IN THE LOCAL GOVERNMENT ELECTION TRIBUNAL 2026/F/LGET/11
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 TRIBUNAL RULES OF 2026 OF THE LOCAL GOVERNMENT ELECTION TRIBUNAL RULE OF 2026

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

BETWEEN

BRIAN CHILESHE PETITIONER

AND

JOSEPH LUKWESA 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 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**

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 Ichinga 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 Ichinga 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 Ichinga 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 8 witnesses to prove the allegations contained in the petition.

Our attention is drawn to the evidence that was adduced in this matter. The petitioner presented his petition and called 8 witnesses to prove the allegations contained in the petition.

The evidence of the petitioner Brian Chileshe who was PW1 was that the election was not free and fair owing to electoral malpractices that were contained in the petition and more specially that the NRPUP engaged in violence during campaign and the 1st respondent by himself or through his agents did engage in vote buying by giving and pens money to votes in exchange of their votes.

The petitioner further testified that after he was nominated under the UPND to stand as councilor in Ichinga ward, they were given time to campaign and during the campaigns, in June 2026 they had an incident where their colleague was attacked who used to take care of the United Party for National Development (UPND) office, and he as attacked by people from the opposition which was National reconciliation prosperity for unity party (NRPUP). He testified that the colleague Moab Siwale (PW5) was taken to the hospital as he sustained some injuries and PW1 went to see him.

PW1 further testified that there was a time he saw his photo that was posted on facebook by the nephew to the 1st respondent with caption of words stating that he was a crook and used to steal TV panel, if he is given access to CDF, he would be stealing". He testified that the 1st Respondent then made a comment below the photo which PW1 did not like and it was Bemba proverb. He testified that a lot of people viewed his photo , he then called the 1st Respondent to tell him about the photo and the 1st Respondent told PW1 that he was aware about the photo sent by his relative but he could not find it on facebook

PW1 testified that on 13th August 2026, he deployed his agents in the different polling stations where they were assigned to operate from around 06:00. Later around 09:00 he went to vote at chimbeimbe polling station and managed to vote. While there he found something strange in that each person who was going to vote was going with a pen. He testified that he had never seen such a thing happen in his entire life that he started voting.

PW1 went to approach the presiding officer about the issue of people going with their own pens and she was equally surprised. When he went outside, he found one person from NRPUP and asked him about the issuance of the pens, PW1 was told they had their own pens and would not use the pens provided for by the government as they were from the ocean and they were for Satanist, he was also told that they wanted to remove the government.

PW1 left home and around 09 to 10:00, he received a call from Mukulo polling station from Wavis (PW6) who informed him that his friend was giving people money and pens who stood on NRPUP party. PW1 told PW6 that he would go there to see if it was true. When he went to Mukulo polling station, PW1 found the 1st Respondent in a spacio car seated, he then asked him what was happening, but the 1st Respondent just laughed and drove off.

PW1 testified that he asked the people around what was that happening, he then told him that the 1st Respondent was giving people pens and money, he then saw lady with a pen and a K20 though he did not know her name. He then grabbed the lady's hand and got the pen from her, he also tried to see what was in her hands the

lady then told PW1 that she was not going to give him the money was he was not the one who gave her but it was the 1st Respondent who gave her, the lady then started insulting PW1 after they struggled. PW1 was then told by PW6 to just let go of the lady as it would cause confusion. He then left and went to kabungo polling station where he found a lot of people with pens on the queue. PW1 called his agent to ask about the pens, he was then told that the 1st Respondent gave the pens to the people, and he asked the people not to use the pens provided by electoral commission of Zambia as they were for Satanists.

PW1 testified that he left the place and went home while the person who carried him went to do other duties that were assigned to him by the party. While at home, PW1 received a call from Marjory a polling agent around 14:00 from mwaba polling station who informed him that pw4 had been injured by members of National Restoration Unity Party for and prosperity (NRPUP). He rushed there but did not find any agent, he then followed them at the hospital where he paid the money that was needed which was K100 and he left. While on his way, PW1 received a call from Mutale polling station from Ruth Mukuka who told him that the 1st respondent was giving out pens and he was showing people were to vote. PW1 called the agent who was transporting him and he later took him to Mutale polling station, he then met the 1st respondent but they did not talk to each other.

PW1 testified that he found a group of people in a football pitch and he recognized one person named Peter Chimfwembe who stood as councilor on National Restoration Party for Unity and Prosperity (NRPUP), he then asked him about the issue of pens which were being given away to people and showing them where to vote. Peter responded that it was true and that they wanted to change the government as they were suffering under UPND. He also told him that they were giving the pens to people because the pens inside the voting room were for Satanists and if they used those pens, the ink was going to be erased. PW1 told Peter that what they were doing was a crime.

PW1 testified that he later went home and around 15:00 he was called by Friday Mulenga the one who used to take him round on a motor bike and he told him that he was at chimbeimbe polling station and he saw the 1st Respondent giving out what

he was earlier giving, and when he tried to approach them, they tried to beat him and they started insulting him. PW1 asked Friday to capture the same people since he had a smart phone, he also asked him to leave the place. When pw1 met Friday, he asked him if he managed to capture the people, but he told him that he did not as they wanted to beat him.

PW1 testified before this tribunal that he later went to Mwaba polling station to see how the counting of votes was going but he was stopped that he was not allowed to go inside, as regards the second polling station from where the agent was beaten, there was no agent for his party, and when he went to stream 7, his 2 agents were outside who told him they had been chased at the time the votes were being counted these being Darious Makasa and Francis bwalya.

PW1 testified that he then went back to his home to wait for the results, later around 19 to 20 hours he received a call from Wavis(PW6) that there was some confusion at Mukulo polling station and one UPND member was almost stabbed with a spear, that was how PW1 told Wavis to go home. The follow morning , PW1 waited for his agents to give him the gen 20 forms but none of them did that , he started calling each agent and they all told him that they were not given the Gen 20 forms though others signed while others did not sign on the forms. Pw1 went to check for himself as they had to be stack at the polling station but he did not find anything that was stack. Later the same day around 09:00 on 14th August 2026, the results were announced on radio and the 1st respondent was declared the winner.

After thinking thoroughly about what was happening, PW1 thought the results were not free and fair hence he decided to come to Court to he helped as he felt people would have voted for him if the 1st respondent had not given them money and pens. He thus prayed that the results be nullified so that they could have re-election to allow people to vote again. He testified that the pens that were being distributed were ordinary pens that one could buy at the market.

When cross examined by counsel for the 1st Respondent, PW1 told this tribunal that he had not been given any response from Electoral Commission of Zambia and his lawyer did not tell him the response. When referred to his bundle of documents PW1

stated that the photo of him that was posted on facebook had no date and he had lived in chinsali for 20 years. He stated that the message on the photo spoke about the past and did not state which period, and he told the tribunal that the caption on the photo talked about TV panels but what was there was about phone panels. He told this tribunal that the according to him, the person who posted said that PW1 would be stealing CDF, though there was nothing to show the number of people who viewed the same photo, though on his phone the number of people who viewed was there.

PW1 stated that the one who posted his photo on facebook was the nephew to the 1st Respondent though he did not sue him, and the party engaged an agent who used to take him around. He told this Tribunal that he was aware that agents had to be accredited by Electoral Commission of Zambia but he did not tell the tribunal if the agent who was taking him round was accredited. He told this tribunal that he did not show proof to the it that any agent for National Restoration Party for unity and prosperity (NRPUP) attacked their agents though there was a medical report for his agent. He told this tribunal that he saw 1st Respondent giving a lady K20 and a pen though he had no proof that the K20 was meant for the same lady to vote for the 1st Respondent.

He stated that he could not confirm that people in villages thought Electoral Commission of Zambia was for the president Hakainde Hichilema. He further stated that the one incident of a K20 was what he thought the 1st Respondent was buying votes. PW1 told this Tribunal that he was aware that polling stations opened at 06 and he found people in queues while others were joining the queue after getting pens. PW1 testified that he was at Mwaba polling station around 14:00 and he did not see the people who voted before 14:00, and other people had pens while others did not have. He told this tribunal that he did not know all the people who supported National Restoration Party for unity and prosperity (NRPUP) in his ward.

He testified that he had the pen he got from the supporter for NRPUP but he did not show it to the Tribunal and it was an ordinary one which could be bought at the market.

PW1 told this tribunal that he did not know that if one went with their own pen to vote, it was not a crime, and he had proof that he paid K100 at the hospital though he did not show the tribunal the proof, though the receipt did not show that his agent was assaulted by agents for NRPUP. He stated that he did not know how many votes he got to date and he did not ask the officer from Electoral Commission of Zambia in Chinsali.

PW1 agreed that the pen he got had no symbol for any party and during campaigns, he visited all polling stations in his ward and a good number of people knew him even facially. He told this tribunal that he voted from chimbeimbe polling station and later went to other polling stations and his face was seen by the people in the polling stations he went to, and they knew him as a candidate on that day, he told this tribunal that he was seen when he was passing through in polling stations.

PW1 told this Court that the people who were given pens saw the face of the person who gave them though there was no face on the pens. He told this Court that he grabbed a pen from one person and if the vote of that person was given to him, he would still not win. He told this tribunal that he knew the people voted for whom had pens on the queue though he could not know the number.

When cross examined by counsel for the 2nd Respondent, PW1 told this tribunal that he did not lie to the tribunal and he did not know what would happen when one told a lie. He recalled telling the tribunal that he received a call from Marjory on 13th August 2026 around 14:00 to say that Eugenia was assaulted by members of NRPUP at the polling station and it happened on the voting day. He agreed to have gone to the hospital and paid K100. When showed the bundle of documents, PW1 stated that the medical report for Eugenia was dated 14th August 2026 though he said he went to the hospital on 13th August 2026, the date stamp for the police and hospital were dated 14th August 2026.

He told this tribunal that Moab was the one who was found at the united party for national development (UPND) office and his medical report was dated 12th June 2026 , and the elections were on 13th August 2026 though he did not witness Eugenia being assaulted because it was at night , he told this tribunal that he did not

see any officer from Electoral Commission of Zambia assault Eugenia and there was nothing to show that an official from electoral commission of Zambia assaulted Moab neither was there any name indicated on the medial report. He further told this tribunal that he found Peter chimfwembe giving pens but he did not see any official from Electoral Commission of Zambia giving pens, and he did not lodge any complaint at Mutale polling station to the presiding officer over what he saw on the distribution of pens.

PW1 told this tribunal that he did not know a document from Electoral Commission of Zambia called appendix 1. He told this tribunal that Friday Mulenga was the one who was picking him when going round the polling station, and recalled Friday called to tell him that pens were being distributed at chimbeimbe polling station but he did not see anyone being given a pen as he did not go there. He told this tribunal that 2 agents were not at the polling station as they had gone to the hospital, and the agents were not removed by Electoral Commission of Zambia from stream 2. When the gen 20 was being distributed, the agents were not there, and he was not there was Darious and Friday were asked to leave stem 7 and he did not know the person who told them to leave. PW1 testified that he did not make a formal complaint to Electoral Commission of Zambia that the agents had been chased from steam 7. He told this tribunal that he was not given any accreditation document. When shown gen 20 he said he could not see the signature of any agent on the form and the document showed the date to be 15th August 2026 as the day the results were announced though he heard the results on radio on 14th August 2026.

There was no re-examination.

PW2 was Maxwell Bwalya who testified that on 13th August 2026, he wanted to go and vote when he saw a lot of people outside his house which was near mukulo polling station. He asked his wife what was happening, he was then told that people were being given money and pens and the presidential candidate as Mr Mundubile. PW2 wanted to go there but he was stopped by his wife who said he was he was a target. PW2 decided to go nearby and he saw a grey car whose door was open. PW2 called PW6 Wavis to ask where he was, he responded that he was home. PW2 told PW6 to go and see what was happening. 5 minutes later, PW2 saw the petitioner

arriving and he went where the car was, and he started talking to the people as well as the 1st Respondent. The vehicle then left and the people remained, he then held one lady and told her he was getting the pen which she had been given, they started struggling with her and he managed to get the pen.

As regards the money, she refused to give the petitioner and said it was given to her by the 1st respondent. PW2 went to talk to the petitioner to let go of the lady to avoid trouble, the petitioner got the pen and people left. PW2 testified that there were other people on the car but he did not see them though he was by the door. He further testified that the money and pens were given after he saw the petitioner grabbing the pen from the lady, and he was about 5 meters away from where the petitioner was with the lady, and the petitioner arrived earlier than Wavis. (PW6)

When cross examine by Counsel Phiri, PW1 told this tribunal that he personally did not see anyone being given money and pens but he relied on what his wife told him and later saw a pen being grabbed from a lady by the petitioner and he did not know the person who was given the pen. He further testified that he did not have the pen before tribunal and the 1st Respondent was giving people the pens while at his car. He testified that he was informed on phone by the petitioner that he needed to come to court to testify.

PW2 testified that he was the one who called (PW6) Wavis Chanda and told him to go and see what was happening as pens and money were being given, and while waiting for him to arrive, the petitioner arrived. He said something was being but he did not know what was being given and he only knew what it was when the petitioner started struggling with the lady that she had been given a pen and money. He told this tribunal that he did not go to other polling stations though he saw a lot of people with pens that were from the vehicle, and he concluded the pens were from the car where the 1st Respondent was.

When cross examined by Counsel Mweene PW2 told this tribunal that he phoned PW6 though he did not have a call log to show that he called him. He testified that the petitioner had a confrontation with the 1st respondent and he told the tribunal the truth. PW2 told this tribunal that the petitioner stood for few minutes at the car

for the 1st respondent and after that he left. He testified that he did not take any photo of what was happening at the vehicle as he did not have a big phone, and he managed to vote for the petitioner.

When cross examined by counsel for the 2nd respondent, PW2 testified that he did not see any official from Electoral Commission of Zambia distribute any pens or money to any voter, and there was no official from electoral commission of Zambia at the car. He further testified that he was not there at the polling station when the votes were being counted, and he did not have any evidence to show that there was somethings that affected the voting.

PW3 was Friday Mulenga whose testimony was that on 13th August 2026 the day of voting, he was going through polling stations to see what was happening. He further testified that around 10:00, the petitioner called him to go to mukulo polling station as he heard that his fellow councilor was there with people, PW3 went there and when he arrived, he found the 1st respondent in a vehicle with a group of people. Then the petitioner asked what was happening where the vehicle was parked, but the 1st Respondent drove off. The petitioner saw a woman who had a pen in her hands that was how PW1 went to grab it, but when he tried to get the money that was in her hands, she refused to give him and they struggled, she then said the money had been given to her by the other councilor. PW3 intervened and asked the petitioner to let the woman be and only get the pen.

He told this tribunal that he got on the motor bike with the petitioner and left him in town while he proceeded to chimbeimbe polling station, he then found the same car parked after about 3 to 4 hours from the time they met in the morning. PW3 went to the car and told them that he gathering they had was not allowed on voting day, one person told PW3 to just leave otherwise he would be beaten, he left and got the phone so he could capture and send to the petitioner but the car left. he went to the polling station where he observed that when one voted, they would give their friend the pen to use , and those who were coming out would tell the others to vote on number 9 where there was Barbra Banda and he heard 3 people say that.

When cross examined by Mr. Phiri counsel for the 1st respondent PW3 told this tribunal that he arrived at the station around 10:00 with the petitioner and they spent about 40 minutes, and left around 11:00. He testified that the petitioner asked the 1st respondent what was happening but the car left immediately. He told this tribunal that the 1st respondent was inside the car but the door was open and he wore a navy blue top, and PW3 did not see anyone being given a pen or money, neither did he see the 1st respondent doing anything at the time he sat in the car.

He further told this tribunal that he saw someone with a pen and money and she said where she got it, and apart from the woman words, he had no other proof to show that the woman was given money. He told this tribunal that he was a monitoring agent for the ward and he was going round the polling stations. He testified that he did not know where the pen was that the petitioner got from the woman, and apart from his word, there was no any other evidence of what happened.

When cross examined by Mr. Malando, PW3 told this tribunal that that he was as before tribunal to testify what he saw the material day and he went to 6 polling stations; his role was to identify problems that were there. Told this tribunal that there was a problem at mukulo polling station as the 1st Respondent was there and he did not answer the petitioner when he was questioned. He further told this tribunal that they were told to inform the councilor once they found problems but he did not do so as they were together with him.

PW3 told this tribunal that it was a problem for people to mention Barbra Banda though he did not report anywhere, and he did not know the number of the jersey for Barbra Banda that it was number 11, but he heard people telling others to vote on number 9 where there was Barbara Banda. He told this tribunal that it was not the 1st Respondent who mentioned Barbara Banda and he did not know on what number the 1st Respondent was on, and he did not know the age of the woman who was given the pen and money. He told this tribunal that the woman was given the pen and money so she could vote for the 1st Respondent and she had not voted yet when she was given the money though he had no proof.

PW3 told this tribunal that the pen was an ordinary cheap one and from the 6 polling stations he went to, he only saw 2 problems at 2 polling stations.

When cross examined by Mr. Mweene, pw3 told this tribunal that he knew pw2 for about month as they used to hang around together before voting. He told this tribunal that he went with the petitioner to the car so his statement was true, and he did not see what the 1st respondent was holding in the hands, neither did he see any party symbol on the 1st respondent. When he saw the 1st respondent at the second polling station, PW3 did not attempt to take a photo or video.

There was no cross examination from the 2nd Respondent counsel

There was no re examination

PW4 was Eugenia Mulenga whose testimony was that she was a polling agent for united party for national development (UPND) on the 13th day of August, 2026 the day of voting and she was operating from mwaba polling station and she arrived at 05:00. She testified that the voting room was opened at 6:00 and people started to vote, and there were officers from Zambia police, electoral commission of Zambia and agents for National Restoration Party for unity and prosperity (NRPUP) who also had pens. The agent for National Restoration Party for unity and prosperity (NRPUP) was giving the voters the pens though pw4 did not see the pens. After PW4 voted, she went outside as there were 2 agents inside. While seated outside, she saw posters for presidential, Member of Parliament mayor and councilor candidates stack on a tree. Later a young man left the queue and went near where PW4 was and asked what would happen on that day and how she saw the situation, but she did not respond. The young man then called his friend and told him they had to vote on the lamp, that was how they left and joined the queue while PW4 remained seated under the tree.

PW4 testified that while seated near the boundary, she a saw a grey car and 6 people came out of it and passed where she was seated, they then went inside. PW4 went close to where they were and recognized Chanda Mwansa as well as the 1st respondent. The 1st respondent got a paper from his jacket and removed a box of pens and he started giving them. Later the 1st respondent gave Mr. Chanda a pen

and Mr. Chanda gave the pen to someone who was on the queue. PW4 then went to tell that them what they were doing was wrong , the 4 people who were with the 1st respondent asked pw4 what she saw, she responded that there were pens inside the voting room provided by electoral commission of Zambia and no one was supposed to receive anything from a candidate .

When PW4 tried to get her phone so she could capture, she was beaten by one of the men, the phone fell off another person went and slapped her, she then fell down and one woman asked why they were fighting. When one young man tried to beat PW4 with a shot button she avoided it and it hit her hand. PW4 started shouting, she was asked who she was with and she said she was with her friends were inside. That was how her friend Marjory was called and she was taken to the hospital and no one remained at the polling station.

Later Marjory phoned the petitioner to inform him that PW4 had been assaulted and that they were at the hospital. PW4 was then given pain killers and was asked to go back the following day. She was then attended to on 14th August 20206 after she was issued with a medical report. She told this Tribunal that she was not attended to on 13th August as they told her they were going to vote.PW4 further testified that at the time she was assaulted, the police were inside but the officer from electoral commission of Zambia was there, she told this tribunal that the 1st Respondent and the one who stood as Member of Parliament on NRPUP were the ones giving pens to people on the queue.

When cross examined by Mr. Phiri counsel for the 1st respondent, PW4 told this tribunal that she went to the polling station as a supervisor and they were 3 and he told the Court that her arm was twisted. She testified that when she was being attacked, others were on the queue and one of them called her friend who was inside the voting room. She further testified that her hand was not broken but it was twisted and they just pulled it at the hospital, and she was with cephas masusa when she was told to go back the following day seeing that they were going to vote.

She told this tribunal that the vehicle that went to the polling station parked near where she sat , but she did not know who was inside , she only identified 2 people

after the disembarked from the car and the 1st respondent had a box of pens which were of different colors but with a white line, and they were common pens that PW4 had seen before . She told this tribunal that she knew a citizen could go with their own pen to vote

When cross examined by Mr. Nyirenda, PW4 told this tribunal that she was a supervisor for the party, and if she was given a pen by a member of the party, she would get it, and agreed that people who were giving pens were skipping others. She further testified that she would not know if the people who got pens were members for the party for the 1st Respondent , though she would have a problem with it as it was not allowed to give anyone anything and giving signs. She told this tribunal that there was something that stopped their party from giving pens because a day before voting after 18:00 no one was suppose to give anything to anyone as it would be seen to be vote buying .

She told this tribunal that prior to voting, they petitioner was a member of the united party for national development (UPND) as well as herself. She told this tribunal that one of the people that helped her was not a UPND supporter, and it was okay for the petitioner to pay for her at the hospital. PW4 told this tribunal that when she was slapped, the police were inside the voting room hence they could not go to help her even after she shouted. She told this tribunal that she was assaulted on the left hand and if the police wrote on the medical report that she was injured on the right hand, they were wrong, and she was attended to on 14th August 2026 as shown on the medical report.

When cross examined by Mr. Malando, PW4 told this tribunal that she was the one that took the complaint and the money was paid on 14th August 2026, she told this tribunal that she did not see the people who followed the 1st respondent to the car. She further told this tribunal that she did not show the tribunal the phone that fell off. She told this tribunal that she was supposes to report to the police and the officer from electoral commission of Zambia about what happened, and before the elections, they were oriented on how to conduct elections, and there was no mention of not allowing people to use their own pens. She told this tribunal that the

posters were stack with instructions on how to vote , and the 1st respondent did not go to show people where to vote

When cross examined by Mr. Mweene , PW4 told this tribunal that she saw the 1st respondent wearing a grey leather jacket and not a navy blue one, and she saw him giving out pens and she saw about 9 people who were being given pens but stopped them when they were about to give the 10th person. She told this tribunal that she did not know the total number of votes that the petitioner got as well as the 1st respondent. PW4 told this tribunal that if the 9 votes of the people she saw being given pens were given to the petitioner, he would have won. She told this tribunal that she did not know anyone among the 9 people who were given pens and she had no document before tribunal to show that she was a supervisor. she told this tribunal that the 1st Respondent did not have any party symbol on him or party regalia.

When cross examined by the 2nd respondent's counsel, PW4 told this court that she entered the polling room at 06:00 and officers from electoral commission of Zambia were already there, and around 08 to 09 she went to sit outside. She told this tribunal that the vehicle for the 1st Respondent arrived at the polling station around 14:00 and by then, she had already voted. PW4 told this tribunal that from 05 to 14:00, there was no violence at the polling station, and while she was outside, she could not confirm if the agents for National Restoration Party for unity and prosperity (NRPUP) were distributing pens inside the voting room. When the pens were being distributed by the 1st Respondent, the officer from electoral commission of Zambia was inside and PW4 did not report to them.

She was not aware that if an incident happened and a report was made to an officer from Electoral Commission of Zambia, they would generate a report over the incident on a form called appendix 1. She told this tribunal that without the report from Electoral Commission of Zambia, the tribunal could not believe if such an incident happened. She told this tribunal that when she was taken to the hospital, voting continued and there was no disruption.

PW5 was Moab Siwale whose testimony was that on 12th June 2026, he was asleep at his place when he heard a knock, some people the shouted that they had taken people who need to be accommodated seeing that the place was a house for United Party for National Development (UPND) and they would accommodate members who needed somewhere to sleep. PW5 opened the door, and immediately he did that he was grabbed by the hand by Kangwa , then Frint went and kicked him on his leg , another friend to Kangwa went and hit him with an iron bar and he fell down.

That was how they ran away. later pw5 got up and went inside, he then told the wife to call the leaders but no one answered. The following day, he called day nongo who answered; he then went to pw5's pace and took him to the hospital. A medial report was then issued to him. Days later, the suspects were apprehended and they appeared before Court. PW5 told this tribunal that the people who assaulted him belonged to National Restoration Party for unity and prosperity NRPUP and he knew them because they lived in chandamali . He further told this tribunal that the suspects used to remove posters for united party for national development (UPND) and he personally saw them.

When cross examined by Mr. Malando counsel for the 1st Respondent, PW5 told this tribunal that she managed to vote and the injuries he sustained did not stop him from voting, and he belonged to UPND while the people who attacked him were supporting NRPUP. PW5 told this tribunal that he had a card for UPND to show that he was a member and his friends also had cards though he did not show the tribunal the or cards. He told this court that he was not told by the people who assaulted him that they were sent by Mr. Mundubile or the 1st Respondent, and he as before tribunal to testify about how he was assaulted.

There was no cross examination from the 2nd respondent

There was no re-examination

PW6 was Wavis Chanda whose testimony was that on 13th August 2026 he went to vote around 10: 00 but before he arrived at the polling station, he received a call from PW2 and he told him that the 1st Respondent was at the polling station giving money and pens to people. When PW6 reached near the polling station, he saw a

group of people who were near an anthill and there was vehicle. When he went there, he found the 1st Respondent giving out pens and money and the amount was K20. PW6 decided to call the petitioner he shortly arrived at the place on a motor bike. The petitioner asked the 1st Respondent what was happening but he did not respond, he then drove off.

The petitioner approached a lady who had a pen and tried to get it and he managed, he then started struggling with her so he could get the money she had in her hands but she refused to give him. She then started insulting the petitioner that was how PW6 told him to let go of her. PW6 told this tribunal that when the money was being given, the 1st Respondent told the people to vote on the symbol of the party starting with the presidential candidate until on the councilor.

PW6 told this tribunal that he later went to join the queue and he found a lot of people with pens in their hands, and he voted from mukulo polling station. At the time he was called inside to vote, they were 3 and the other 2 had their own pens, after voting, PW6 went home.

He further testified that he decided to go to Mutale polling station to see if pens were being distributed because of the love for his political party, when he reached, he found peter with a box of pens. Shortly PW6 saw the petitioner arriving and he told him that he and been called, he then tried to get the box of pens from peter and some confusion arose. PW6 then left the place went to visit his brother around the same area, and later went to his place. He told this tribunal that the pens were ordinary ones which were white and blue and he met PW2 where the pens and money was being given

When cross examined by Mr. Malando Counsel for the 1st Respondent PW6 told this tribunal that the petitioner did not take any confusion at the 2 places, but he tried to grab the pen and money from the lady and the pens from peter. He agreed that there was some noise and people started talking when Brian tried to get the pens from the lady and peter. He further told this tribunal that the talking started when the petitioner went to the polling station, but before that there was no noise when

people were getting money and pens. He told this tribunal that the anthill was about 40 to 50 meters away from the polling room.

PW6 told this tribunal that he arrived at mukulo polling station first before the petitioner and he was called by PW2, he told this court that he was the one who told the truth, and he did not know that it was not a crime for a voter to use his or her own pen, and he did not tell the tribunal the number of pens he saw, and not all people who went to vote were given pens as others refused to get. He had no evidence that all the people who got pens belonged to NRPUP as some members of UPND got the pens. He told this tribunal that it took him 3 minutes to arrive at the polling station from his house.

He further testified that the 1st Respondent did not take long at the polling station at the time PW6 arrived and the vehicle was about 15 meters away from where the anthill was, the 1st Respondent was alone in the car and it was surrounded by people. He told this court that he could see what someone was doing inside the car which was surrounded by people and he did not count the number of K20's that were given out, and he did not know what made him not tell the petitioner to get the K20 from other people who had received.

When cross examined by the 2nd Respondent, pw6 told this court that he voted at mukulo polling station and he managed to cast his vote, he did not see any officer from electoral commission of Zambia giving out pens and money and he voted for the party he loved which was UPND. He told this Court that the petitioner was the candidate for UPND who stood as councilor and he as before court to testify on behalf of the petitioner

There is no-re-examination.

PW7 was Delila Mwansa whose testimony was hat on 8th August 2026, her son Thomas informed her that the petitioner had been posted on facebook and she was shown the photo which had some words underneath and her son explained to her that the words stated that "if the councilor was voted for he would be stealing CDF money because he was a crook". PW7 searched for the petitioner's phone number

and after she found it, she called him and told him about the photo that was posted on facebook and the day she saw it and he was embarrassed about it.

On 9th August 2026, PW7 went to the market where she heard people talking about the photo of the petitioner that was posted on facebook and they said the 1st respondent did a wrong thing to post his friend as the post could cause people not to vote for the petitioner as they would think he was a thief, PW7 did not know the people who were talking as she just heard them. On 13th August 2026, she went to cast her vote and arrived at 06: 00 at mwaba polling station. When she arrived, she went behind the classrooms were there were toilets, she then saw a car parked and she was called by the 1st respondent who sat behind the car. She was asked whom she was planning to vote for but she said her vote was a secret , she also told the 1st respondent that she had seen value in the current president , but she was told people in Chinsali had changed their minds.

PW7 was told to and if she had agreed to change where to vote, she would be given something for salt. She told the 1st respondent that even if she did not agree, he could still give her, that was how she was told she would be given K100 seeing that she was elderly, but others were being given K20 each. PW7 was given a K100 and a pen that was how she left. She was told to be directing people to be going to the car using the head to give a signal. PW7 told this tribunal that she sat by the roadside waiting for people then Belita went and asked her if she was done voting, and she agreed.

Belita asked for 20 from PW7, she then told her she only had K100 and did not have change, she then directed him or where the vehicle for the 1st Respondent was and told the friend she would find her at the market. PW7 told this tribunal that after Belita retuned, she asked her if she had been given the money and pen, and she agreed, she then told her to give her the pen since she benefited from the money, that was how she was given the pen and she proceed to the market and bought relish.

When cross examined by the 1st Respondent counsel, PW7 told this tribunal that she had no proof that the 1st Respondent gave her money and a pen and it was a crime

for her to have a conversation with the 1st Respondent but she did not report anywhere. she told this tribunal that she told the court that a vote was secret and the act of giving her a pen changed her mind on where to vote as she voted where she did not want to though she was alone in the booth when voting. She told this tribunal that the problem was with the person who gave her the pen and K100 and she had proof that she sent Belita to the car where the 1st respondent was though she did not show the tribunal, neither did she show the photo she was shown by her son.

PW8 told this tribunal that on 13th August 2026 that she went to vote at Mwaba polling station, she then met pw7 and asked her if she could lend her 20 as she wanted to buy relish. Pw7 then referred her to go where a vehicle was parked which was grey in color. When she reached, she found and who asked who she was going to vote for, pw8 responded that a vote was secret. Pw8 was the given a 50 and a pen, she was then told to vote on the lamp because of what she was given, she then went and casted her vote based on what she was told. After voting she went to the market where she met PW7, who asked her if she finished voting and PW8 agreed. PW7 then told pw8 to give her the pen as she wanted to be using it to write people who owed her.

When cross examined by Mr. Phiri counsel for the 1st Respondent, PW8 told this tribunal that from her evidence, there was nothing linking the 1st Respondent and she did not mention to the tribunal that people were being given food on the material, and the man who gave her the pen and money worked for electoral commission of Zambia but she did not know what ECZ meant. She testified that she did not mention that there were people who were beaten and given alcohol.

When cross examined by Mr. Nyirenda , PW8 testified that she handed over the pen to PW7 that she was given and PW7 was the one that referred her to the vehicle after she asked for K20 from her. PW8 told this tribunal that she did not know the number plate of the car where she got the pen and K50 but she did not bring the pen neither did she bring the K50 because she used it. She told this tribunal that she did not mention the serial number of the money she was given, and apart from what

she told the tribunal, she had no other proof to show that what she said really happened.

When cross examined by Mr. Malando, PW8 testified that no one told her what to tell the tribunal and she knew the matter before the tribunal as it was over the issue of voting. she testified that she voted where she did not want because of the pen and K50 she was given, though she was alone in the booth, but she had no proof to show that she voted on the lamp. she told this tribunal that the person who told her to vote on the lamp worked for Electoral Commission of Zambia

When cross examined by Mr. Musukwa counsel for the 2nd Respondent, PW8 testified that the persons who her where to vote was where they were voting form but she did not know the name of the person though she knew him facially. She testified that the person parked at the polling station and stood at the car. She further testified that she did not know what a reflector was but the man did not wear any uniform but wore cloths like any other voter.

PW8 told this tribunal that what made her think the man worked for Electoral Commission of Zambia was because of how he looked as he was short, dark in complexion and huge , and the vehicle parked near where people were voting from about 40 meters away from the polling station.

This marked the close of the petitioner's case

RW1 was Joseph Lukwesa whose testimony was that he as a business as well as the newly elected councilor for Ichinga ward in Chinsali district as he was elected on 13th august 2026 and he stood on the national reconciliation for unity prosperity party (NRPUP). He testified that on the material day, he went to vote from Mishishi polling station around 08:00 and he did not take much time there as he left around 08:30. He testified that he was driving a Toyota ipusm registration number ALJ 9214 grey in colour. He later went to Mwaba polling station with the election agent because he wanted to see how voting was going on, he went with Kapambwe Chitembo as well as honest Chewe.

He told this tribunal that people were casting votes without a problem, and at mwaba polling station, there were 8 streams and he spent 10 to 15 in each stream,

they proceeded to the council hall where they spent 10 minutes and they did not find anything wrong, they proceeded to Chinsali Correctional Facility and spent about 10 minutes as well and no problem was found. Rw1 testified that he proceeded to Mutale polling station and took about 10 to 15 drive, and they did not find anything wrong there, they went to Mukulo polling station and did not find anything wrong.

Around 11:00 PW1 proceeded to his home as he was not felling well, he asked his agents to proceed with their responsibility. While at home, he used to receive updates from the polling agents about the number of votes he got, and he was also following on the radio when announcement was being done. Results were announced on radio for all participants and after adding all the votes, RW1 found that he scored more votes than his opponent, as he got 4506 while his friend got 1489. On 15th August 2026, the announcement was made and he was declared the winner as councilor for Ichinga ward at civic center. As regards the allegations that he was distributing money and pens, RW1 denied ever doing such a thing and he had no interest in the agents for UPND and neither did he work with Electoral commission of Zambia, even when the votes were being counted, RW1 was at home and he never intimidated any voters with his agents.

When cross examined by counsel for the petitioner., RW1 testified that as a candidate of the 20226 elections, he attended some trainings that were conducted by Electoral Commission of Zambia about 3 times and they were told not to give voters anything in exchange of a vote , they were told not to do so as it would be bribery and the rules applied on the day of voting. He further testified that he used a pen provided by electoral commission of Zambia when voting and he did not see anything wrong with it. He told this tribunal that it was not in order for agents to issue pens to voters and he had 30 agents in total.

When RW1 left, he told the agents to do their job and they agents represented the candidates, and no one stopped RW1 from entering the polling stations when he was going round as he was a candidate and they were all allowed by Electoral Commission of Zambia to go and check . he further testified that he went to Mwaba polling station and that was the only time he went there and he never met Chansa Mwansa the candidate who stood as member of parliament. He told this tribunal that

there were 14 polling stations in Ichinga ward and the distance from mwaba to Kabungo polling station was about 4 kilometers , he started with mwaba polling station, then council hall and the distance was about 500 meters , he then went to correctional facility which was 400 meters , then to Mutale polling station which was about 2 km. from Mutale he went to mukulo which was about 3 to 4 Km , from mukulo he went to Kabungo polling station which was about 4km, after that he went home.

He told this tribunal that he spent a longer period at Mutale polling station which was 10 to 15 minutes and he managed to check 8 voting rooms and his conclusion was that the elections were free and fair in all polling stations even if he visited for 10 minutes in each polling station, but he could not speak for the whole election day seeing that he visited for 10 minutes. He told this tribunal that he used his Toyota ipsum the whole day and after observing the polling stations, he went and parked it he told this tribunal that he went to the civic centre when the day was set for announcing to the official results and he was given a form which had the results indicated for both himself and the petitioner. He told this tribunal that the form he was given was different from the one the agents were giving him as he was being given the form with results for each polling station but the one he was given had the total number of votes in the ward. He testified that the agents were sending the results via phones; others sent messages while others with smart phones sent the forms.

When cross examined by counsel for the 2nd Respondent, RW1 told this tribunal that he did not see any Electoral Commission of Zambia officer conducting any malpractice in all the polling stations he went to.

There was no re-examination

RW2 was Kapambwe Chitembo whose testimony was that on 20th July 2026 he received an identity card from electoral commission of Zambia as he was an agent for NPRUP and he was given authority to go round polling stations. On 13th August 2026 RW2 went to mwaba polling station at 04:00 and the polling station was officially opened to the public at 06:00, RW2 voted at 06:00 and was there until

08:00. When the 1st Respondent arrived, he found RW2 already there, that was how he later asked him to go round the polling station with him , they spent 15 minutes at mwaba polling station , they proceeded to chimbeimbe polling station were they spent about 10 minutes, later they went to Chinsali correctional facility . there after they went to Mutale polling station and found voting was going on well , they later went to mukulo polling station where they spent 10 minute, they proceeded to kabungo polling station and did not find problems, they went back to mwaba polling station where RW2 continued working while the 1st Respondent went.

While at the polling station, RW2 did not see anything wrong, at 18:00 they closed the polling station they started counting the votes until 01:00, the ones who stood on NPRUP emerged victorious. All agents were later called by the presiding officer for them to sign the documents. he told this tribunal that as an agent, he never gave out any money or pens or food to the voters on the voting day as alleged by the petitioner neither did he intimidate the voters to vote for the 1st Respondent, police officers were there and the agents were told by electoral commission of Zambia not to interfere with people and there were not suppose to give anything to any voter, if something was noted, a report had to be made to the presiding officer. He further testified that they were told not to leave the polling stations not until all the counting of votes was done.

RW2 testified that prior to voting day, he wrote a complaint letter on 4th June 2026 to the district electoral officer complaining about the petitioner who was intimidating the 1st respondent and his parents, parties were summoned and the petitioner was told to stop intimidating the opponent, parties later reconciled after sitting down and all of them signed an agreement that was produced and marked JL1. On 17th August 2026, the petitioner made an announced on Muchinga radio conceding that he lost the elections and the presenter was Martin Phiri. He stated on radio that people of Chinsali were illiterate and failed to vote for him who was connected to the president of the Republic, but stated he would try in the next elections.

When cross examined by the petitioners counsel, RW2 testified that he heard the petitioner being interviewed on radio on 17th August but the interview was not before the tribunal neither was the interviewer Martin Phiri before tribunal to show

that such an interview took place. He told this tribunal that he was not the only one who heard the interview as others who were before the tribunal heard it , and the letter he wrote on 4th June 2026 was not produced in court , but the contents of JL1 had information to show that he wrote a complaint to the committee .He further told this tribunal that the threats were attributed to the 1st respondent and his parents and RW2 did not hear them , though he was only told about the threats by the parents to the 1st respondent and the 1st respondent himself.

RW2 testified that when they were called by electoral commission of Zambia, all the parties were told to campaign and to stop character assassination, they were also asked to reconcile which they did. He told this tribunal that there was no specific mentioning of the petitioner but the letter said both parties had to stop doing certain actions. RW2 testified that the 1st respondent's mother was not his sister but someone he knew as they were supporting the same political party, and the 1st respondent found RW2 at Mwaba polling station and they spent 15 minutes, RW2 was picked and they went to other polling stations using the 1st respondent's car, and they passed through 14 polling stations, it took them about 3 hours to visit the 14 polling stations.

RW2 testified that he parted ways with the 1st respondent around 11:00 and he remained at Mwaba polling station. RW2 did not know what the 1st respondent did after they went separate ways and he could not know, and he could only account for the 10 minutes each in polling station that they visited, he could not speak beyond the 10 minutes if elections were free and fair as he could not know what happened when he was not there. During the training by electoral commission of Zambia, RW2 and others were told what to do and what not to do during campaigns and voting, and they were told they would be working on behalf of their candidates. He further told this tribunal that agents could not give out anything on the day of voting even the day before voting.

When cross examined by the 2nd respondent's counsel during the time he passed through the polling stations, he did not observe any malpractice.

RW3 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 stake holders, receiving results from polling station 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 had a meeting with stake holders 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 ichinga ward.

RW3 testified that he passed through Mishishi ward on the day of voting and later visited other polling stations including Mwaba polling station ichinga ward, later he went to the totaling Centre. Rw3 testified that after monitoring the 4 polling stations, he did not find any problem. Around midnight results started arriving from polling stations and on 15th August 2026, results for ichinga 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 1st respondent to intimidate voters. As far as RW2 was concerned the elections in ichinga ward were free and fair, and It was not an offence for one to go with their own pen to use when voting. He testified that he did not receive any complaint from ichinga ward on the day of voting, neither was he told of any malpractice in ichinga ward or any incident that would disrupt the running of elections .

When cross examined by the petitioners counsel, RW3 told this tribunal that he believed all agents were given access to the gen 20 forms , but he was not at all polling stations hence he could not say for certain that all agents had access to the gen 20. He told this tribunal that there were several ways they would receive complaints from aggrieved parties, one way was by a party. outing it in writing and taking the complaint to the district electoral officer, if a complaint was criminal in

nature, a party would be advised to report to the police, others would physically walk to the officer were an incident could have happened. He told this tribunal that he shared his contact with stake holders during the trainings. As regards on the voting day, an aggrieved party could inform the presiding officer and the jurisdiction of the presiding officers was within 400 meters of the polling stations. He told this tribunal that the conflict management committee was set to resolve grievances that arose before during and after elections. He told this tribunal that it was not mandatory that all grievances were to be reported to the committee before or during elections, and the committee would only sit for matters that were presented to them. If a matter was not presented to them that would not invalidate the complaint. he further told this tribunal that the presiding officer was the first point of contact for stake holders at a polling station . Where a complaint was made verbally, the presiding officer could resolve it and indicate in the dairy, those complaints that were beyond the presiding officer, RW3 would be informed if it was also beyond RW3, and he would escalate the issue to the commission.

He told this tribunal that presiding officers would be provided with diaries where they would record and report incidents at polling station, but he did not bring the diaries. He testified that he visited 4 polling stations including mwaba polling station and what he observed was that everything was okay, and his personal observation was limited to the 30 minutes that he was in the polling stations . He told this tribunal that the candidates and their agents were not allowed to give anything to the voters, but candidates were allowed to only greet the people on voting day.

When cross examined by counsel for the 1st respondent, RW3 testified that the commission was responsible for declaring that results were free and fair , and the candidate as well as stake holders could not declare that results were not free and fair . He told this tribunal that greeting was a form of communication, and he did not know the total number of agents who were in Ichinga ward and he could not know if there were enough gen 20 forms in Ichinga ward. He further testified that it was not the duty of electoral commission of Zambia to follow agents who were not around when the gen 20 was being issued.

He told this tribunal that at the time the results were being announced, the petitioner was not there at the civic centre or any of his representative, and the results announced at the civic centre were a true reflection of what they received from polling stations . He told this tribunal that there was no harm for one to go with their own pen to vote as it was not mandatory to use the pen provided by electoral commission of Zambia, if one trusted their pen, they could use it

ANALYSIS OF THE EVIDENCE:

Having considered the pleadings, the evidence adduced by the parties, the submissions of counsel, and the authorities cited before the Tribunal, I reconsider the following issues to arise for determination:s

1. Whether the 1st Respondent, or persons acting with his knowledge, consent or approval, committed a corrupt practice, illegal practice or other misconduct in connection with the election.
2. Whether the allegations of bribery, distribution of money or pens, intimidation, violence, and interference with the Petitioner's polling agents have been sufficiently proved.
3. Whether the alleged Facebook publication and related conduct are attributable to the 1st Respondent and, if so, whether they constitute electoral misconduct.
4. Whether the alleged irregularities concerning the Gen 20 forms have been established.
5. Whether, even if one or more irregularities are established, the Petitioner has proved that the majority of the voters in Ichinga Ward were or may have been prevented from electing the candidate whom they preferred.
6. Whether, having regard to the evidence as a whole, the cumulative effect of the matters proved warrants the nullification of the election.

we shall consider each of these issues in turn.

THE APPLICABLE LAW

The governing provision is section 97(2)(a) of the Electoral Process Act No. 35 of 2016.

It provides:

> ***"(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."***

The words of the provision is important. It establishes two cumulative requirements which must be satisfied before an election may be declared void under section 97(2)(a).

First, the Petitioner must establish that a corrupt practice, illegal practice or other misconduct was committed in connection with the election by the candidate or with the requisite knowledge, consent or approval of the candidate or the relevant agent.

Second, the Petitioner must establish the requisite electoral consequence, namely, that the majority of voters in the relevant constituency, district or ward were or may have been prevented from electing the candidate whom they preferred.

Proof of the first requirement, standing alone, is therefore not sufficient to warrant the nullification of an election.

This position is consistent with the authorities cited before the Tribunal, including **Austin Liato v Sitwala Sitwala** and **Chrispin Siingwa v Stanley Kakubo**,

which emphasized the necessity of establishing not merely the existence of an electoral offence or irregularity, but also the requisite electoral consequence. This burden of proof rests upon the Petitioner.

In **Lewanika and Others v Chiluba (SCZ/EP/3 & 4 of 1996) [1997] ZMSC 56,** the Supreme Court recognized that, although an election petition is a civil proceeding, allegations made therein must be established to a fairly high degree of convincing clarity.

That principle was reiterated in **Brelsford James Gondwe v Catherine Namugala**, where the Supreme Court held that the party alleging electoral wrongdoing bears the burden of establishing the allegation to the requisite standard.

The heightened standard applicable to serious allegations does not convert the proceedings into criminal proceedings, nor does it impose the criminal standard of proof. Rather, it recognizes that allegations such as bribery, intimidation, fraud and electoral malpractice are serious and potentially capable of invalidating the result of an election. Such allegations must therefore be supported by sufficiently cogent and credible evidence. The principle is also consistent with the court's decision on in **Bater v Bater [1950] 2 All ER 458** and **Hornal v Neuberger Products Ltd [1957] 1 QB 247**, relied upon in the submissions.

Coming to the issue of distribution of money and pens, the allegation in this Petition is that the 1st Respondent distributed money and pens to voters for the purpose of influencing their votes. We have carefully considered the evidence of PW1, PW2, PW3, PW4, PW6, PW7 and PW8 concerning these allegations. There are significant differences between the accounts given by the witnesses regarding the location, timing, identity of the persons involved, and the precise nature of the alleged transactions. PW2 did not personally see the 1st Respondent give money to the woman he referred to in his evidence.

PW3 did not personally see the 1st Respondent distribute money, PW6, on the other hand, testified that he saw the 1st Respondent distributing money and pens. PW4 gave direct evidence that she saw the 1st Respondent distributing pens to approximately nine people. PW7 gave direct evidence of an alleged transaction in

which she received K100 and a pen. PW8 described an incident in which an unidentified man allegedly gave her K50 and a pen, but expressly failed to connect that person to the 1st Respondent. As regards the evidence concerning the distribution of pens, PW4's evidence is the most direct. Her evidence places the 1st Respondent at Mwaba polling station and attributes to him the distribution of approximately nine pens, even though the 1st Respondent denied the allegation. Even assuming, however, that PW4's evidence is accepted to the fullest extent, we are not persuaded that the evidence establishes, to the requisite standard, the broader allegation that the 1st Respondent engaged in widespread bribery throughout Ichinga Ward.

There is no reliable evidence establishing the total number of persons allegedly given money and pens. There is no evidence establishing the number of voters who accepted the alleged items. There is no evidence establishing how many of those voters subsequently voted for the 1st Respondent, or how many changed their intended vote as a consequence of the alleged inducement. Equally, there is no polling-station-by-polling-station analysis establishing the extent to which the alleged conduct affected the results. It is therefore necessary to distinguish between the possibility that an irregularity occurred and the statutory consequences which must be established before an election may be nullified.

Even if we were to accept that PW4 saw the 1st Respondent distribute pens to approximately nine persons, that evidence does not establish the statutory requirement that the majority of voters in Ichinga Ward were or may have been prevented from electing the candidate whom they preferred.

Coming to the issue of voters carrying their pens on the voting day, Considerable evidence was led concerning the issue in that RW3 testified that the mere possession of a pen by a voter was not, in itself, prohibited. RW3 expressly testified that voters were at liberty to use their own pens. PW4 herself accepted that citizens were permitted to attend a polling station with a pen of their choice.

Consequently, the mere fact that voters were seen with pens cannot be said to be an electoral malpractice. What may constitute misconduct is the distribution of an item

for the purpose of inducing or influencing a voter, rather than the mere possession or use of the item. We therefore find it difficult to treat every person seen with a pen as a person who had been bribed. Our emphasis is that, we find that the Petitioner did not establish the number of such persons, their identities, whether they received the pens from the 1st Respondent or persons acting on his behalf, or whether possession of the pens affected their electoral choices. The Petitioner placed particular reliance upon the alleged K20 payment made to a woman at Mukulo polling station. We find the evidence concerning this allegation to be substantially indirect. The Petitioner stated that the woman had informed him that the 1st Respondent had given her the money. PW2 did not personally see the 1st Respondent give the woman the money. PW3 similarly did not personally witness the 1st Respondent giving the woman money. PW6 testified that he saw the 1st Respondent distributing money.

Even assuming, for argument sake, that the K20 was given by the 1st Respondent for the purpose of influencing the woman's vote, the Petitioner himself admitted that even if the woman's vote had been cast in his favour, he would still not have won the election that admission is significant. It demonstrates that, even on the Petitioner's own case, that particular transaction could not have altered the outcome of the election. More importantly, there is no evidence establishing that the alleged K20 transaction was representative of the conduct of the majority of voters in Ichinga Ward. We therefore find the allegation to be an isolated transaction which, even if proved, does not satisfy the statutory threshold under section 97(2)(a).

Coming to the testimony of PW7, she alleged that the 1st Respondent gave her K100 and a pen and instructed her concerning how to vote. PW7 stated that she possessed proof of the transaction which was only the pen which she did not produce into evidence, and said in respect of the money that she used the money to buy relish. Further, PW8 described a separate transaction involving K50 and an unidentified person. She expressly failed to connect the unidentified person to the 1st Respondent. If anything this witness described the person who gave her this money as an ECZ officer. Without any justifiable reason why she thought so. Her

difficulty in properly identifying the person who allegedly bribed her is fatal more so for the reason that she even chose to go and use the money allegedly given to her.

Even though these two witnesses' evidence sounds direct, their evidence shows that their decision to accept the money if at all it was given was with the full knowledge that it was meant induce them to vote otherwise. This conduct alone does not make them innocent victims of the alleged bribery. They therefore fall in the category of witnesses with their own interest to serve whose evidence must be corroborated. A perusal through the record does not show any such corroboration to settle their allegation. And it is trite that they cannot corroborate each other.

Besides, the two witnesses did not mention seeing any other person go to the vehicle and receive money as they did. Even PW7 who claims to have been told to be at the road side directing people to the vehicle only received her share directed PW8 and rushed to go and buy relish. The allegations therefore cannot safely be elevated into proof of widespread bribery throughout the ward. We are therefore inclined to determine the Petition on the evidence properly placed before us and not upon suspicion, conjecture or inference unsupported by a sufficient factual foundation.

PW4 testified to the effect that she had been assaulted by members of NRPUP when she tried to stop them from distributing pens to the voters. This evidence was relied upon by the petitioner alleging that the assault of PW4 caused the intimidation of his agents and amounted to electoral violence. We accept that PW4 sustained an injury and that the incident was sufficiently serious to require medical attention. However, the medical report only establishes the injury, but does not identify the perpetrators. Even though the witness said the assault was witnessed by the people on the line including a lady who helped her, no single person was called to corroborate the identity of the attackers.

The evidence does not establish that the persons who assaulted PW4 acted upon the instructions of the 1st Respondent, nor that the 1st Respondent himself assaulted her. Additionally, the witness' account of how she ended up being given a medical report dated 14th August 2026 when she clearly reported the matter to the police on 13th

August 2026 is questionable. For the reason that we take judicial notice of the fact that health workers are essential employees who are given preference on voting day to be able to go back and attend to the public. And in most instances hospitals and clinics are well manned on voting day in anticipation of any possible receipt of casualties from voting activities. We find it difficult to believe the witness' testimony that she could not be examined and have her medical report form signed on the 13th August 2026 for the reason she has given. And as such find her explanation to be an afterthought and a calculation to link the 1st Respondent's agents to the violence.

More so, even though the evidence establishes that the incident of violence occurred at or in the vicinity of the polling station. It does not establish, to the requisite standard, that the violence was committed by the 1st Respondent or by persons acting with his knowledge, consent or approval. From the witness' own account the majority of the people on the line seemed unbothered with the assault, this and the lack of any evidence establishing the number of voters who were possibly prevented from voting, or whose electoral preference was affected, as a consequence of the assault we rightly conclude that voting continued after the alleged incident.

Coming to the testimony of PW5, he stated that he was assaulted in June 2026 , approximately two months before polling day. PW5 identified persons whom he believed belonged to the NRPUP. However, he expressly admitted that none of the persons who attacked him stated that they had been sent by the 1st Respondent. There is no evidence linking the 1st Respondent to that assault. Furthermore, PW5 stated that he was bringing the evidence primarily in relation to his assault case. The Tribunal cannot attribute electoral responsibility to a candidate merely because an alleged perpetrator is believed to support or belong to the same political party. Political affiliation, without more, does not establish that the conduct was authorized, approved or consented to by the candidate. Most importantly, there is no evidence to prove that this kind of conduct was common in the ward so as to affect the outcome of the elections. The allegation is accordingly not proved against the Respondents

Coming to the issue of the alleged intimidation and threat, the Petitioner also relied upon alleged threats and acts of intimidation. However, the evidence does not

establish the identity of the alleged perpetrators with sufficient certainty or establish their connection with the 1st Respondent. Much of the evidence concerning alleged threats to voters was based upon information received by the Petitioner from third parties.

Where such evidence is relied upon as a basis for nullifying an election, the Tribunal must be satisfied that the evidence establishes the allegation to the requisite standard. The mere repetition of information received from unidentified or uncalled witnesses cannot, without more, establish widespread electoral intimidation. If anything the petitioner did not advance any evidence aside the accounts given by the witnesses which we have already found to fall short of the requisite standard to warrant the grant of the reliefs sought. We therefore find that the allegation of widespread intimidation has not been proved to the required standard.

The Petitioner also alleged that some of his agents were prevented from entering polling streams or were required to leave. In relation to Mwaba Stream 7, the Petitioner testified that he found two of his agents outside the polling station. However, he admitted that he did not know who had instructed them to leave. He was not present when they were allegedly removed and did not make a complaint to the ECZ concerning the incident. The evidence therefore does not establish who removed the agents or establish that their removal was attributable to any of the Respondents. Similarly, although some of the Petitioner's agents were allegedly absent during the counting of votes, the Petitioner did not establish that they had been unlawfully excluded by the 1st Respondent or the ECZ. In the absence of evidence identifying the person responsible and establishing the requisite connection with the 1st Respondent, the allegation cannot be sustained.

Concerning the issue of the Gen 20 forms, the Petitioner placed substantial reliance upon the allegation that his agents were not given copies of the Gen 20 forms. The evidence establishes that the Gen 20 form is an important electoral document containing the results recorded at a polling station. RW3 explained that stakeholders present at the counting process were ordinarily given access to the Gen 20 forms and that, where physical copies were insufficient, stakeholders could record the results. The Petitioner's evidence was that his agents signed certain documents but

did not receive copies of the Gen 20 forms. There are, however, two important considerations. First, the Returning Officer was not present at every polling station and therefore could not state with absolute certainty that each individual agent received a physical copy of the Gen 20 form. Second, and more importantly, the Petitioner did not demonstrate how the alleged failure to receive copies of the Gen 20 forms altered or compromised the actual results. The Petitioner did not present a polling-station-by-polling-station comparison showing:

- the result recorded on each Gen 20;
- the result allegedly announced differently;
- the alleged discrepancy;
- the number of votes affected; and
- the consequence of the alleged discrepancy upon the final result.

He did the Petitioner establish that any particular Gen 20 contained incorrect figures.

Indeed, PW6 admitted that although he signed documents after counting, he did not know the figures recorded and did not testify that the figures were incorrect. The complaint concerning the Gen 20 forms therefore remains, at its highest, a procedural complaint without a demonstrated electoral consequence. The evidence concerning the declared results is also material to the determination of this Petition. The 1st Respondent testified that the results communicated to him from the polling stations gave him approximately 4,506 votes, while the Petitioner obtained approximately 1,489 votes. The Petitioner, when confronted with the results contained in the relevant ECZ documentation, did not establish that those figures were false or inaccurate.

More significantly, the Petitioner admitted that he did not know the number of votes which he had obtained. No comprehensive alternative tally was presented to demonstrate that the declared result was mathematically impossible or materially erroneous. There is therefore no evidential basis upon which the Tribunal can speculate that the alleged irregularities altered the result. The Tribunal cannot substitute speculation for proof.

The Petitioner also relied upon a Facebook publication concerning his character. The alleged publication contained words to the effect that the Petitioner was a "crook" and would steal CDF if elected. The Petitioner attributed the publication to a nephew of the 1st Respondent and stated that the 1st Respondent subsequently commented on the publication. There are, however, substantial evidential difficulties with this allegation. The screenshot produced bore no date. The telephone containing the original post was not produced. The alleged author of the publication was not called as a witness, and the Petitioner did not sue the alleged author. There was also no evidence establishing the number of persons who saw the publication or the number of voters who were allegedly influenced by it. Further, there was no reliable evidence establishing that the 1st Respondent authorized or approved the original publication. The alleged comment attributed to the 1st Respondent does not, without more, establish that he authored or authorized the original publication. We therefore find that the Facebook evidence does not establish electoral misconduct by the 1st Respondent to the required standard.

An important feature of section 97(2)(a) is that the provision is not satisfied merely because misconduct occurred somewhere in the electoral process. Where the conduct is not personally committed by the candidate, the Petitioner must establish the requisite knowledge, consent or approval of the candidate or the relevant election or polling agent. The evidence concerning unidentified NRPUP supporters, alleged assaults, alleged intimidation, and alleged distribution of pens at different polling stations does not sufficiently establish the required connection with the 1st Respondent. Political affiliation alone is insufficient. The fact that an individual supports, campaigns for, or is associated with a candidate does not automatically make every act of that individual an act of the candidate for purposes of section 97(2)(a). There must be evidence connecting the conduct to the candidate through the statutory requirement of knowledge, consent or approval. That connection has not been established in respect of the majority of the allegations advanced by the Petitioner.

The authorities cited before the Tribunal emphasize that an election is not to be nullified merely because an irregularity has been established. In **Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Others (2005) Z.R. 138**, the Supreme Court emphasized the need to establish that electoral malpractice was of such a scale as to affect the result, such that the declared outcome could no longer properly represent the will of the electorate.

Similarly, **Steven Masumba v Elliot Kamondo (Appeal No. 17 of 2016) [2017] ZMCC 88** illustrates the importance of establishing both the extent and electoral effect of alleged misconduct.

The persuasive principle in **Morgan v Simpson [1975] QB 15** likewise distinguishes between an irregularity and an irregularity of sufficient consequence to vitiate an election.These principles must, however, be applied subject to the precise wording of section 97(2)(a) of the Electoral Process Act.

The statutory test applicable to the present Petition is whether the proven corrupt practice, illegal practice or other misconduct was committed by the candidate or with the requisite knowledge, consent or approval and whether, as a consequence, the majority of voters in the ward were or may have been prevented from electing the candidate whom they preferred.

We have considered whether the individual allegations, when taken cumulatively, establish a pattern of misconduct sufficient to invalidate the election. The principle of cumulative effect is legitimate. An election court or tribunal is entitled to consider proven irregularities collectively where the evidence demonstrates that they formed part of a sufficiently widespread and materially consequential pattern. However, cumulative effect cannot be used to transform unproved allegations into proof. The Tribunal must first identify what has actually been established by the evidence. In the present case, the evidence establishes that:

- there were allegations concerning persons carrying or distributing pens;
- PW4 gave evidence that she saw the 1st Respondent distribute approximately nine pens;

- there was evidence concerning isolated payments of money;
- PW4 was assaulted after confronting persons at a polling station;
- there was an earlier assault upon PW5;
- there were allegations concerning the exclusion or absence of polling agents; and
- there was a complaint concerning access to Gen 20 forms.

However, the evidence does not establish that these matters were widespread throughout Ichinga Ward, nor does it establish that they affected the majority of voters. Nor does it establish that the 1st Respondent authorized, consented to, or approved all the alleged acts. Finally, it does not establish that the alleged acts altered or were capable of materially altering the declared result in the manner contemplated by section 97(2)(a). Consequently, the cumulative evidence does not satisfy the statutory threshold.

The Tribunal has also considered the evidence of RW3, the Returning Officer. The Electoral Commission of Zambia is the constitutional body responsible for the administration and conduct of elections. RW3 testified that the polling stations opened at approximately 06:00 hours, that he personally visited Mwaba, that stakeholders had been trained concerning their respective responsibilities, and that mechanisms existed for reporting electoral incidents. His evidence does not establish that no irregularity could possibly have occurred, because his personal observations were necessarily limited to the polling stations and periods which he visited. Indeed, he fairly accepted that he could not know everything that occurred at every polling station throughout the day.

Nevertheless, his evidence is relevant in assessing whether the Petitioner demonstrated that the alleged irregularities were reported through the established electoral mechanisms or reflected in the official electoral records. The Petitioner did not produce polling-station diaries recording the alleged widespread incidents. He did not produce complaints made to presiding officers concerning the alleged distribution of money and pens. Nor did he establish that the ECZ received complaints concerning widespread misconduct of the nature alleged throughout the ward. While failure to lodge a complaint does not, by itself, defeat an election

petition, it is a relevant evidential circumstance where the Petition alleges widespread electoral malpractice occurring openly at numerous polling stations.

We have carefully considered the demeanour and evidence of the witnesses. There are several material inconsistencies and evidential weaknesses in the Petitioner's evidence and that of his witnesses, in that the Petitioner gave differing accounts concerning the location and circumstances of the alleged distribution of money and pens. PW2 did not personally witness the giving of money upon which part of his evidence was based, PW3 admitted adding to his evidence concerning the purpose for which money was allegedly given. PW4's evidence concerning the assault and medical treatment contains inconsistencies when considered against the medical documentation, PW7 claimed to possess proof of her alleged transaction but did not produce it. PW8 could not identify the person who allegedly gave her K50 and expressly failed to connect that person to the 1st Respondent and the Petitioner acknowledged that even the alleged K20 transaction would not have enabled him to win the election.

These matters do not mean that every witness called by the Petitioner was untruthful. Rather, they demonstrate that the evidence must be approached with care and that allegations of widespread electoral malpractice cannot be established merely by aggregating assertions which lack sufficient corroboration, precise attribution, or demonstrable electoral consequences.

The Petitioner repeatedly described the election as not free and fair. However, a conclusion that an election was not free and fair must follow from established facts and the applicable legal test. The Tribunal cannot invalidate an election merely because some undesirable incidents occurred during the electoral process. Elections, like all human processes, may involve disputes, isolated misconduct, disagreements and procedural imperfections. The relevant question under section 97(2)(a) is whether the misconduct which has been proved satisfies the statutory threshold for nullification. Having considered the evidence as a whole, we find that the statutory threshold has not been met.

Having considered the pleadings, evidence and submissions as a whole, we make the following findings:

There is evidence, particularly from PW3, capable of establishing that the 1st Respondent was involved in the distribution of pens to a number of persons at Mwaba polling station. However, the evidence does not establish the full extent of the alleged distribution or that it affected the majority of voters in Ichinga Ward. The allegations concerning K20, K50 and K100 payments have not been established with sufficient clarity and corroboration to demonstrate widespread bribery throughout the ward.

In relation to the allegations of Violence, it occurred in relation to at least some of the incidents described by the witnesses. However, the evidence does not sufficiently establish that the 1st Respondent committed, authorized or consented to the violence, or that the violence prevented the majority of voters from freely exercising their rights. The Petitioner failed to establish who removed or prevented the relevant agents from accessing the polling streams or that the alleged acts were attributable to the 1st Respondent. The Petitioner established concerns regarding access to Gen 20 forms but did not establish that the alleged procedural failure resulted in incorrect results or affected the outcome of the election.

Coming to the issue of the publication of the petitioner's photo on facebook., the publication was not sufficiently authenticated or connected to the 1st Respondent so as to establish electoral misconduct by him. The Petitioner did not prove that the alleged misconduct prevented or may have prevented the majority of voters in Ichinga Ward from electing the candidate whom they preferred. An election petition is not determined by the number of allegations made but by the quality, credibility and legal sufficiency of the evidence supporting those allegations. The burden rested upon the Petitioner to establish, to the requisite standard, the matters upon which he relied.

The evidence before the Tribunal raises concerns regarding certain incidents said to have occurred during the electoral process. In particular, the evidence of PW3, if accepted to its fullest extent, raises a serious concern concerning the distribution of

of an isolated electoral irregularity. The Petitioner was required to establish that the relevant corrupt practice, illegal practice or other misconduct was committed by the 1st Respondent or with his knowledge, consent or approval and, further, that the majority of voters in Ichinga Ward were or may have been prevented from electing the candidate whom they preferred. The evidence does not satisfy that second and decisive requirement.

There is no reliable evidence establishing the number of voters allegedly affected, the extent of the alleged malpractice across the ward, the number of votes allegedly procured or lost, or the manner in which the alleged conduct prevented the majority of voters from freely expressing their electoral preference. The Tribunal is not entitled to speculate on these matters. Accordingly, the Petition has failed to establish the statutory basis upon which the election may be declared void.

In summary 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 proffered 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 Ichinga 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