay in ECZ's announcement of results.

4.54 On 16th August 2026 she was informed by her agent that stakeholders were demanding for announcement of the results and that ECZ called them all. It was verbally agreed that ECZ should declare based on the verified results even if incomplete. The agreement was later reduced to writing as per copy in her bundle of documents, given to her by her agent.

4.55 She was told by her agent that ECZ was getting ready to declare the result of the poll. She went to the totalling centre as she wanted to be present.

4.56 ECZ and other stakeholders were already gathered, the final results were announced and she was declared as winner.

4.57 She categorically denied the Petitioner's allegation that she told the returning officer to announce incomplete results.

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4.58 She was not at Kabanga totalling centre and her cadres did not start violence nor did she instruct them to.

4.59 The results for 64 polling stations are what were announced and upon which she was declared winner.

4.60 She later came to know about missing results for 10 polling stations when the record of proceedings was availed to her a few days before trial. She could not recall the names of all the polling stations with missing results.

4.61 *When cross examined by Mr Zulu, for the Petitioner,* Mrs Munashabantu agreed that Mapatizya Constituency had 74 polling stations spread out over 12 wards.

4.62 She initially stated that she did not have results for all 74 polling stations and did not do her own tabulation of results.

4.63 However, when shown paragraph 10 of her affidavit of 27th August 2026, she changed position and stated that it was correctly worded to say she tabulated results from all 74 polling stations. She however conceded that she had not brought documents from which she did her tabulation.

4.64 In one breath she stated that the document she exhibited in her bundle showed that she agreed to announcement of results of 64 polling stations.

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4.65 When pressed further she stated that she was not availed results for the 64 polling stations and that she did not consent to announcement of the results based on the 64.

4.66 She was shown Gen 21 (declaration of the result of the poll) and ECZ 19 (record of proceedings at the totalling of votes) and agreed that it is based on them that she was declared as duly elected with 14,812 votes versus the Petitioner's 14,330.

4.67 When shown the results in the record of proceedings for the following polling stations, she agreed that they did not tally with the results in the Gen 20 forms featured in the Petitioner's bundle:

(i) Chalinga – 2
(ii) Chitumbi –1
(iii) Jokwe
(iv) Mapatizya –1
(v) Mapatizya – 2
(vi) Njabalombe – 2
(vii) Simundivwi –1

4.68 When asked to do so by Counsel, in the context that the Petitioner agreed with the record of proceedings results in all except 7 polling stations, the First Respondent totalled the results for 57 based on the record of proceedings and for the above 7 based on the Gen 20 forms in the Petitioner's bundle. The totals worked out to be 13,496 for her and 15,456 for the Petitioner.

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4.69 The Petitioner's bundle has Gen 20 forms for the 10 polling stations with missing results namely:

(i) Chilobe
(ii) Sialumba
(iii) Mulamfu - 1
(iv) Mulamfu - 2
(v) Njabalombe -1
(vi) Kabulawo -1
(vii) Mafumba - 2
(viii) Mafumba - 1
(ix) Manyemunyemu
(x) Siinwami 01

4.70 They give a total of 1896 votes for her and 2,529 for the Petitioner.

4.71 When added to the totals for the 64 it gives 17,985 for the Petitioner and 15,392 for her.

4.72 She admitted that she had not brought any Gen 20 forms to Court.

4.73 **When cross-examined by Mr Lisimba,** for the Second Respondent, Mrs Munashabantu testified that:

4.73.1 she assumed the Gen 20 forms in the Petitioner's bundle were prepared by him since his signature is on the bundle;

4.73.2 she only saw the Gen 20 forms through her lawyer;

4.73.3 the averment of her winning based on her own tabulations of votes from 74 polling stations was with the aid of her

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polling agents at the polling stations not from the totalling centre;

4.73.4 according to her tabulations, she won;

4.73.5 according to the Petitioner's tabulations, he won; and

4.73.6 according to the ECZ record of proceedings, she won.

4.74 *When re-examined by Ms Kamwi, the First Respondent testified* that the reference made in paragraph 10 of her affidavit of 27th August 2026 to her tabulation of votes for 74 polling stations was based on unverified results which she received from her polling agents. Some of those results came through the telephone.

4.75 She also clarified that she consented to announcement of the available results not to the results as a whole because she had not seen them.

4.76 *The First Respondent called Mr Lazarous Simasiku ("**RW2**")* as a witness. *He testified in chief* that he was a recently elected Zimba ward councillor and present on 16th August 2026 at the totalling centre at Zimba Secondary School.

4.77 He testified that the delays by the ECZ in announcing the results made the stakeholders present uneasy. The stakeholders

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included agents for the Petitioner, agents for the First Respondent, independent monitors and observers. He was also present.

4.78 In response to stakeholders' concerns, the ECZ explained that the documentation was jumbled up in the container where it was stored and had to the sorted before eventual announcement of results.

4.79 The ECZ suggested to the stakeholders about compiling and consolidating the results of the 64 polling stations already published and proceeding to declare the winner.

4.80 The stakeholders verbally agreed to the suggestion. The ECZ then asked all stakeholders to leave the totalling hall to allow the ECZ time to do the consolidation.

4.81 When the stakeholders were outside, the returning officer inquired about who amongst them would need the two documents being prepared by the ECZ namely record of proceedings and a consent agreement to announcing results.

4.82 Those who agreed were called inside to sign the consent agreement and they did. They included the Petitioner's polling agent, Mr Batwell Muntanga and RW2 himself, some observers and the Officer in Charge, Zimba Police.

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4.83 The consent agreement is the one in the First Respondent's bundle of documents. The ECZ proceeded to announce the results and declared the winner. The results from 10 polling stations were not announced and he does not know where the results are.

4.84 *When cross-examined by Mr Zulu for the Petitioner,* Mr Simasiku's demeanour became unconvincing. He would have extended pauses or look-up as if to think before answering. He was also generally evasive.

4.85 He testified that he is a councillor from the UPND to which the First Respondent also belongs. He campaigned for the First Respondent and his interest and loyalty is with the First Respondent. The First Respondent asked him to testify. Therefore, his evidence before Court is to support the interests of the First Respondent and party by all means.

4.86 He testified that his presence and involvement at the totalling centre was as an aspiring councillor, party member and interested party.

4.87 He was not the First Respondent's polling agent or election agent but agreed that he signed the consent agreement on her behalf.

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4.88 He was present when the declaration of the First Respondent as winner took place. It was based on the results for 64 polling stations.

4.89 This was on 16th August 2026 and he was given the record of proceedings the same day. It is the one exhibited in the Second Respondent's bundle.

4.90 Prior to announcement of results for the 64 polling stations, there were some missing results.

4.91 The ECZ's explanation was that when the totalling centre changed to Zimba, the documents were mixed and needed to be put in order before the results could be announced.

4.92 He was not around when the First Respondent tabulated results from all the polling stations.

4.93 After declaration of results he became aware of a Police incident report issued at Zimba in respect of the missing results.

4.94 He testified that the Police incident report is the one in the Second Respondent's bundle and it speaks about the ECZ materials going missing at Kabanga.

4.95 *When cross-examined by Mr Lisimba for the Second Respondent,* Mr Simasiku testified that he went to the totalling centre on 16th August 2026 before the announcement of results.

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4.96 The stakeholders from both the First Respondent and the Petitioner suggested that results be announced based on the results from 64 polling stations.The consent document was drawn up by the ECZ.

4.97 Mr Simasiku was not re-examined and on that note the First Respondent closed her case.

4.98 *The Second Respondent's sole witness was Mr Newton Mudenda (**"RW3"**). He testified in chief* that he was the returning officer for Mapatizya Constituency during the 2026 General Elections, assisted by two others namely Mr Rodney Syanyunya and Mr Mainza Chanvwanga. They were stationed at the totalling centre at Kabanga Secondary School.

4.99 On 14th August 2026 one of the stakeholders (PW2) informed Mr Mudenda to expedite the announcement of results as he (PW2) had information that the totalling centre would be attacked.

4.100 Eventually the totalling centre was attacked and unaccredited people entered it, causing the presiding officers for the polling stations to scamper leaving behind the election materials scattered all over the room.

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4.101 The centre was then closed by the district electoral officer and by that time Mr Mudenda had verified and announced results for 46 polling stations.

4.102 He carried the box with the verified results and sought refuge in his car. He eventually saw people throwing other election materials into cars and heard it said that they would be taken to Zimba.

4.103 They moved in a convoy which he joined. As they got to the bridge, one of the ballot boxes fell and broke, papers scattered. They were picked but he is not sure if all were found.

4.104 Eventually they got to Zimba and the materials were deposited in a container at the Civic Centre. It was left under Police security.

4.105 On 15th August 2026 he sent his assistant to get materials from the container and eventually results for 13 more polling stations were announced, bringing the total to 59.

4.106 Later materials for 5 more polling stations were retrieved from the container.

4.107 On 16th August 2026, efforts to find more materials in the container were futile as 10 polling stations had results missing namely:

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(i) Mulamfu Primary School – 1
(ii) Mulamfu Primary School – 2
(iii) Mafumba Primary School - 1
(iv) Mafumba Primary School - 2
(v) Chilobe Community School - 1
(vi) Sialumba Primary School - 1
(vii) Simwami Primary School - 1
(viii) Manyemunyemu Primary School - 1
(ix) Kabulawo Community School - 1
(x) Njabalombe Primary School - 2

4.108 These 10 polling stations did not have entries in the system. He had announced results for some of them but then commotion started before they could be entered in the system.

4.109 He told the stakeholders on 16th August 2026 that the results for the rest of the polling stations could not be found. A decision was made verbally to proceed to announce the outcome based on only 64 polling stations.

4.110 He sought authority for it from the Southern Province coordinator of the ECZ and was advised to procure a written agreement with the stakeholders.

4.111 There was an attempt to generate the record of proceedings for the parliamentary election but the electronic system could not close to allow for it. The system refused to close because if the results for the remaining 10 polling stations were added to the loser, he would surpass the winner.

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4.112 He consulted ECZ and was authorised to fill out a manual form which he did.

4.113 He declared the First Respondent as victorious based on totalled votes for 64 polling stations. By that time his assistant had drawn up the consent agreement.

4.114 Those aggrieved by the declaration left the totalling centre. The rest of the stakeholders remained and he told them to sign the consent agreement. It is the one appearing in the First Respondent's bundle of documents.

4.115 The Petitioner's bundle of documents has documents which include Gen 20s for the 10 polling stations with missing results. He does not know their source and did not verify them.

4.116 His notice to produce of 23rd September 2026 has Gen 20 forms given to him by the presiding officers. He verified them and they were entered in the electronic system and the resultant record of proceedings is a true record of what transpired.

4.117 He announced those results and gave them to IT personnel to enter in the system. He had declared the First Respondent as winner with 14,812 votes.

4.118 *When cross examined by Mr Zulu for the Petitioner,* Mr Mudenda testified that this was his first time as returning officer for

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Mapatizya but that he was very conversant with electoral rules and regulations having previously served as polling officer and as presiding officer.

4.119 It was his testimony that on 13th August 2026, voting took place in all 74 polling stations in the constituency. However, he only received votes from 64 of them.

4.120 Mr Mudenda stated that his duties at the totalling centre included verifying the results received from all polling stations, totalling them and declaring the parliamentary winner if there are no issues.

4.121 It was his evidence that where there are issues then the declaration has to be preceded by either an agreement with the stakeholders or by bringing the ballot papers to count them together for those with missing results.

4.122 He testified that there was violence at the totalling centre at Kabanga on 14th August 2026 but that he only reported it to the Police on 16th August 2026 at Zimba.

4.123 Mr Mudenda agreed that he prepared and signed the consent agreement as returning officer.

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4.124 He testified that candidates have polling agents to represent their interests in each polling station. They also have election agents who are responsible for the entire constituency.

4.125 The two of them have different accreditation. The polling agent is not allowed at the totalling centre but confined to the polling station.

4.126 The election agent is the one who represents a candidate at the totalling centre.

4.127 Mr Mudenda agreed that the Petitioner was duly represented by his election agents at the totalling centre. He conceded that however, the consent agreement shows that a polling agent called Mr Mutika Batwell Muntanga is the one who signed for the Petitioner. Mr Mudenda admitted that he knew at the time that Mr Muntanga was a polling agent.

4.128 He also agreed that the person who signed for the First Respondent was RW2, a local government election candidate.

4.129 In one breath Mr Mudenda admitted that he did not write to the ECZ over the missing results but in another breath he testified that he wrote a report on it to the ECZ.

4.130 He however, conceded that the report was not part of the evidence before Court. He testified that his notice to produce had

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the correct Gen 20 forms, but conceded that some of the Gen 20 forms he brought like Zimba 3 at p.61 of his notice versus Zimba 3 at p.41 of the Petitioner's bundle had no witness signatures unlike that produced by the Petitioner.

4.131 Mr Mudenda conceded that unlike the Petitioner's bundle, he only brought the Gen 20 forms in the notice to produce after a *subpoena*.

4.132 It was his evidence that they are tallying with the record of proceedings that he filed earlier in the Second Respondent's bundle.

4.133 He brought the notice to produce to support the record of proceedings.

4.134 The record of proceedings is a product of data entry by someone other than him (RW3) but in his presence. It was based on results that he had announced.

4.135 The record of proceedings was not printed on the day of declaration on 16th August 2026 because the system refused it. There were no stakeholders present in the room when the record of proceedings was being prepared nor when system refused to print it.

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4.136 Mr Mudenda testified (with very unconvincing demeanour) that at point of tallying the votes for the 64 polling stations which he announced the stakeholders were present.

4.137 He testified that there was an initial IT personnel who was working on the record of proceedings then a second one came from Kalomo to work on it on 16th August 2026.

4.138 The second IT personnel only came to enter results. Mr Mudenda did not know him, had not met him before and could not recall his name.

4.139 To the best of Mr Mudenda's knowledge the IT personnel who entered results on 16th August 2026 was not sent by the Second Respondent but came from the First Respondent.

4.140 He agreed that according to the Gen 20 forms in the Petitioner's bundle, the totals for the following 7 polling stations which the Petitioner disputed in the record of proceedings were 1,859 for the Petitioner and 1,132 for the First Respondent:

(i) Chalinga - 2
(ii) Chitumbi - 1
(iii) Jokwe
(iv) Mapatizya - 1
(v) Mapatizya - 2
(vi) Njabalombe - 2
(vii) Siamundiwi

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4.141 He also agreed that this was different from the totals for the same polling stations in the record of proceedings which gave 739 for the Petitioner and 2,484 for the First Respondent.

4.142 He agreed that if the Petitioner's documents were to be accepted as valid over the 7 polling stations, the totals would be 15,450 votes for the Petitioner and 13,460 votes for the First Respondent.

4.143 Mr Mudenda when shown the Gen 20 forms in the Petitioner's bundle in relation to the 10 unannounced polling stations, namely Simwami 1, Manyemunyemu, Mafumba 1, Mafumba 2, Kabulawo 1, Njabalombe 1, Mulamfu 1, Mulamfu 2, Sialumba 1, Chilobe 1, agreed that the totals were 2,629 for the Petitioner and 1,896 for the First Respondent.

4.144 Further that if they and the Petitioner's documents were accepted as valid then the totals for all 74 polling stations would be 18,079 votes for the Petitioner and 15,356 for the First Respondent.

4.145 *When cross-examined by Ms Kamwi for the First Respondent*, Mr Mudenda testified that two IT personnel entered results in the system. They were both from the Second Respondent. They

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entered results that had been verified by him and they did so in his presence.

4.146 It was his evidence that the second IT personnel came to relieve the first who fell ill and had to leave.

4.147 He testified with very unconvincing demeanour that the missing results for the 10 polling stations were not in a queue to be announced and that he never verified or saw them.

4.148 Mr Mudenda also testified with very unconvincing demeanour that the stakeholders are the ones that verbally proposed that a winner be declared based on results for the 64 available polling stations.

4.149 It was his testimony that the consent agreement that he later documented was signed by various stakeholders including representatives of the Petitioner, First Respondent, Second Respondent, Police and independent observers.

4.150 Mr Mudenda testified that Gen 20s do not need to be witnessed to be valid and that they are only valid if verified by the ECZ.

4.151 He testified that the Gen 20 forms in the Petitioner's bundle were not verified and invalid. Further that the ones in the Second Respondent's notice to produce were verified and valid.

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4.152 *When re-examined by Mr Lisimba for the Second Respondent, Mr Mudenda testified that for Gen 20 forms to be confirmed as valid, they should be accompanied by a record of proceedings from the polling stations and a ballot account form. This was in relation to the Gen 20 at p.31 of the Petitioner's bundle.*

4.153 He stated that a Gen 20 is valid even if not signed by a witness.

4.154 *Mr Mudenda testified that the polling agent that signed the consent agreement on the part stated for the Petitioner had a card that said "polling agent totalling centre" and was allowed there on that basis.*

4.155 The notice to produce is the one that has valid Gen 20s not the Petitioner's bundle.

4.156 Stakeholders were not in the room when the record of proceedings was printed.

4.157 He clarified that he prepared a manual declaration where he had to write out the names because the system could not print one. The second IT personnel was sent by the Second Respondent.

4.158 He stated that the 7 polling stations which have contradictions cannot be objected to at this stage as it was supposed to have been done at point of announcement.

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4.159 According to him, the Gen 20 forms which the Petitioner has for the 10 unannounced polling stations are not valid as they do not have records of proceedings and ballot account forms to support them.

4.160 RW3 further testified that Gen 20 forms can only be valid if they have a record of proceedings and ballot account forms to support them. In his view the Petitioner's computation of the results is not valid.

4.161 On that note the Second Respondent closed its case.

5. CLOSING SUBMISSIONS BY COUNSEL

5.1 After conclusion of trial, the Petitioner tendered final submissions on 5th October 2026 to which the First Respondent reacted with opposing submissions on 12th October 2026.

5.2 The focus of the Petitioner's final submission was on the returning officer's performance and it was said that it fell short of the requirements of s.72(1) of the **EPA**. It was argued that the returning officer had results from all 74 polling stations transmitted to him but failed to announce for 10. Further that he manipulated the record of proceedings to favour the First Respondent to point of victory.

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5.3 The Petitioner's final submissions did not cover the allegations of misconduct and undue influence which had been pleaded against the First Respondent in his petition.

5.4 Turning to the First Respondent. The crux of her final submissions was that parliamentary election petitions demand a standard of proof beyond a simple balance of probabilities. Authorities cited to canvass the point included ***Lewanika & Ors. v FTJ Chiluba***[1].

5.5 It was submitted for the First Respondent that the Petitioner failed to meet that standard by failing to establish any link between her and the violence at the initial totalling centre. Also by failing to prove any exertion of influence by her on the returning officer.

5.6 The First Respondent's Advocates also submitted that both Petitioner and First Respondent were affected by the missing results for 10 the polling stations. However, they argued that the declaration of the result of the poll based on 64 of 74 polling stations, qualified as being substantially in accordance with the statutory process under s.72(1) of the **EPA**.

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6. THE LAW ON PARLIAMENTARY ELECTION PETITIONS

6.1 The law relating to the subject is largely codified with the primary legislation being the **EPA**, introduced earlier in this judgment. Some of the salient provisions of relevance to this case are:

(i) an interested person may petition the High Court to challenge the outcome of a parliamentary election within 14 days of the results (s.96 (1),97 (1) and 100 (3));

(ii) interested persons for that purpose/with locus to petition include (s. 98) –

a) registered voters;
b) persons who were eligible to be nominated to contest in the election;
c) candidates who contested in the election; and
d) the Attorney General;

(iii) there are three grounds on which parliamentary election results can be nullified –

a) misconduct committed by the victorious candidate (or for which they or their official agent are blameworthy) which misconduct hindered or may have hindered the majority of the electorate in voting for their preferred candidate (s.97(2)(a);
b) procedural irregularity in the conduct of the election which affected the outcome (s. 97 (2) (b)); and
c) eligibility of the victorious candidate (s. 97 (2)(c)).

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(iv) the High Court must determine the petition within 90 days of filing and either declare the election result as void or declare any candidate as duly elected (s. 99 and s. 106(1)).

6.2 I will now proceed to examine the grounds for nullification in detail and also the burden of proof.

Misconduct

6.3 Section 97(2)(a) of the **EPA** reads:

"*97. (1)* ---.

(2) ***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****;*" (Emphasis added)

6.4 The **EPA** goes further to particularize some of the forms of misconduct as:

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(i) bribery (s.81)

(ii) impersonation (s. 82)

(iii) undue influence (s. 83)

(iv) publishing false statements about opposing candidates (s. 84)

(v) tampering with ballot boxes/paper (s. 87)

(vi) solicitation or lobbying for votes on election day within 400 metres of a polling station (s.89(1)(e)).

6.5 The said provision is to be read with the proviso under s.97(3) which stipulates:

> *"Despite the provisions of subsection (2), where, upon the trial of an election petition, the High Court or a tribunal finds that a corrupt practice or illegal practice has been committed by, or with the knowledge and consent or approval of, any agent of the candidate whose election is the subject of such election petition, and the High Court or a tribunal further finds that such candidate has proved that—*
>
> *(a) a corrupt practice or illegal practice was not committed by the candidate personally or by that candidate's election agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent;*
> *(b) such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and*
> *(c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent;*
>
> *the High Court or a tribunal shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void."*

6.6 Section 97(2)(a) of the **EPA** was the subject of judicial interpretation by the Constitutional Court in the case of ***Nkandu***

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Luo & ECZ v Doreen Sefuke Mwamba & AG[2] wherein it was pronounced:

> *"As earlier stated, we have in unequivocal terms, stated our position on the above provisions.* ***In order for a petitioner to successfully have an election annulled pursuant to section 97(2)(a), there is a threshold to surmount. The first requirement is for the petitioner to prove to the satisfaction of the Court, that the person whose election is challenged personally or through his duly appointed election or polling agents committed a corrupt practice or illegal practice or other misconduct in connection with the election; or that such malpractice was committed with the knowledge and consent or approval of the candidate or his or her election or polling agent****. Sections 81-95 in Part VIII of the Act and also the relevant provisions of the Electoral Code of Conduct outline the corrupt or illegal practices or misconduct in the electoral process.*
>
> ***In addition to proving the electoral malpractice or misconduct alleged, the petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorate from electing the candidate of their choice***." (Emphasis added)

6.7 It can therefore be concluded that as far as misconduct (in a parliamentary election challenge) goes, a petitioner must prove:

(i) *there was an act of misconduct* relating to the election;

(ii) *the actor* was either a candidate or someone else clothed with the knowledge, consent or approval of the candidate or that of their election or polling agent (in other words a connection

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or link of culpability between the misconduct and a candidate);

(iii) *the magnitude* of the act of misconduct was that it was widespread; and

(iv) *the effect* of the act was that it prevented/swayed or may have prevented/swayed the majority of voters in the constituency from electing their preferred candidate.

Procedural irregularity

6.8 Section 97(2)(b) of the **EPA** stipulates:

> "*97. (1)* ---.
>
> *(2)* ***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)*---
>
> *(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****;*" (Emphasis added)

6.9 The above provision is to be read with the proviso under s.97(4) which states:

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"4. ***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.***" (Emphasis added)

6.10 The learned authors of **Halsbury's Laws of England**[2] explain what is meant by 'the result' in a challenge of the election procedure as:

> "***The result means the success of one candidate over another*** *and not merely an alteration in the number of votes given to each candidate.*" (Emphasis added)

6.11 The said authors go on to cite the case of ***Clare, Eastern Division Case***[3] as authority for the proposition.

6.12 As for what amounts to substantial conformity with the law, the English case of ***Morgan & Ors. v Simpson & Anr.***[4] is useful because of the similarities between s.37(1) of the **Representation of People Act**, 1949 and s. 97(4) of our **EPA** and I quote Stephenson, L.J. who succinctly put it that:

> "***For an election to be conducted substantially in accordance with that law there must be a real election by ballot and no such substantial departure from the procedure*** *laid down by Parliament* ***as to make the ordinary man condemn the election as a sham or a travesty*** *of an election by ballot.*" (Emphasis added)

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6.13 The principle has been applied in Zambia in ***Sibongile Muvamba v Kelvin M. Sampa & Anr.***[8] where the Constitutional Court endorsed the said English case before pronouncing:

> "*This shows that the threshold is high if the Court is to nullify an election based on the fact that the election was not conducted substantially in conformity with the law.* ***It should be of such a scale or level or of such a nature that it can be said to amount to a travesty of an election or a sham.***" (Emphasis added)

6.14 It is therefore incumbent upon a petitioner relying on this ground to:

(i) specify a provision of the **EPA** (or related legislation, primary or secondary) which prescribes an electoral process/procedure;

(ii) prove that there was an occurrence(s) in respect of the election which occurrence did not comply with that procedural prescription; and

(iii) prove that due to the occurrence(s) the election was a sham or travesty as it was not conducted substantially in accordance with the **EPA**; and

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(iv) prove that the procedural anomaly affected the outcome of the election in terms of the success of one candidate over the other(s).

Eligibility

6.15 The **EPA** in s.97(2)(c) stipulates:

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

6.16 The qualifications for election as MP are prescribed in Article 70(1) of the **Constitution** as:

> *"(1) Subject to clause (2), **a person is eligible to be elected as a Member of Parliament, if that person**-*
>
> *(a) is a citizen;*
> *(b) is at least twenty-one years old;*
> *(c) is a registered voter;*
> *(d) has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent; and*
> *(e) declares that person's assets and liabilities, as prescribed."* (Emphasis added)

6.17 The grounds for disqualification from being elected as MP are also codified and I cite the provisions of art. 70(2) of the **Constitution** as:

> *"(2) **A person is disqualified from being elected as a Member of Parliament if that person***
>
> *(a) is validly nominated as a candidate in a presidential election;*
> *(b) is a public officer or Constitutional office holder;*

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(c) *is a judge or judicial officer;*
(d) *has a mental or physical disability that would make the person incapable of performing the legislative function;*
(e) *is an undischarged bankrupt;*
(f) *is serving a sentence of imprisonment for an offence under a written law;*
(g) *has, in the immediate preceding five years, been removed from public office on grounds of gross misconduct; or*
(h) *holds or is acting in an office, as prescribed, the functions of which involve or are connected with the conduct of elections.*" (Emphasis added)

6.18 Quite clearly, a petitioner seeking nullification of a Parliamentary election result under s. 97(2) (c) of the **EPA** must prove that on the day of voting the victorious candidate was ineligible for election as either:

(i) they did not meet the qualifications set by art. 70(1) of the Constitution; or

(ii) they were otherwise barred from being elected because of their status which falls in the categories listed in art. 70(2) of the Constitution.

Burden and standard of proof

6.19 In ***Galaunia Farms Limited v National Milling Company Limited***[6], the Supreme Court re-affirmed that the burden of proof in a civil case lies with he who alleges.

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6.20 Closer to this case is the decision of the Constitutional Court in ***Nkandu Luo & ECZ v Doreen Sefuke Mwamba & AG***[2] earlier cited, wherein it was categorically stated that onus is on a Petitioner to prove that there is cause for nullification of a parliamentary election under section 97(2) of the **EPA**.

6.21 Turning to the standard of proof, the Supreme Court in ***Mwalimu Simfukwe v Evaristo David Kasunga***[7] (decided prior to enactment of the **EPA**) did canvass the principle that the standard of proof to be discharged by a petitioner in election petitions is higher than on a balance of probabilities.

6.22 The said case was cited and the principle entrenched by the Constitutional Court, post enactment of the **EPA** in the decision in ***Abiud Kawangu v Elijah Muchima.***[8], and re-affirmed in ***Joseph Malanji v Charles Abel Mulenga & Anr.***[9].

6.23 It follows therefore that the Petitioner as proponent bears the burden to prove his case against the Respondents and to do so beyond a simple balance of probabilities.

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7. ANALYSIS AND FINDINGS

7.1 I have closely studied the material on record, evidence, competing submissions and relevant law. After a careful consideration, my decision is as set out below.

The contention of misconduct

Alleged violence at totalling centre

7.2 This contention is introduced in para. 3(b) of the petition as follows -

> *"On the said 14th August, 2026, the First Respondent's cadres stormed the totalling centre at Kabanga Secondary School thereby disrupting the counting of votes and threatening the use of violence to the stakeholders present."*

7.3 Mr Josphat Kapika (PW2) and Mr Newton Mudenda (RW3) both testified that they were eye witnesses to the totalling centre being attacked and disrupted on 14th August 2026. The evidence was on behalf of the Petitioner and Second Respondent, respectively.

7.4 It was the First Respondent's evidence (RW1) that her plans to visit the totalling centre on 14th August 2026 were aborted after being informed by her agent that there was a security problem there.

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7.5 Based on the convergence of witness testimonies from all three parties (through PW2, RW1 and RW3), I accept and find that the totalling centre at Kabanga was attacked and its work disrupted.

7.6 However, I note that -

7.6.1 there was no evidence of any instructions being issued by the First Respondent to anyone to orchestrate the attack;

7.6.2 the evidence of the First Respondent was unchallenged that she was not present at the totalling centre during the attack;

7.6.3 the Petitioner and his witness did not establish that they knew the identities of the attackers, which in my view could (if known) have been interrogated to establish a connection (if any) between them and the First Respondent; and

7.6.4 there is actually no evidence before Court linking the attack itself to the First Respondent (or her agents).

7.7 It can be seen from the foregoing that the Petitioner's evidence on this ground of petition is deficient.

7.8 As for the implications of that deficiency, I heed the decision of the Constitutional Court in ***Richwell Siamunene v Sialubalo Gift***[10] wherein it was pronounced:

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> *"We note that* ***there is insufficient evidence to support a finding that the documented acts of violence that occurred after the nomination day are linked to the respondent****. Mere proof that the UPND supporters* ***were indeed involved*** *in the said acts* ***does not warrant an inference*** *being drawn* ***that the Respondent had directly or indirectly incited the UPND supporters to act as they did****. To so hold would amount to* ***speculation and it is not the duty of this Court to make assumptions*** *based on nothing more than party membership and candidacy in an election."* (Emphasis added)

7.9 Accordingly, whilst the violence at the totalling centre without a doubt disrupted the electoral processes there, I cannot accept the Petitioner's invitation to ascribe blame to the First Respondent. To do so, in these circumstances, would require this Court to speculate and make assumptions, which is impermissible.

7.10 Put differently, there is no foundation for a finding that the violence was perpetrated by the First Respondent (whether directly or through her agents). Thus, the First Respondent's submissions on the point carry the day.

Effect of the misconduct

7.11 Since there was no violence by (or attributable to) the First Respondent in respect of the election, there is no basis for interrogating its effect, which would have been the determinant of whether it qualified for purposes of nullification or not.

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The contention of procedural irregularity

7.12 It was observed earlier in this judgment that the ECZ has the constitutional mandate to operate the electoral process, including conducting and managing elections.

7.13 It was further alluded to that the arms and legs of the ECZ include election officers, further broken down to include presiding officers of polling stations and returning officers in charge of the entire constituency.

7.14 For context, the pool of votes validly cast in each constituency is populated by votes from all the polling stations under the constituency.

7.15 Considering what is in issue before Court, it is imperative to run through some of the key prescriptions of the electoral process at post-voting stage up to point of declaration of a victor.

7.16 Section 71(1) and (2) of the **EPA** require every presiding officer of a polling station to record the results of a poll (in a prescribed form):

> *"71. (1) **After announcing the result at a polling station, a presiding officer shall complete a form, as may be prescribed, reflecting:***
> *(a) the number of ballot papers supplied to the polling station;*
> ***(b) the result at the polling station;***
> ***(c) the number of rejected ballot papers;***

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*(d) **the number of spoilt ballot papers**; and*
(e) the number of unused ballot papers.

(2) When a presiding officer has complied with subsection (1), the presiding officer shall publicly announce the result of the count at the polling station to members of the public, the accredited observers, monitors, election and polling agents present at the polling station." (Emphasis added)

7.17 Section 71(3) and (4) obligate the presiding officer to thereafter update the returning officer with that result and forward the form and election materials to him.

*"(3) **When the presiding officer has complied with subsection (2), the presiding officer shall inform the returning officer of the result** of that count at the polling station.*

*(4) When the presiding officer has complied with subsection (3), **the presiding officer shall***

(a) seal in separate ballot boxes each of the items mentioned in subsection (1) and the written record of any objections; and

*(b) **deliver the form, completed in terms of subsection (1), and the sealed ballot boxes to the returning officer**."*(Emphasis added)

7.18 Prior to the 2026 amendment, the **EPA** did not have a specific section prescribing the powers and duties of returning officers for parliamentary elections unlike presiding officers and polling assistants who were covered under s.38 and 40 respectively.

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7.19 However in 2026, the **EPA** was amended to *inter alia* prescribe the powers and duties of returning officers as follows in s.37A -

> "***37A. (1) A returning officer shall be in charge of electoral activities at a constituency**, district or ward.*
>
> ***(2)** Despite the generality of subsection (1), **a returning officer shall-***
> *(a) conduct the nomination process at constituency, district or ward level;*
> ***(b) collate results in a constituency**, district or ward;*
> ***(c) declare National Assembly** and local government **election results;***
> *(d) announce presidential results in a constituency; and*
> *(e) perform any other election related duties as determined by the Commission and under this Act."*
> (Emphasis added)

7.20 It is evident from s.37A(1) and (2)(b) that the returning officer has a duty to collate the results in the constituency, not just the majority of them. Collate is defined in the **Oxford Advanced Learner's Dictionary**[3] at p.284 as *'to collect information together from different sources in order to examine and compare it.'* The learned authors of **Black's Law Dictionary**[4] for their part define collation at p.792-793 as *'the comparison of a copy with its original to ascertain its correctness; the report of the officer who made the comparison'*

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7.21 Thus it can be said that under s.37A(1) and (2)(b) of the **EPA**, a returning officer in a parliamentary election has the obligation to collect the votes from all the polling stations and to verify the accuracy of the records of those votes, based on their source documents. After the returning officer is done with the collection and verification exercise (collation), comes the function of declaring the outcome of the parliamentary election.

7.22 In addition, going by the provisions of s.72(1) of the **EPA**, the returning officer's power to declare the victor is activated after he has verified the results to include tallying them based on the documentation received from all polling stations (as required under s.71). I reproduce s.72(1) for ease of reference:

> "*72. (1) **Upon receipt of the items mentioned in section seventy one, a returning officer shall tally the results of the votes received from the polling station in the constituency**, district and ward **and shall**-*
> *(a) announce the results of the votes for the presidential and mayoral or council chairperson elections; and*
> ***(b) declare the results for the National Assembly** and Ward election.*" (Emphasis added)

7.23 The word 'tally' is defined in the **Oxford Advanced Learner's Dictionary**[3] at p.1566 as '*a record of the number or amount of sth, especially one that you can keep adding to*'. The learned authors of **Black's Law Dictionary**[4] at p.4555 for their part

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define 'tally' as '2. *Anything used to record an account. 3. An account; a score.*'

7.24 It follows that the returning officer of a parliamentary election has an obligation (under s.72(1) of the **EPA**) to compile a record of votes from the polling stations and to keep adding to the score until the entire constituency is accounted for.

7.25 The dependency nexus between the verification and aggregation function (collation and tallying the votes from all polling stations) *on the one hand*, as the trigger for the returning officer declaring the winner, *on the other hand*, is explained further in the subsidiary legislation. See regulation 50(1) and (3) of the **Electoral Process (General) Regulations**[3], reproduced as follows-

> *"50. (1) **The returning officer shall, receive the votes counted at the polling stations in the constituency**, district or ward, **total the votes of the poll for each candidate from the ballot paper accounts of each polling station**.*
>
> *(2) ---*
>
> *(3) **When the totalling of the votes for National Assembly** or local government elections **has been completed and the result of the poll ascertained, the returning officer shall***
>
> ***(a) complete in duplicate a declaration of the results** of the poll in Form GEN 21set out in the Schedule;*

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(b) declare to be elected as Member of Parliament, *mayor, council chairperson or councillor,* ***the candidate to whom the majority of votes were cast by reading aloud in public at the place where the totalling was conducted****; and*

(c) cause to be delivered to the Commission, without delay, the original of the completed form." (Emphasis added)

7.26 This can be contrasted with s.73 of the **EPA**, which relates to presidential elections. It empowers that returning officer (not all returning officers) to announce and declare the result without receiving results from every polling station, if waiting would cause undue or unreasonable delay, provided that:

(i) the results already received are sufficient to determine the outcome; and

(ii) the outstanding results are not likely to affect the result of the election.

7.27 I reproduce the exact wording of s.73 of the **EPA** for reference:

"73. (1) The Returning Officer shall tally, announce and declare the result of a presidential election as soon as they are received.

(2) ***The Returning Officer shall announce and declare the result of a presidential election without having received the results of all polling stations if-***

(a) to wait for the receipt of the result from every polling station would unduly and unreasonably delay the determination and declaration of the result of that election; and

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(b) the outstanding results are not likely to materially influence the overall result of that election. (Emphasis added)

7.28 Section 73 of the **EPA** clearly allows for declaration of a winner based on an insurmountable lead of votes whereby the closest opponent has no mathematical path to victory.

7.29 Insurmountable lead amounts to a statutory exception of the duty of the ECZ to consolidate and announce all the results before declaring an election winner. However, it is expressly confined (by law) to presidential elections, with no extension to parliamentary or local government elections.

7.30 Thus, unlike the returning officer for a presidential election (empowered by s.73 of the **EPA**), the one for parliamentary elections has no power (under s.72 or elsewhere) to declare the outcome of the election, and a winner until he has received and ascertained votes from all the polling stations in the constituency.

7.31 Therefore, it was a serious irregularity and outright illegality for the returning officer to declare a parliamentary election winner in the absence of results from all 74 polling stations.

7.32 It was not for ECZ officers to find a practical way of declaring the outcome of a parliamentary poll (on the strength of a consent agreement allegedly procured from the parties). Instead the

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solemn duty was on ECZ to reflect the will of all voters who validly cast their votes in the parliamentary election in Mapatizya.

7.33 It was even seriously contested as to whether the consent agreement actually had consensus *ad idem*. The evidence shows that despite the Petitioner having PW2 as his election agent and representative at the totalling centre, the agreement was signed on behalf of the Petitioner by a person who (as the Petitioner testified credibly) was at the totalling centre without the Petitioner's knowledge.

7.34 Perhaps more importantly, the electoral laws do not actually provide for such an agreement.

7.35 Worse still, its import was to purportedly bypass the **EPA** provisions appraised earlier which dictate that the collation and tallying of votes from all polling stations is a pre-condition to the exercise of the returning officer's power to announce and declare the result of the parliamentary election.

7.36 In ***Ndola Energy Co. Ltd v Lamamuda Ltd.***[11], the Supreme Court guided that parties cannot, by agreement, ouster or circumvent the prescriptions of a statute.

7.37 As things stand, the nature of the first-past-the-post electoral system for constituency based MPs denotes that the candidate

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with a simple *majority of all votes validly cast* wins, not simply the one who gets *the majority of the portion of validly cast votes that has been verified* by the returning officer.

7.38 The latter is what the returning officer adopted at parliamentary level without legal basis.

7.39 Further, the arithmetic shows that the total number of potential votes from the 10 unaccounted polling stations was 6,238. This far exceeded the narrow gap of 482 votes between the two candidates in the declared results, by more than 10 times over.[1]

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[1] See ECZ GEN21 at p.1 of the Second Respondent's bundle of documents which shows a declaration of result of the poll at 14,812 votes for the First Respondent and 14,330 votes for the Petitioner (difference of 482). See also p.10-11, same bundle, which has data on the 10 polling stations in issue and when analysed as per table below indicates a total of 6238 potential votes:

	POLLING STATION	No. OF VOTERS
1.	SIMWAMI PRIMARY SCHOOL – 1	758
2.	MAFUMBA PRIMARY SCHOOL – 1	729
3.	MAFUMBA PRIMARY SCHOOL – 2	729
4.	MANYEMUNYEMU PRIMARY SCHOOL – 1	517
5.	KABULAWO COMMUNITY SCHOOL – 1	475
6.	NJABALOMBE PRIMARY SCHOOL – 2	733
7.	MALAMFU PRIMARY SCHOOL – 1	638
8.	MALAMFU PRIMARY SCHOOL – 2	638
9.	CHILOBE COMMUNITY SCHOOL – 1	258
10	SIALUMBA PRIMARY SCHOOL – 1	763
	TOTAL	**6238**

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7.40 This position was corroborated by the returning officer himself, when he appeared as the Second Respondent's sole witness.

7.41 Of relevance on the point was his testimony in chief that the record of proceedings could not be printed at the totalling centre because the system detected that the missing results for the 10 polling stations could, if added to the Petitioner, place him ahead of the First Respondent. According to him, on that basis, the electronic system could not close with the results of only 64 of the 74 polling stations.

7.42 Again, just like he did in the legal infractions flagged earlier herein, the returning officer did not heed that inbuilt safeguard in the electronic system of the Second Respondent.

7.43 On the clear totality of the foregoing the irregularity (and outright illegality) of declaring the victor on the strength of results from only 64 polling stations instead of all 74, it can rightly be said to have affected the conclusive outcome of the poll and so I find.

7.44 It renders the declaration of the First Respondent as victor, premature and less than substantially in accordance with the principles and procedures enshrined in the **EPA** and subsidiary legislation, highlighted earlier. Thus the threshold for judicial intervention under s.97(2)(b) and 97(4) of the **EPA** has been met.

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7.45 For holistic closure on this contention, I must pronounce on the Petitioner's allegations suggesting that the First Respondent was complicit in these wrongful acts of the returning officer. As rightly submitted by her Advocates, there is quite frankly no evidence (cogent or otherwise) before Court to support any such finding against the First Respondent.

7.46 The blame lies solely with the Second Respondent, which was itself let down by the returning officer who strayed from the limits of his mandate at post-voting stage.

7.47 I wish to also address the following pertinent sub-contention. The Petitioner went to great lengths to attempt to show that the record of proceedings of the ECZ was flawed and that the Gen 20a forms brought by him should be preferred over those produced in Court by the ECZ. The ECZ for its part endeavoured to show that the documentation it brought was credible.

7.48 However, since this Court has already made some findings which are determinative of the petition, it is now academic to pronounce on the accuracy of the ECZ record of proceedings and on the credibility of the competing Gen 20a forms produced by the Petitioner and ECZ.

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7.49 Consequently, I heed the binding jurisprudence which guides Courts to avoid venturing into academic exercises and I thus decline the invitation from the Petitioner and Second Respondent to break their tie. I am fortified by ***AG v LAZ***[12] and more recently the exposition of Chief Justice Malila in ***AG v Chishimba Kambwili***.[13] They canvass the doctrine of mootness or academic futility.

8. CONCLUSION AND ORDERS

8.1 The Petitioner challenged the election of the First Respondent as MP for Mapatizya constituency on two out of three possible grounds namely:

(i) misconduct; and
(ii) procedural irregularity.

8.2 There is no instance of misconduct that has been proven against the First Respondent. It follows that the first ground of the petition lacks merit and is hereby dismissed.

8.3 As for the second ground, there is no evidence of major irregularity or other fault with the way the mandate of the Second Respondent was executed at the stages preceding, and on voting-day.

8.4 However, it has been proven to the satisfaction of this Court that the post-voting electoral processes were not conducted by the

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Second Respondent substantially in accordance with the electoral laws. It has similarly been proven that the procedural irregularities were so serious as to have affected the result in terms of the success of one candidate over the other.

8.5 Fortified by these findings, the second ground has merit and the petition is successful.

8.6 I therefore invoke sections 97(2)(b), 97(4) and 99(a) of the **EPA**, and hold that the election result for Mapatizya constituency, following voting on 13th August 2026, is void. Consequently, the declaration of the First Respondent as MP, made on 16th August 2026, is hereby nullified.

8.7 As for costs, section 109 of the **EPA** confers discretion on this Court and the case of ***Afrope Zambia Limited v Anthony Chate & Ors***[14] serves as a useful guide for the exercise of that power. I quote Wood, JS who aptly stated on behalf of the Supreme Court guided that -

> *"**It is a settled principle of law that a successful party will not normally be deprived of his costs unless there is something** in the nature of the claim or*

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in the conduct of the party ***which makes it improper for him to be granted costs***." (Emphasis added)

8.8 In the case before Court, the Petitioner has succeeded and there is nothing in the nature of the claim nor conduct of the Petitioner (during the case) which warrants any deprivation of costs.

8.9 As for the First Respondent and Second Respondent, it is necessary to backtrack that they and the Petitioner were all affected by the violence that rocked the totalling centre at Kabanga. However, it is the irregular steps taken by the Second Respondent's agent thereafter, that triggered this petition.

8.10 Therefore, the Second Respondent shall bear the Petitioner's costs of this action, to be taxed if not agreed. Turning to the First Respondent, even though vanquished as a litigant, she has been found blameless in the Second Respondent's condemned steps and shall therefore be spared of any costs burden other than her own to bear. So I order.

Dated this 29th **day of** October **2026.**

K. CHENDA
Judge of the High Court

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