IN THE LOCAL GOVERNMENT ELECTION TRIBUNAL 2026/F/LGET/12
FOR THE CHINSALI DISTRICT
OF MUCHINGA PROVINCE
HOLDEN AT CHINSALI
(CIVIL JURISDICTION)

IN THE MATTER OF: ARTICLE `59(3) OF THE CONSTITUTION, CAP 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 72(1)(B), 97(1),98(C),99(A)AND (B), 100 (2)(B)AND 106(1)(A) OF THE ELECTORAL PROCESS ACT 35 OF 2016 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: RULE 11 (1) OF THE LOCAL GOVERNMENT ELECTIONS TRINUALRULES OF 2026 OF THE LOCAL GOVERNMENT ELECTION TRIBUNAL RULE OF 2026

IN THE MATTER OF: LOCAL GOVERNMENT COUNCILOR ELELCTION FOR NKAKULA WARD HELD ON THE 13TH DAY OF AUGUST 2026

BETWEEN

MAKOPA MWANZA **PETITIONER**

AND

ROBERT BWALYA **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

CORAM: HON E. PHIRI, MRS C.N. MAKODZA AND MR K.SAKACHIVA

ON 25TH DAY OF SEPTEMBER 2026

For The Petitioner: Ms S.K. Mukuka And Ms N Lungwe Of C.L Mundia & Co

For the 1st Respondent Mr. M Mweene, G. Phiri, B Nyirenda of M. Mweene and Partners, and A. Malando of Aongola And Co

For the 2nd Respondent: Mr. M. Musukwa and Mr. M. Milambo of Brighton and Ernest Legal Practitioners

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JUDGMENT

LIST OF AUTHORITES

Statutes referred to:

1. **Constitution of Zambia Chapter 1 of the Laws Of Zambia**
2. **The Electoral Process Act. No. 35 of 2016**
3. **The Local Government Elections Tribunal Rules, Statutory Instrument No. 32 of 2026**
4. **The Electoral (Code Of Conduct) Regulations Statutory Instrument No. 90 Of 2016 as Amended by the Electoral (Code Of Conduct) (Amendment) Regulations, Statutory Instrument No. 35 Of 2020**

Case law:

1. **Akashambatwa Mbikusita Lewanika and Others v Frederick Jacob Titus Chiluba, (1998) Z.R. 49**
2. **Brelsford James Gondwe v Catherine Namugala. SCZ Appeal No. 129 of 2012**
3. **Sibongile Mwamba v Kelvin Sampa and Another [2017] ZMCC 87**
4. **Dean Masule v Kangombe [2020] ZMCC 3**
5. **Lewanika and Others v Chiluba (SCZ/EP/3 & 4 of 1996) [1997] ZMSC 56,**
6. **Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Others (2005) Z.R. 138**
7. **Mwiya Mutapwe vs Shomeno Dominic appeal No. 19 of 2017, 2016 /CC/A008**

Introduction

This election petition was filed by the petitioner before this tribunal on 28th August 2026 in which the petitioner is challenging the election of the 1st respondent as councilor for Nkakula ward in Chinsali District, following the general elections of 13th August 2026. The petitioner thus seeks for the following reliefs these being:

1. A declaration that the election of the 1st respondent as councilor for Nkakula ward is null and void
2. A declaration that the illegal practices committed by the 1st and 2nd respondent or their agents affected the election results.
3. A declaration that the petitioner is the duly elected councilor for Nkakula ward
4. An order for costs be borne by the respondent.

We wish to remind ourselves at the outset that the burden of proof in an election, as in any other civil matter lies on the petitioner who must prove and establish the allegations he has complained of. However, the standard of proof in an election petition is higher than that required in an ordinary civil action though not as high as in criminal proceedings. The allegations made in an election must establish the issues raised to a fairly high degree of convincing clarity though not beyond the reasonable doubt as required in criminal cases.

This principle is supported by **Akashambatwa Mbikusita Lewanika and Others v Frederick Jacob Titus Chiluba**, and was reiterated in **Brelsford James Gondwe v Catherine Namugala**. The same principle is reflected in **Lewanika and Others v Chiluba (SCZ/EP/3 & 4 of 1996) [1997] ZMSC 56**, where the Supreme Court recognized the elevated evidential standard applicable in election petitions.

The authorities further establish that the seriousness of an allegation is relevant to the degree of probability required to establish it. The principles discussed in **Bater v Bater [1950] 2 All ER 458** and **Hornal v Neuberger Products Ltd [1957] 1 QB 247** illustrate this graduated approach to proof in civil proceedings involving

serious allegations. In **Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Others (2005) Z.R. 138**, the Supreme Court emphasised that it is insufficient merely to establish an irregularity. The Petitioner must additionally establish that the malpractice was of such a scale as to affect the result so that the declared outcome could no longer be regarded as representing the will of the majority of voters. Likewise, the authorities relied upon in the proceedings, including **Austin Liato v SitwalaSitwala**, **ChrispinSiingwa v Stanley Kakubo** and **Steven Masumba v Elliot Kamondo**, demonstrate that proof of an isolated electoral offence does not, without more, justify nullification. The electoral effect of the misconduct must also be established. We therefore approach this Petition on the basis that the Petitioner must establish, to a fairly high degree of convincing clarity:

> ***(i) that the complained-of irregularity occurred;***
>
> ***(ii) that the conduct constituted an unlawful electoral act or other misconduct;***
>
> ***(iii) where required by section 97(2)(a), that the conduct was committed by the 1st Respondent or with his knowledge, consent or approval, or that of his election or polling agent;***
>
> ***(iv) the extent and reach of the alleged misconduct; and***
>
> ***(v) that the misconduct prevented or may have prevented the majority of voters from electing the candidate of their preference.***

Our attention is drawn to the evidence that was adduced in this matter. The petitioner presented his petition and called 6 witnesses to prove the allegations contained in the petition.

The evidence of the petitioner Makopa Mwanza who was PW1 was that he filed a petition before the tribunal due to what was happening during campaigns and during the voting time on 13th August 2026. He testified that he went to Mishishi polling station around 12:00 that was in Nkakula ward, upon arrival, PW1 found an observer

for United party for national development (UPND) named Bombeck Kaunda who told pw1 that he had a confrontation with the observer for NRPUP who was giving out pens and money and the police were informed. PW1 was worried and saddened because what he knew was that when it was voting day, money and pens were not suppose to be given to people . When PW1 went to the market, he met PW6 Rupiah Kevin Chola whom he gave food to take to the polling agents who were at lameck polling station.

PW1 testified that he went to chisonta polling station and found their observer named Mwalala, he was then given the food for him to give the polling agents. When PW1 asked Mwalala what was happening, he was told that people were being given pens, he then decided to go and see what was happening and it was around 13:00. PW1 testified that when he tried to enter the polling station, he was stopped by the police and he was told he was not supposed to be there hence he had to leave.

He testified that he got worried when he heard people were being given pens, PW1 proceed to Mwalala polling station and arrived around 14:00 , before reaching the polling station about 200 meters away from the polling station, he saw a man holding a paper which had faces for all candidates , he was then seeing showing the women where to vote . PW1 told the man that he was not supposed to show the women the face of the 1st Respondent, but he responded that there was no problem. When PW1 asked where the person got the posters, he was told that he got them from the officer from. PW1 went to the polling station and asked the field agent named Lewis Mulenga and asked who the person was who had the posters, he was told he was from NRPUP.

PW1 then went with Lewis Mulenga to Lameck polling station around 15:00 where he found his observer Kelvin Rupia Chola in the car. Before PW1 could come out of the car, he heard people on the queue telling Rupia and another person Davy Nyimbiri to leave and that they would be beaten. PW1 told Lewis to go inside to see what was happening, when Lewis returned, the people were still saying the same words. Later Rupia drove off with Davy Nyimbiri and the vehicles registration number

was AQB 813. PW1 also left with Lewis Mulenga and they went to Kapululu polling station.

He further testified that he saw a Toyota Sienta that arrived and a man came out who was a member of NRPUP though he did not know his name. When this person arrived, there was no confusion from the people who were in the queue and he was not threatened the way PW1's observers were threatened. When they arrived at Kapululu polling station, PW1 observed that people were going with their own pens. Later they went to Mishishi polling station to vote, he then managed to vote using the pen provided by Electoral Commission of Zambia. PW1 testified that they went to the government house with Lewis and it was towards 18:00. Lewis went inside while PW1 remained outside, he then saw people with their own pens to going to vote, and he then went and sat in the car.

PW1 testified that he received a call around 19:00 form Davy Nyimbiri who told him that the car for Kelvin Chola had been broken by the members of NRPUP at Lameck polling station. PW1 then called the secretary of the party and informed him about what happened to the observers. PW1 started waiting for his polling agent to update him about the results, he started calling them around 23:00hrs to 24:00hrs and they started telling pw1 the results. Pw1 told the agent to sign the gen 20 after votes were counted and get a copy so he could look at the results.

On 14th August 2026, PW1 called the different agents to ask about the gen 20 forms but they said they were not given apart from one polling station from government housing polling station. PW1 testified that he had a complaint about what happened as the voting was not free and fair, he decided to filing a petition so he could be helped so justice could prevail. He testified that the pens given to people were ordinary pens, though PW1 did not see the distribution of pens in other places. He got worried because Electoral Commission of Zambia had the mandate to provide pens. He thus want the tribute to help him in accordance with the laws of Zambia, he asked that the result be nullified so they could vote again without the issue of pens.

When cross examined by Mr. Nyirenda counsel for the 1st respondent, PW1 stated that what he knew was that Bombek reported to the police after the confrontation that happened though he did not have proof. He testified that the camp for UPND was not within the polling station at chisonta, and he was told by his members that pens were being distributed by agents for NRPUP. PW1 did not know how many agents distributed the pens and did not know the ones who were giving pens as he did not see them.PW1 testified that he tried to enter the polling station at chisonta but he was stopped by a police officer though as a candidate, he had the right to enter but he did not report the issue, and the police officer did not do a good job, he was alone when he stopped PW1 from entering.

He further testified that the distance from where he was to where he saw the men with posters was about 1.5 meters, though PW1 did not hear what they were saying but one was pointing on the photo of the 1st Respondent, and what he had was not a ballot paper, PW1 was alone when he saw the man with the poster. PW1 asked Lewis Mulenga who the man was and he told him he used to be found with members of NRPUP. He testified that being found with a member for a party did not mean one was a member of that party, and Lewis did not have proof to show that the old man was a member of NRPUP.

PW1 testified that he was driving a Toyota IST registration number AQB 1427 and he heard the people on the queue telling his agents that they would beat them. His observers were outside and their duty was to observe the voting process which started from the queue outside until into the voting room, and there was no observer in the voting room apart from the polling agent. When the agent went and came back, no one was telling them they would be beaten.

He further testified that a member of NRPUP was the one who went with the Toyota sienta and he was known to PW1 as he was an active member, though the man was not the cause of the confusion neither did he influence the confusion that was at the polling station earlier. PW1 testified that he was not personally threatened by the voters and he went to Mishishi polling station 2 times and voted at the second time he went there because of the mandate had of distributing food to the agents in the polling stations. He told this tribunal that he saw 3 people with pens while he was

voting in the room and it was wrong for them to go with their own pens because they impersonated the work of Electoral Commission of Zambia who had the mandate to provide pens.

PW1 did not know where the people got the pens neither did he see them using the pens when voting but it was still wrong for them to carry their own pens. He told this tribunal that he was called by Davy Nyimbiri and he was told that they had been attacked by a member of NRPUP around 19:00 and a report was made though he was not the one who reported about the attack, it was the owner of the vehicle who reported.

PW1 testified before this tribunal that his agents were not given the gen 20 apart from one polling station, and Electoral Commission of Zambia had the obligation to give the gen 20 and if his agents were not given, he could not blame his opponent. He testified that violence was only recorded at Lameck polling station and the registered voters there were 835, but PW1 did not know the votes he got nor did he know the vote's the opponent got. He testified that he had not seen the gen 20 forms to date and he did not see anyone being given money or pens personally neither did he see anyone being beaten.

When cross examined by Mr. Mweene,PW1 testified that he did not show the tribunal any evidence that the 1st and 2nd respondent's connived during elections, he agreed that he had party agents but his observers were chased from Lameck polling station. He testified that observers were not required to have accreditation forms or identity cards, he agreed that for one to remain at the polling station, he or she had to have an identity card or accreditation form, and if he was not told about the pens and money, he wouldn't have talked about it in his petition and he would have talked about other things that he saw. He testified that the pens he saw were ordinary but the ones found in the both were special and looked more expensive. He stated that there was no party symbol on the pens neither did the people have any party symbols who had the pens.

PW1 told this tribunal that he did not show any evidence that the 1st Respondent incited people to cause violence, and he did not ask the man he saw with the

posters if he was a member of NRPUP. He testified that he exhibited the same posters in the bundle of documents though they were not the actual posters that the man was holding. The document in his bundle was not the one that he saw the man holding but it was similar to what he saw. He testified that he knew the total number of votes she got though he forgot them but did not know the number of votes that the opponent got, and if the 3 votes of the people he saw with pens were given to him, he wouldn't have won. He did not tell the tribunal that there was violence when the votes were being counted and no agent told him that there was violence.

When cross examined by counsel for the 2nd Respondent pw1 testified that his observers from Lameck polling station were chased around 15:00 but he did not know the people that chased them who were ordinary voters, and he did not follow up the matter as to why the observers were chased from lameck polling station. He testified that the observers took food for the agents and there were 8 polling stations in Nkakula ward, though PW1 went to 7 polling stations out of the 8. From the 7 polling station, PW1 did not personally see anyone being given pens and money and he could not confirm or deny that the act actually happened. He further testified that he did not see any officer from Electoral Commission of Zambia give the man a poster that looked like the ballot paper; neither did the man tell him who gave him the poster. PW1 did not make an effort to get the paper to see what was there, and it was possible that the people went with their own pens and he could not know who they voted for, it could be factual that the 3 voted for the 1st Respondent or they voted for the petitioner.

PW1 stated that he was not there when the vehicle AQB813 was broken and he did not see the people who broke it. He further stated that the gen 20 were not issued to him or any of his agents apart from one polling station at government house , his agents told him that the electoral commission of Zambia had no copies that was why they were not given . PW1 did not make an effort to ask the retuning officer, though it was important for him to have the gen 20. PW1 was not aware that the Gen 20 were given to the agents who were present after the counting of votes and that they signed on the forms , but his agents did not sign and he did not know the reason. He told this tribunal there was confusion at lameck polling station before the

counting of the votes but he was just told and he did not witness it himself. He stated that there was no report from Electoral Commission of Zambia that counting of votes was disrupted.

PW2 was Bombeck Kaunda whose testimony was that he went to vote at Mishishi polling station on 13th August around 12:30, and when he joined the queues, there were 10 people in front, later PW2 went to answer the call of nature behind the classrooms, he then found a group of young men from NRPUP chatting, one of them told the friend that a vehicle was going to arrive and once that happened , he had to go and get pens, PW2 then went to sit on a pillar, Shortly PW2 saw the vehicle arrive and an agent for NRPUP went to get pens which were in a plastic. The agent followed people who were going to vote. While giving them the pens, the agent was putting money in the hands of people. PW2 followed the agent where he was and he grabbed a lady who had been given money which was a 50 and a pen. PW2 then reported to the police officer who was at the polling station. The officer followed the person who as distributing pens and rebuked him, PW2 left and went back to the polling station around 14:00 but he still found the group of people, he then forgot about since he already reported to the police officer.

When cross examined by Mr. Nyirenda counsel for the 1st respondent, PW2 testified that the petitioner was a candidate for the UPND and he stood as councilor and PW2 went to vote on the material day and no one confronted him. He further testified that he was just a voter on the day of voting and not an observer hence the petitioner lied by saying PW2 was an observer. He testified that he heard people talk about pens the time he went to answer the call of nature, when he returned, he went to sit on a stone because the queue was long.

He testified that he knew the people who talked about pens though they did not have any party regalia nor was he shown their membership cards. He testified that he did not know the number plate of the car that took the pens but it was white. He saw the pens in the plastic when the person who got them went closer, and there was nothing indicated on the plastic and no one said they were from the 1st Respondent. He testified that the one he found discussing about the pens was the

one who was distributing them. The one who went to get the pens did not go with the 1st respondent neither did he return with him.

He testified that he did not see when the vehicle left and did not know the people who were giving the pens and money and he did not ask them who sent them to distribute the pens. PW2 followed the lady he saw being given the money as he wanted to see what was put in her hands but he did not know the lady's name neither did he know the name of the person who gave her the money. PW2 testified that the 1strespondent was not there when the lady was given the money and pen and he did not ask what the money was for and he did not know why she was given. He told this tribunal that the lady was from NRPUP and he wasn't told by the lady that the money was from the 1strespondent, what PW2 knew was that the money and pen were to be used to vote.

He told this tribunal that he reported to the police who went and rebuked the one who was giving the pens , and the one who was distributing the pens did not say that he was sent by one who was he was sent by the 1st Respondent. He testified that the 1st Respondent was rebuked by the police officer. He testified that he reported around 13:40 and he did not hear the 1st Respondent tell people to vote for him nor did he see him giving pens, he saw 25 people who had been given money and pens. He further testified that he did not see the 10 people who were in front of him being given pens. PW2 testified that he did not know what was that remained happening the time he left the polling station and he did not make a follow up over his report as he expected the police to take action, and it was an offence for the people to be found at a place they were told to leave .He testified that he did not receive money and a pen and no one approached him to be given the money and pens.

When cross examined by Mr. Mweene PW2 told this tribunal that he used a pen when voting and It was not an offense to be found with a pen before voting , he also did not notice if the lady voted and the times she voted , but she got the pen when shhe was about to go and vote . He testified that he voted around 12:30 at Mishishi polling station and arrived there at 12:00, and during the time he was at the polling station did not see any violence.

When cross examined by counsel for the 2nd Respondent, PW2 told this tribunal that despite money and pens being given, the voting was smoothly done, when he saw the lady being give money, PW2 did not inform electoral commission of Zambia officers but he told the police who was outside, the officer then followed the people who were giving pens. At the time he went back, the distribution did not continue. He further testified that there was disruption of voting when the pens were being given, but those who were in the queue did not leave, and those who were arriving were the ones who were going to get pens. He testified that people were voting without disruption and no officer from electoral commission of Zambia witnessed any distribution of the pens

PW3 was Patrick Nga'ndu whose testimony was that on 13th August 2026; he went to Mwalala polling station as an agent for UPND and arrived at 05:50. When they entered the voting rooms, al boxes were checked and they were okay. At 06:00 the polling room was opened after the stake holders voted and people started going to vote. PW3 testified that while in the room he saw people arriving with their own pens and he did not know what it meant. 2 hours later, he went outside where he found 6 people seated on a bench with pens. When pw3 asked to be given a pen, he was told that he could not be given as he was an agent for UPND. He went back inside and around 12:00, he went outside again and found the same 6 people who had posters with faces for candidates starting from presidential to councilors, the 6 people were showing people were to vote and they pointed on the symbol for the lamp. PW3 told them it was not allowed to do such on the day of voting as that was taught by electoral commission of Zambia.

When cross examined by Mr. Phiri counsel for the 1st Respondent PW3 told this tribunal that he saw people with pens when he was inside the voting room who were members of NRPUP and he knew they were for NRPUP because of the symbol they were giving. He testified that he was aware that a lot of people in Zambia did not belong to a political party but they were voters, he was aware that when voting one could vote for candidates on different parties. He further testified that he did not see anyone distribute the pens, but the person who refused to give him a pen was

Bernard Bwalya, and he only had his statement before court that people were seen with pens

When cross examined by Mr. Nyirenda, PW3 told this tribunal that he arrived at 05:55 at the Mwalala polling station and he saw a lot of people with pens around 06:50 when people started to go and vote. He told this tribunal that the polling station was opened at 06:40, and the time he went outside, the 6 people he found with pens were not on the queue as they sat on the bench, though he did not know who put the bench there. When he asked for a pen, he was told they were for NRPUP members. He further testified that he didn't check the time he went back inside the voting room but he went outside the 2nd time at 12:00 , and he saw the 6 people with posters that had faces for all candidates and they were showing people who to vote for.

He told this tribunal that the 6 people were outside the boundary and he reported to the police officer, and at the training conducted by electoral commission of Zambia,, they were told to report any incident to the police or presiding officer, and he reported to the police not the presiding officer. When PW3 asked the 6 people who gave them the posters, he was told it was an officer from electoral commission of Zambia. He told this tribunal that he saw an officer from Electoral Commission giving out posters who was with a police officer seated on a bench. He further testified that it was an offence for the 6 people to have posters and it was wrong for the officer from Electoral Commission of Zambia to give out the posters, though the posters were not ballot papers ,the 6 people were telling people to get pens while people were on the queue . They were 15 people on the queue around 15:00 and 30 people around 10:000 and the 30 people got the pens. He testified that he never left the polling station but he didn't not see everything that happened when he was inside the voting room.

He testified that his role was both inside and outside the polling station, while he was inside he did not see the distribution of the pens. According to PW3 all the people who went with pens were given but he did not have any proof, and not everyone was given a pen, only members of a NRPUP and according to pw3 all the people who went with their pens were members of NRPUP. He further testified that

during the training, Electoral Commission of Zambia did not tell them that it was not a crime for people to go with their own pens and use it, and he asked for a pen, but did not want to be a member of NRPUP, if he had been given he was not going to be a member of NRPUP.

When cross examined by the 2nd Respondent's counsel, PW3 told this tribunal that the poster he saw with the 6 people looked like a ballot paper but it was big which was white with all Presidential candidates, members of parliament, mayors and councilors. Some posters were placed on the wall, while others were on the hands of the officer from Electoral Commission of Zambia. He told this tribunal that some officers from Electoral Commission of Zambia were inside the voting room while others where outside, the officer outside was not interacting with the voters who were on the queue and PW3 saw her giving out the posters but he didn't interact with her, and what he knew was that officers were not allowed to distribute posters. His job was to check on the voters and the distribution of pens and later he was supposed to start counting the votes.

As a polling agent, he was supposed to report to the presiding officer when he noted some issues happening but he did not do so, and he was an interested part who had to see that all went well. He testified that both the officer from Electoral Commission of Zambia and the people who were given the posters were inside the boundary. During elections, PW3 did not see any official from Electoral Commission of Zambia issue out any materials for any political party and none of the posters had individual posters for candidates. PW3 testified that he told his friends Shupa Fidelis of what was happening outside and from the time he was at the polling station, he did not see any violence happening and he did not see anyone being given money from any political party nor did the official from Electoral Commission of Zambia instruct voters were to vote.

There was no re-examination

PW4 was Lewis Mulenga whose testimony was that on 13th August 2026, he was working from Mwalala polling station and when people were going to vote, he saw them with pens. what made PW4 know the pens had a problem was because, when

a certain lady went to vote, she had no pen but upon reaching the booth ,she was given a pen by an agent for NRPUP even when Electoral Commission of Zambia had provided pens . The lady was told by the agent that if she used the pen provided by ECZ, the ink would be erased.

PW4 testified that people continued going to vote and exchanging the pens, but he did not say anything as a monitor. Later another voter went to vote but did not know how to cast her vote, she then asked to be helped and an agent for NRPUP volunteered to help her, the presiding officer allowed him to do that and the voter agreed, that was how she was helped. Later another voter arrived who did not know how to vote and the same agent stood so he could help him and said he was related to the man, but PW4 raised his hand told the presiding officer that the agent had already helped another person, that was how the person was helped by the presiding officer to cast his vote .

PW4 testified the he decided to go outside and found a bench where an officer from Electoral Commission of Zambia sat with posters that had the faces of all the candidates, and the voters were being given the posters but PW4 did not say anything; he went back inside and people continued going to vote. Around 14:00 PW4 received a call from the petitioner and asked him to go to the roadside, when he went outside, he found another bench which was next to where the officer from Electoral Commission of Zambia sat he found people seated there who had gone to vote and they belonged to NRPUP, he knew them as they used to meet during campaigns. PW4 did not say anything and they started saying they were going to vote on the lamp. PW4 proceeded to meet the petitioner but he met people who held posters with faces of candidate, he told they were wrong and asked them to stop, but he was told to proceed with his journey, then one person asked for bread form the petitioner but PW4 told him not to give them.

PW4 testified that he proceeded with the petitioner to Lameck polling station around 15:00; he went inside while the petitioner remained outside as he had no card. PW4 was then asked by people who were on a queue what he wanted, they continued making noise but he told them he had a card and was allowed to observe what was going on in polling stations. PW4 went inside the polling station but did not stay long

due to the noise of the voters from outside, he was told to leave the place, then a young man on the queue told PW4 that all they wanted was the lamp and they would kill someone.

PW4 went close to the young man and told him that what he was doing was wrong as casting of a vote was secret, he then went to a police officer who was nearby and told him what the person was saying and asked that he be removed, but the officer did not respond, PW4 then left and went to Kapululu polling station around 16:00. He showed the officer from Electoral Commission of Zambia his card and he went inside, however the other officer inside the voting room sent him outside and told him he was the one who was suppose to allow him to go inside. PW4 decided to leave around 17:00 and they went to Mishishi polling station and he found people seated in groups. He went round all polling stations and later casted is vote, he then went government complex polling station around 18:00.When they started counting the votes, there were a lot of people and pw4 told an officer to send away 2 men who were drunk, they were told to go out but shortly they went back inside.

When cross examined by counsel for the 1st Respondent, PW4 told this Tribunal that he did not have an encounter with the 1st Respondent the time he went to the polling station, and the 2 drunken men were removed from the polling station though they went back. He testified that he was engaged as field agent by UPND, but he never wrote a compliant to Electoral Commission of Zambia after going through all the polling stations, and it was not the problem of PW4 or the 1st Respondent if the police did not take action.

He further testified that he was bullied at lameck polling station and he was asked to leave but the 1st Respondent was not there neither did he tell anyone to bully PW4. He testified that the bullying added votes to the 1st Respondent because as they bullied him, they mentioned the lamp, hence others who wanted to vote for UPND could have changed and voted on the lamp, he testified that they did their campaigns but the bullying could have caused their members to vote for the opposition due to having fear.

He testified that he did not know how many people changed where to vote after he was bullied since voting was a secret, and it was possible for people to change. He testified that he did not change where to vote even after he was bullied as there was no noise at his polling station. He testified that he knew the 4 people who had the posters though not by name and the posters were not marked, and the procedure the presiding officer did of asking the voter if she was comfortable to be helped was right and the voter consented to being helped, he did not see the 1st respondent give a pen to anyone who was going to vote

When cross examined by Mr. Mweene, PW4 told this tribunal that people were using pens when voting and in all polling stations he went to , no one was chased for using their own pen , and PW4 did not lodge a complaint that people were using their own pens to vote. He testified that there was a another table outside near where the officer from Electoral Commission of Zambia sat and people were seated on it who had already voted, though he never told the tribunal that by then he found the people had voted. He agreed that some people got tired of standing in a queue, and as a field agent, he did not show the tribunal the identify card. He further testified that when he went to government complex he found a lot of people and he did not tell the tribunal that his role was to count votes at government complex, and he did not tell the tribunal that the people counting votes were affected.

When cross examined by counsel for the 2nd Respondent, PW4 told this tribunal that he observed things he was not happy with in 3 polling stations but he did not make a complaint formally, and his job as field agent was to inform the petitioner what was wrong and he told him verbally. He did not mention to the tribunal that voting was not disrupted despite the 2 men making noise at government complex, and the counting of votes continued at the totaling centre. He told this tribunal that the 2 men were just making noise and did not fight with anyone. He furthers testified that the posters given out by the officer from Electoral Commission of Zambia had the faces of all candidates and they were not pre-marked, but the 4 men were showing the voters where to vote , he was not shown the document but he saw them.

PW5 was Kelvin Rupia Chola whose testimony was that on 13th August 2026, he was assigned to distribute food to poling agents under the UPND and he started with

Lameck polling station around 15:00 before he could arrive, he found people giving signs that they had to vote on Mr. Mundubile's party and PW5 knew the people who were doing the signs who were john Chola, Ben Chanda but he forgot the 3rd person. PW5 told the police if it was in order for people to give signs, he told this tribunal that he was not welcomed by the people at the polling station as he was told they did not want to see him.

Shortly PW5 left and later went back around 17:00 at Lameck polling station with 2 of his friends. He told the police that he took food for the agents but he was asked to wait as they were sorting the votes. Around 18:00hrs to 19:00hrs, PW5 saw people who followed him to his car who were chasing him, he was asked what he went to do and he said he took food and he also wanted to hear the results . However they started throwing stones towards PW5 and his car and his windscreen was broken, that was how he drove near where the police officer was while his friends ran away.

The people followed him and continued attacking him, later the police called for help and police officers arrived. PW5 was picked with others and they went to the police headquarter, he was then asked to report the matter the following day, he also took photos of the damaged car. Later he gave the photo to the petitioner after printing it using his printer and laptop. He also gave the petitioner a copy of the police report. he told this tribunal that the elections were not free and fair because he was chased from the polling station and he did not hear the announced results and his car was also broken.

When cross examined by Mr. Malando counsel for the 1st Respondent PW5 told this tribunal that the elections were not free and fair in all polling stations of Nkakula ward and he went in all polling stations though he did not mention in his evidence. He testified that his compliant was not about the car that was broken but they were also chased from the polling station, and he voted at Mishishi polling station though he did not tell the tribunal that he was chased from Mishishi polling station.

He further testified that he was a business man but he was not paid to distribute food to the agents, and he was aware that the petitioner said he did not lose fairly

as the elections were not free and fair, and he could not confirm that at Lameck polling station it was dark as there were lights. He agreed that by 19:00hrs voting had already closed and his car was broken after voting time though the votes were affected as people did not work in peace. He testified that he was outside while the agents were inside the voting room counting votes, and he did not tell the tribunal that the 1st respondent was the one who chased him or if he was the one that broke his car, and he did not confirm if the party NRPUP was sued though the 1st Respondent was not political party. PW5 testified that he was the one who took the 3 photos of the car exhibited in the bundle of documents and the photos were taken from 3 different places though there was no date and time on them.

When shown the photos in the bundle of documents, he told this tribunal that the photo on page 3 and 5 were the same though the one on page 4 had the screen not completely broken. He testified that there was a person in the photo but he denied that the photo was edited, he agreed to have printed the photos himself and the cap on the person in the photo was due to finished ink. He told this tribunal that he was asked to go to the police on 14thAugust, 2026 though the date on the docket was 17th August 2026. He told this tribunal that he knew the people who broke his car though no nothing was indicted on the docket and It was not signed neither was there a police date stamp as well as the value of the car . He told this tribunal that the people for the 1st Respondent were the ones who broke his car.

When cross examined by counsel for the 2nd Respondent, PW5 told this tribunal that he started off going to lameck polling station at 15:00 and he met people who were giving signs of where to vote and they were outside the polling station and they were voters at lameck polling station, but he did not tell the tribunal that he saw them voting but he saw then outside.

When he went back to lameck polling station, it was around 17:00 and he was told they were sorting out votes, and it was not true that he was not suppose to be at the polling station where votes were being counted, and it was not true that he was not suppose to be there as he was an accredited agent, though when votes were being counted, not everyone would be allowed to be at the place. He further testified that he was not allowed to go inside at lameck polling station because he

was not agent and his car was broken after he voting was done. He told this tribunal that since his car was broken after voting was done, the elections were not free and fair.

PW6 was Davis Nsofwa whose testimony was that he was an agent for UPND and he arrived the polling station at 05:50 hours, he found officials from Electoral Commission of Zambia had arrived and they were shown the ballot boxes which were empty. As polling agents, they voted first and later people started voting, what PW6 saw was that people were going with their own pens to vote who supported NRPUP. When he checked his phone, he found a message from a number he did not know which stated that when voting they were not to use the pens provided by electoral common of Zambia as they had a problem, but PW6 did not pay attention to the number that sent him the message.

PW6 testified that they continued observing the elections until 18:00hrs when the polling station was closed, they started counting the votes and after that, he was made to sign a document with other agents. When he tried to get the gen 20, he was not given though he signed some documents he did not know what they were, later they left as they were told to either wait or go home.

When cross examined by Mr.Malando counsel for the 1st Respondent PW6 told this tribunal that the message was sent to him and he only saw it at the time he arrived at the polling station, he kept it for one week in his phone. He further testified that the message was from someone he did not know but it was a Zamtel number. He recalls attending voter education training but he did not know that service providers were sending educational messages. He told this tribunal that he did not know the number for the 1st Respondent neither did he hear him tell people to go with their own pens. When he signed documents, he signed as an agent as it was a requirement, but he did not learn anything from electoral commission of Zambia what it meant once he signed the documents as an agent. He told this tribunal that there was no confusion during the counting of votes and announcement of results.

When cross examined by counsel for the 2nd Respondent, PW6 told this tribunal that he did not tell the tribunal that people did not vote in peace neither did he say that

there was a disruption that happened , and he could not recall seeing figures on the paper he signed and he did not know if the figures were there.

This marked the close of the petitioner's case

RW1 was the 1st Respondent Robert Bwalya whose testimony was that on 13th August 2026, he went to his polling station where he was registered to cast his vote around 09:00, upon arrival, he requested to be allowed to vote without making a queue seeing that he was a candidate and he was allowed to vote. After he was done voting, he went to his home where he stayed the whole day. He testified that he could not go round the polling station as he did not have transport.

Around 23 to 24, he started receiving messages from his agents in different polling stations and he would records the marks somewhere. The following day, he added the figures he received and he found a total of 1836 votes. On 15th August 2026, he heard an announcement on radio that results would be announced at the totaling center at 09:00 that was how he went there; when he arrived he found the announcement had already started. RW1 testified that shortly after his arrival, the results for his ward were announced and he was declared the winner. As regards the allegation that he was giving money to voters, it was not true as he failed to go round the polling stations due to lack of money hence it was not possible for him to give money to voters. He further testified that he never worked with officers from Electoral Commission to intimidate the voters.

When cross examined by counsel for the petitioner, RW1 told this tribunal that he was not told what to say before the tribunal and he left Mishishi polling station round 09:20 , and it took him 5 minutes to reach the polling station from his home. He told this tribunal that he requested to be allowed to vote without making a queue and he was given special treatment as a stake holder. He told this tribunal that the polling agents were taking care of his needs and they represented him, but he could not speak on what they did on his behalf on the material day since he was not there, and it was possible the agents could have done something wrong when he was not there.

He testified that they were trained by Electoral Commission of Zambia and he attended 3 trainings and they were told what to do and what not to do during campaigns and during voting. They were told not to give anything to voters or wear party regalia on the day of voting and the rules applied to agents. He told this tribunal pens was anything as well as money and what they were told was that if things were given to voters, it meant bribing people.

When cross examined by counsel for the 2nd Respondent, RW1 testified that the campaign was free and fair in his ward and the time he was at the polling station, there was no disruption of voting process ,and he never saw any malpractice or any misconduct by the officers from Electoral Commission of Zambia . RW1 told this tribunal that the party selected the agents who were taking care of the interests of the candidates who stood on his party.

He told this tribunal that the agents were his eyes and ears and doing things on his behalf on the ground, and he was told by the agents about what was happening at the polling stations, and none of them told RW1 that there was any malpractice at the polling stations, neither was he told if there was any disruption of the voting at any polling station or during counting of votes. He told this tribunal that his agents signed on the Gen 20 and what he knew was that once an agent signed the Gen 20, then the figures were correct and they had to read before signing. He told this tribunal that the figures he was told by his agents were correct because they were the one that were announced at the totaling centre and as far as RW1 was concerned the elections were free and fair.

RW2 was Kingsley Kabengele whose testimony was that he was the returning officer for Chinsali constituency during the past elections that were held on 13th August 2026. His role was to coordinate and supervise the elections in the constituency which included training poll staff, briefing stakeholders, receiving results from polling stations and announcing of result for Presidential candidates and mayors and declaring the winner for parliamentary and local government elections.

Prior to having the Elections, the Commission and a meeting with stake holder and they were educated on the dos and don'ts. A day before voting, all poll staff were

deployed to their stations so they could open the polling stations on time. As retuning officer, he received Information that all polling stations opened by 06:00 on 13th August 2026, including Nkakula ward.

RW2 testified that he passed through Mishishi ward on the day of voting and later he went to the totaling centre. Around midnight results started arriving from polling stations and on 15th August 2026, results for Nkakula ward were announced, all stake holders who were present were given copies of the Gen 20. he told this tribunal that the allegation by the petitioner was denied by the commission as they were not privy that the 1st Respondent was campaigning on the day of voting neither did they work together with the 1strespondent to intimidate voters, as far as RW2 was concerned the elections in Nkakula ward were free and fair, and I was not an offence for one to go with their own pen to use when voting.

When cross examined by counsel for the petitioner, RW2 told this tribunal that it was not an offence for one to go with their own pen to vote, but candidates were not allowed to give anything to voters including pens on the day of voting. He told this tribunal that he spent 30 minutes at Mishishi polling station and visited 3 streams, and he agreed that his observation of the polling station was based on the 30 minutes he spent at Mishishi. He told this tribunal that all information about elections was given to him by presiding officers and the authority of the presiding officer was up to 400 meters and if an incident was beyond the 400, the presiding officer could not report.

RW2 told this tribunal that he did not hear that someone was campaigning on the day of voting , if anyone was seen campaigning , RW2 could be told by the presiding officer through the phone or a written report if it was something the presiding officer could not resolve. He further testified that the presiding officers were given diaries were they had to record any incident, though he did not bring the diaries to the tribunal. He testified that the mandate of the conflict management committee was to resolve disputes among parties and it was constituted by the Electoral Commission of Zambia.

He testified that it was not mandatory that all disputes had to be taken to the committee because other disputes would be resolved among the affected parties without the committee knowing. If a complaint was not taken to the committee, that complaint wouldn't be invalidated. He told this tribunal that the role of the police was to maintain order and offer security and they were stake holders on the electoral process, the electoral commission of Zambia would give directives to the police on how to work, and there was nothing wrong for one to report to a police officer if they saw something wrong at the polling station.

He told this tribunal that it was wrong for a candidate to tell voters who to vote for on voting day, and he could not say for certain that the agents for the Petitioner were given the Gen 20. he told this tribunal that he spent 30 minutes at the polling station he went to and a candidate was not suppose to be stopped to go to a polling station as they were allowed to visit and not camp.

When cross examined by counsel for the 1st Respondent, RW2 testified that he was certain with his answer in paragraph 9 of the 2nd Respondent's answer filed before court as he received reports from the presiding officers, and the 30 minutes he spent at Mishishi did not limit his knowledge. The results referred to in paragraph 13 of the 2nd Respondent's answer were for the 1st Respondent and paragraph 4 was in response to paragraph 8 of the petitioner where the petitioner alleged the ward to be a constituency.

He told this tribunal that he did not receive any information that the 1st Respondent was giving pens to voters and he gave out his phone numbers to all stake holders but the petitioner never called him to report any malpractice in Nkakula ward. He told this tribunal that the election agents and polling agents were issued with identity cards which they returned after the elections ended. As regards paragraph 5 of the 2nd Respondent's answer, it meant that elections were free and fair in Nkakula ward and there was no confusion that would affect the results. RW2 told this tribunal that In Elections, there would always be a winner and a looser and if there was a tie in the votes, there a would be a tie breaker.

This is the evidence we received

Counsel for both parties filed submissions and we are grateful for the spirited submissions.

Finding of facts

We wish to state that our findings are that, there was some incident of violence on the voting day at lameck polling station, however we wish to state that the said violence occurred after voting had closed, we also find that some voters were seen going with their own pens to go and vote, but what has to be established is whether the said voters were all given pens by the 1st Respondent or his agents and if the act of using their own pens could have influenced the majority voters to vote otherwise.

The application of the law to the facts

Having stated our findings, we shall now apply the law to these facts. We do that in order to establish if the standard of proof set out above has been satisfied and if on the strength of the evidence and findings of this tribunal can nullify the election of the councilor for Nkakula ward.

The reading of the provisions of section 97(2) (a) of the Electoral Process Act No. 35 of 2016 states ***that the election of a candidate as a Member of Parliament, mayor, council chairperson or councilor shall be void where, upon trial of an election petition, it is proved to the satisfaction of the High Court or tribunal that a corrupt practice, illegal practice or other misconduct has been committed in connection with the election by a candidate, or with the knowledge and consent or approval of the candidate or that candidate's election agent or polling agent, and the majority of voters in the relevant constituency, district or ward were or may have been prevented from electing the candidate whom they preferred.***

It follows from the wording of section 97(2) (a) that there are material elements which a Petitioner must establish before the drastic remedy of nullification can be

granted. First, the alleged corrupt practice, illegal practice or other misconduct must be established. Secondly, where the conduct is not personally committed by the candidate, the requisite knowledge, consent or approval connecting the conduct to the candidate or his election or polling agent must be established. Thirdly, and importantly, the Petitioner must demonstrate that the misconduct prevented, or may have prevented, the majority of voters from electing the candidate of their preference.

In the matter before us, the Petitioner in his petition alleged that the elections were not free and fair in that persons associated with the 1st Respondent distributed pens and money to voters on polling day. PW1 testified that he was informed that pens were being distributed at various polling stations. However, under cross-examination, he conceded that he did not personally see anyone distributing money or pens. He further stated that he did not know how many people were distributing the pens and did not know the identity of the persons allegedly responsible. Indeed, PW1 expressly accepted that, from the seven polling stations which he visited, he did not personally see anyone being given pens or money and could neither confirm nor deny that the alleged conduct occurred.

PW2 gave more direct evidence; he testified that, at Mishishi Polling Station, he saw an individual collecting pens from a vehicle and subsequently distributing pens and money to persons approaching the polling station. He stated that one lady received a K50 note and a pen and that he reported the matter to a police officer. PW2 further testified, however, that he did not know the registration number of the vehicle from which the pens came, did not know the names of the persons distributing the pens and money, and did not hear anyone state that the money or pens were being distributed on the instructions of the 1st Respondent. Significantly, the 1st Respondent was not present when the lady was allegedly given the money and pen.

PW2 estimated that approximately 25 people had been given money and pens. Yet he did not know whether those persons ultimately voted, for whom they voted, or whether the distribution affected their choice. He also confirmed that voting

continued smoothly and that the people already in the queue did not leave because of the alleged distribution. PW3 testified that he saw persons with pens and that some people told him the pens were for NRPUP members. However, he expressly accepted that he did not see anyone distribute the pens. He also accepted that he could not establish that every person who carried a pen was a member of NRPUP.

PW3's evidence concerning the pens must therefore be treated with caution. A person possessing or using a pen is not, without more, evidence that the pen was supplied by a candidate or that its use constituted an electoral inducement. This point is reinforced by the evidence of RW2, the Returning Officer, who stated that it was not an offence for a voter to go to a polling station with his or her own pen. His evidence was that candidates, however, were not permitted to give anything to voters on polling day. Accordingly, the mere fact that voters were found carrying their own pens cannot constitute proof of an electoral offence.

We note that the evidence of PW2 raises a concern regarding the alleged distribution of money and pens at Mishishi Polling Station. However, the evidence does not satisfactorily establish that the 1st Respondent personally participated in that conduct or that the persons involved acted with his knowledge, consent or approval. There is also insufficient evidence connecting the unidentified persons to the 1st Respondent. The evidence that they were associated with NRPUP, even if accepted, does not by itself establish that they were acting as agents of the 1st Respondent or under his authority.

Most importantly, the Petitioner has not demonstrated the electoral effect of the alleged distribution of pens as well as the effect of some voters going to vote with their own pens. There is no reliable evidence establishing how many voters received the alleged money, how many actually voted, how many were induced by the alleged payment, or how many changed their intended vote as a consequence. we therefore find that the allegation of distribution of money and pens has **not been established to the requisite standard so as to engage section 97(2)(a) of the Act.**

The Petitioner also relied upon evidence concerning persons displaying posters containing the faces of candidates and allegedly directing voters where to vote. PW1 testified that, approximately 200 meters from Mwalala Polling Station, he saw a man holding a paper depicting candidates and showing women where to vote. PW1 stated that the man was associated with NRPUP. However, PW1 accepted that he did not hear what the man was saying and did not establish his identity. He also admitted that the poster produced before the Tribunal was not the actual poster he saw. PW3 gave evidence that six persons were outside Mwalala Polling Station with posters depicting candidates and that they were allegedly showing voters where to vote. He stated that he reported the matter to the police.

PW3 also testified that the posters were not pre-marked and contained the faces of all candidates who included those standing on UPND. He accepted that the posters were not ballot papers. He further testified that he did not report the incident to the presiding officer, despite his training having instructed him to report incidents to the police or presiding officer. PW4 similarly testified that he saw an Electoral Commission officer seated outside with posters containing the faces of candidates and that some persons were allegedly showing voters where to vote. He did not, however, lodge a formal complaint with the Electoral Commission.

It is significant that none of PW1, PW3 or PW4 identified the 1st Respondent as the person undertaking the suspected campaigning. None of them testified to have seen the 1st Respondent instructing the persons concerned, nor was there evidence demonstrating that the persons concerned were acting as the 1st Respondent's authorized agents. There is also a material evidential distinction between the existence of campaign material and proof that a candidate personally or through an authorized agent used that material to unlawfully influence voters. We therefore find that, while the evidence suggests that certain persons may have engaged in conduct which was inconsistent with the proper conduct of an election, the required nexus between that conduct and the 1st Respondent has not been established to the requisite standard.

As regards the testimony of PW4, he testified that an NRPUP agent assisted a voter who did not know how to cast her vote. According to PW4, the presiding officer permitted the assistance after the voter agreed to be helped. When another voter required assistance, PW4 raised an objection because the same agent had already assisted another voter, and the presiding officer thereafter assisted that voter. On the evidence before us, the first instance of assistance was expressly permitted by the presiding officer and consented to by the voter. The second voter was assisted by the presiding officer after PW4 raised his concern. There is therefore insufficient evidence that the procedure resulted in an unlawful interference with the secrecy or freedom of the vote. On the contrary, the evidence demonstrates that the presiding officer exercised supervisory control over the process.

The Petitioner further relied upon allegations of intimidation and violence, particularly at Lameck Polling Station. PW1 testified that, when he arrived at Lameck Polling Station, he heard persons in the queue telling his observers, Kelvin Rupia Chola and Davy Nyimbiri, to leave and threatening that they would be beaten. He did not, however, identify the persons who made the threats. He subsequently left the place. PW4 similarly testified that he was told to leave Lameck Polling Station and that one person allegedly said that those present wanted "the lamp" and would kill someone. PW4 reported the statement to a police officer but stated that the officer did not respond. PW5 gave evidence of a more serious incident occurring later in the day. He testified that, after returning to Lameck Polling Station between 18:00 and 19:00, persons followed him to his vehicle, threw stones at it and broke the windscreen.

He reported the matter to the police and later produced photographs of the damaged vehicle. However, PW5's evidence under cross-examination materially qualified the allegation against the 1st Respondent. He expressly accepted that the 1st Respondent was not present, did not personally chase him and that he could not state that the 1st Respondent personally broke the vehicle. More so, PW5 accepted that the vehicle was damaged after voting had closed. He further accepted that he was outside while the agents were inside counting votes.

The petitioner alleged in his affidavit verifying facts and his testimony that his agents and observers at Lameck polling station were chased. While he addressed almost all his witnesses as agents and monitors, only three advanced undisputed evidence that they were officially assigned by the party as either field monitor or polling agents. PW3,PW4 and PW6. A perusal of the record clearly shows that none of these witness ever mentioned being sent away or chased from the polling stations as alleged.

What is on the record close to this allegation is PW5's testimony. It is however notable from his evidence that he said he was just engaged to deliver food, which fact he said he even told the polling agent Alick Bwalya who allegedly chased him. According to this witness when Bwalya Alick chased him he complained to the police saying "I just brought food."

In the case of Mwiya Mutapwe vs Shomeno Dominic. It was held that **not everyone in a candidate's political party is his agent.**

It is surprising how the petitioner who is so much worried about the security of the votes does not see the purpose of accreditation and expects every person he related with to have freedom to walk in and out of polling rooms without proper identity and purpose. We find his allegation that his observers and agents were chased to be baseless.

The timing is material, an act occurring after the close of polling may constitute criminal or other misconduct, but for purposes of section 97(2) (a), the Petitioner must still establish its connection with the election and demonstrate its effect upon the ability of the majority of voters to elect their preferred candidate. The evidence before the Tribunal does not establish that the alleged attack occurred during the voting period or that it prevented voters from exercising their rights. Further, although PW4 expressed the view that intimidation could have caused voters to change their intended vote, he conceded that he did not know how many people changed their vote and accepted that voting was secret.

The Tribunal cannot speculate as to how voters might have voted. The effect of alleged intimidation must be proved by evidence rather than conjecture. We accordingly find that the evidence establishes, at most, an isolated disturbance at

Lameck Polling Station. The Petitioner has not established that the disturbance was orchestrated by the 1st Respondent or his authorized agents, or that it prevented or may have prevented the majority of voters in Nkakula Ward from electing the candidate of their choice.

The Petitioner also complained that his agents were not given copies of the Gen 20 forms following the counting of votes. PW1 testified that, on 14th August 2026, he contacted his agents and was informed that they had not been given Gen 20 forms, save for one polling station at Government Housing. He accepted, however, that he did not make an effort to approach the Returning Officer about the alleged failure. PW1 further conceded that he had not personally seen the Gen 20 forms and that he was unaware whether agents present at the counting had been given the forms. He also accepted that he did not know why his agents had not signed the forms.

PW6 gave evidence that, after counting, he signed documents but was not given a Gen 20. He did not know the figures appearing on the document he signed and did not testify that the figures were incorrect. He further confirmed that there was no confusion during the counting or announcement of results. In contrast, RW2 testified that, when the results for Nkakula Ward were announced, stakeholders who were present were given copies of the Gen 20 forms. He also stated that he could not say with certainty whether the Petitioner's agents had been given copies. On this evidence, the Tribunal is unable to conclude that there was a deliberate withholding or manipulation of Gen 20 forms. The Petitioner has not demonstrated that the alleged non-provision of the forms resulted in an incorrect result. There is no polling-station-by-polling-station comparison establishing the official figures, the alleged alternative figures, and the number of votes in dispute or the net effect of the alleged discrepancy upon the result.

The authorities of **Sibongile Mwamba v Kelvin Sampa and Another [2017] ZMCC 87** and **Dean Masule v Kangombe [2020] ZMCC 3**, underscore the necessity of demonstrating that alleged electoral non-compliance had the requisite effect upon the election result.

Coming to the testimony of the 1st Respondent, he testified before this tribunal that he voted at his polling station at approximately 09:00 and thereafter returned home, where he remained for the rest of the day. He explained that he did not have transport with which to move around the polling stations. Later that night, he received information from his agents regarding the results from various polling stations.

Under cross-examination, RW1 acknowledged that his agents were effectively his eyes and ears at the polling stations and that it was possible for an agent to have done something wrong without his personal knowledge. RW1 nevertheless stated that his agents had been trained by the Electoral Commission and were aware that they were prohibited from giving anything, including money or other items, to voters on polling day. He understood such conduct to amount to bribery.

The evidence of RW1 is not, by itself, sufficient to disprove every allegation made by the Petitioner. However, the burden remains upon the Petitioner to prove the allegations. The 1st Respondent is not required to prove the negative proposition that no person associated with him ever engaged in misconduct. The crucial question is whether the Petitioner's evidence establishes the necessary connection between the alleged conduct and the 1st Respondent. On the record before us, it does not.

As regards the testimony of RW2, who was the Returning Officer for Chinsali Constituency, his responsibilities included coordinating and supervising the election, training polling staff, receiving results and declaring the winners of parliamentary and local government elections. RW2 testified that all polling stations in Nkakula Ward opened by 06:00 on 13th August 2026. He further stated that he passed through Mishishi on polling day and subsequently proceeded to the totaling centre. Results began arriving around midnight and the results for Nkakula Ward were announced on 15th August 2026. RW2 further stated that he received no report that the 1st Respondent was campaigning on polling day, giving pens to voters, or working with Electoral Commission officers to intimidate voters.

He also testified that, if a serious incident occurred at a polling station, the presiding officer could report it to him by telephone or in writing. RW2 further confirmed that it was wrong for a candidate to tell voters whom to vote for on polling day. He also stated that a candidate was entitled to visit polling stations and could not simply be prevented from doing so, although a candidate was not permitted to camp at a polling station. The evidence of RW2 is particularly relevant because the Petitioner alleged widespread electoral misconduct. Yet there is no evidence of an official report from the Electoral Commission confirming widespread disruption of voting in Nkakula Ward.

We have considered the Petitioner's submission that the Tribunal should consider the cumulative effect of the various irregularities, and we accept that, as a matter of principle, proven irregularities may be considered cumulatively. However, cumulative effect cannot be used as a substitute for proof. Each material allegation must first be established to the requisite standard. In the present case, the evidence establishes that there were concerns and isolated incidents at some polling stations. There is evidence that some voters possessed their own pens; there is evidence from PW2 of an alleged distribution of money and pens at Mishishi; there is evidence from PW3 and PW4 concerning persons displaying candidate posters; and there is evidence of disturbances and an attack on a vehicle at Lameck polling station.

However, the evidence does not establish a coherent, respondent-linked pattern of electoral misconduct extending throughout Nkakula Ward. More so, the Petitioner has not demonstrated the electoral effect of the alleged conduct. The evidence does not establish the number of voters allegedly bribed or induced, the number allegedly intimidated the number of who people were prevented from voting, or the number who allegedly changed their vote as a consequence of the complained-of conduct.

PW1 himself accepted that he did not know the votes received by the 1st Respondent at the relevant polling station and did not know how many votes were affected. He further accepted that, because voting was secret, it was possible that persons who carried their own pens could have voted for either candidate. This is critical. The Tribunal cannot infer the political preference of voters merely because they

possessed a pen, received an item, were present near persons associated with a particular political party, or were exposed to a poster.

The statutory test is not whether something improper occurred in isolation. It is whether the statutory conditions for nullification have been satisfied. The evidence therefore falls short of establishing that the majority of voters in Nkakula Ward were, or may have been, prevented from electing the candidate of their preference.

Coming to the issue of electoral materiality, the principle of electoral materiality is also relevant as stated in the **Morgan v Simpson [1975] QB 15**, where Lord Denning identified circumstances in which an election may be vitiated by departures from electoral law, including where an election is not substantially conducted in accordance with the law or where a breach or mistake affects the result. We approach that authority cautiously and only to the extent consistent with the Constitution and the Electoral Process Act.

The governing statutory provision in this case remains section 97(2)(a). The evidence before the Tribunal does not establish that the election in Nkakula Ward was conducted so fundamentally contrary to law that the electoral process as a whole ceased to represent the exercise of the franchise by the voters. Nor has the Petitioner demonstrated that the alleged irregularities affected the result to the extent contemplated by section 97(2)(a). The Tribunal cannot speculate about electoral effect. The alleged effect must arise from the evidence. In **Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Others**, the Supreme Court stressed that malpractice must be shown to have been of such scale as to affect the result so that the declared outcome could no longer be regarded as representing the will of the majority of voters. In the present case, that threshold has not been reached.

Having carefully considered the evidence as a whole, we make the following findings: **First**, the Petitioner has not proved that the 1st Respondent personally distributed money or pens to voters. **Second**, although PW2 gave evidence of an alleged distribution of money and pens by unidentified persons at Mishishi Polling Station,

the evidence does not sufficiently connect those persons to the 1st Respondent or establish that they acted with his knowledge, consent or approval. **Third**, the evidence concerning persons carrying their own pens does not, without more, establish an electoral offence, particularly in light of the Returning Officer's evidence that voters were not prohibited from bringing their own pens.

Fourth, there is evidence that persons displayed posters and may have directed voters towards particular candidates. However, the evidence does not establish that the 1st Respondent personally participated in that conduct or authorized it. **Fifth**, there is evidence of disturbances at Lameck Polling Station and damage to PW5's vehicle. However, the evidence does not connect the 1st Respondent to the incident and, significantly, the vehicle was damaged after the close of polling. **Sixth**, the Petitioner has not established that the alleged incidents prevented or may have prevented the majority of voters in Nkakula Ward from exercising their right freely. **Seventh**, the complaint concerning Gen 20 forms has not been supported by sufficient documentary or numerical evidence to demonstrate that the result was thereby compromised. **Eighth**, there is no sufficient evidence before the Tribunal demonstrating that the alleged irregularities, whether considered individually or cumulatively, materially affected the result of the election.

Election petitions are important proceedings because they protect the integrity of the electoral process. The Court must therefore scrutinize credible allegations of electoral malpractice carefully. At the same time, the remedy of nullification cannot be granted merely because irregularities or isolated incidents are shown to have occurred. The Petitioner bears the burden of establishing the statutory grounds for nullification to the requisite standard. The evidence must establish not only the occurrence of the complained-of conduct, but, where required, its attribution to the candidate and its electoral consequence. In the present matter, we find that the Petitioner has not discharged that burden.

The evidence, taken at its highest, establishes that there were isolated incidents and concerns at certain polling stations. However, the evidence does not establish that the 1st Respondent personally committed the alleged electoral offences, or that the

persons responsible acted with his knowledge, consent or approval or that of his election or polling agents. More fundamentally, the Petitioner has not established that the alleged conduct prevented or may have prevented the majority of voters in Nkakula Ward from electing the candidate whom they preferred. The statutory requirements under section 97(2) (a) have therefore not been satisfied.

In conclusion we want to state that the petitioner did not prove to the satisfaction of the tribunal which higher degree of clarity that the incidences were so widespread that they prevented or might have prevented the electorates from voting for their preferred candidate and as such affected the outcome of the election. For avoidance of doubt, we hold that, from the foregoing and on the plethora of authorities, the 1st Respondent was duly elected as councilor of Nkakula ward in Chinsali district.

In the circumstances the petition fails and is accordingly dismissed.

Each party to bear its own costs.

I.R.A 14 days.

Delivered at Chinsali this 25th day of September 2026

REPUBLIC OF ZAMBIA
THE JUDICIARY
25 SEP 2026
SENIOR RESIDENT MAGISTRATE
P.O. BOX 430058, NAKONDE

HON E. PHIRI
CHAIRPERSON

C.N. MAKODZA
HON. MEMBER

K. SAKACHIVA
HON. MEMBER