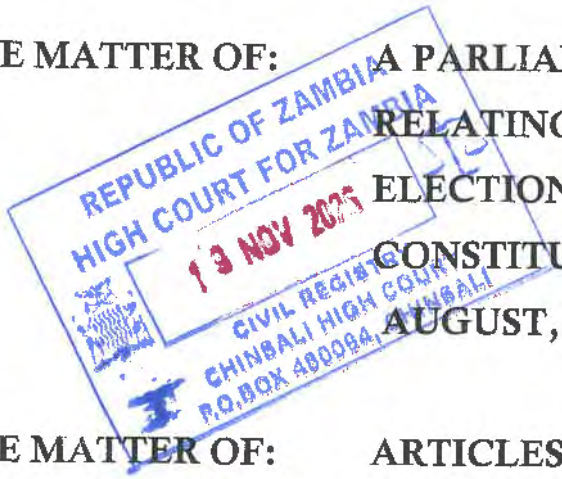
IN THE HIGH COURT FOR ZAMBIA 2026/HP/EP/027
AT THE DISTRICT REGISTRY
HOLDEN AT CHINSALI
(PARLIAMENTARY ELECTION PETITION JURISDICTION)



IN THE MATTER OF: A PARLIAMENTARY PETITION RELATING TO THE PARLIAMENTARY ELECTION FOR MPIKA NORTH CONSTITUENCY HELD ON 13TH AUGUST, 2026

AND

IN THE MATTER OF: ARTICLES 1, 2, 5, 8, 9, 45, 46, 47, 48, 49, 50, 54, 70, 71, 72 AND 73 OF THE CONSTITUTION OF ZAMBIA

AND

IN THE MATTER OF: SECTIONS 29, 37, 38, 55, 68, 72, 77, 81, 83, 84, 86, 89, 94, 95, 96, 97, 98, 99, 100, 102, 106, 107 AND 108 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016

AND

IN THE MATTER OF: THE ELECTORAL CODE OF CONDUCT, 2016

AND

IN THE MATTER OF: RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES 2026, SI NO. 31 OF 2026

AND

IN THE MATTER OF: **THE ELECTION OF FRANCIS ROBERT KAPYANGA AS MEMBER OF PARLIAMENT FOR MPIKA NORTH CONSTITUENCY, MPIKA DISTRICT**

BETWEEN:

MORDECAI SICHALWE **PETITIONER**

AND

FRANCIS ROBERT KAPYANGA **1ST RESPONDENT**

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

Before the Honourable Lady Justice C.M. Lombe in Open Court at Chinsali

For the Petitioner: *Ms S. Mukuka and Ms. N. Lumbwe of Messrs C.L Mundia and Company.*

For the 1st Respondent: *Mr I. Simbeye of Messrs Malisa and Partners Legal Practitioners*

For the 2nd Respondent: *Ms. A. Muyumbana of Messrs EMK and Associates*

J U D G M E N T

CASES REFERRED TO:

1. **Michael Mabenga v Sikota Wina, Mafo Wallace Mafiyo and George Samulela (2003) Z.R. 110)**
2. **Giles Chomba Yamba Yamba v Kapembwa Simbao and two others, (Selected Judgment No. 6 of 2018)**
3. **Mubika Mubika v Poniso Njeulu (SCZ Appeal No. 114 of 2007)**

4. Saul Zulu v Victoria Kalima and the Electoral Commission of Zambia (SCZ Appeal No. 141 of 2012)
5. Attorney General and Two Others v Aman Walid Kabourou (Civil Appeal No. 42 of 1994) [1995] TZCA 30 (Court of Appeal of Tanzania, 31 January 1995)
6. Steven Masumba v Elliot Kamondo (Constitutional Court of Zambia Appeal No. 17/ 2016)
7. Nkandu Luo and the Electoral Commission of Zambia v Doreen Sefuke Mwamba and the Attorney General (Selected Judgment No. 51 of 2018)
8. Mwiya Mutapwe v Shomeno Dominic (Appeal No. 19 of 2017)
9. Akashambatwa Mbikusita Lewanika, Hicuunga Evaristo Kambaila, Dean Namulya Mungomba, Sebastian Saizi Zulu and Jennifer Mwaba v Frederick Jacob Titus Chiluba (1998) Z.R. 49
10. Brelsford James Gondwe v Catherine Namugala (SCZ Appeal No. 129 of 2012)
11. Margaret Mwanakatwe v Charlotte Scott and Another (Selected Judgment No. 50 of 2018)
12. Jonathan Kapaipi v Newton Samakayi (CCZ Appeal No. 13 of 2017)
13. August and Another v Electoral Commission and Others 1999 (3) SA 1 (CC); 1999 (4) BCLR 363 (CC); [1999] ZACC 3 (Constitutional Court of South Africa)
14. Fridah Katongo v Mfula Benson and Electoral Commission of Zambia, 2026/F/LGET/2 (Local Government Elections Tribunal)
15. Edward Shamwana and Others v The People (SCZ Judgment No. 12 of 1985)

16. U-Rest Foams Limited v Puma Botswana (Pty) Limited and Another, (Appeal No. 222 of 2016) [2018] ZMSC 50
17. Mutemba v Zambia Newspapers Limited and Another (1972) Z.R. 107 (HC)
18. Leonard Banda v Dora Siliya, (SCZ Appeal No. 95 of 2012)
19. Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Others (2005) Z.R. 138 (SC)
20. Austin Liato v Sitwala Sitwala, (Selected Judgment No. 23 of 2018)
21. Khalid Mohamed v The Attorney General (1982) Z.R. 49 (SC)
22. Wilson Masauso Zulu v Avondale Housing Project Limited (1982) Z.R. 172 (SC)
23. Bowman Chilosha Lusambo v Bernard Kanengo and the Electoral Commission of Zambia, (CCZ/Appeal No. 19 of 2021)
24. Richwell Siamunene v Gift Sialubalo, (Appeal No. 15 of 2017)
25. Herbert Shabula v Greyford Monde (CCZ/Appeal No. 32 of 2016)
26. Austin C. Milambo v Machila Jamba (CCZ Appeal No. 6 of 2016)
27. Mbololwa Subulwa v Kaliye Mandandi (Selected Judgment No. 25 of 2018)
28. Bowman Chilosha Lusambo v Bernard Kanengo and Others, (2023/CCZ/A002)
29. Subramaniam v Public Prosecutor [1956] 1 WLR 965 (PC)
30. Robert Chiseke Taundi v Mwene Naluwa (Appeal No. 12 of 2017)
31. Muhali George Imbuwa v Enock Kaywala Mundia (Selected Judgment No. 12 of 2018)
32. Wisniewski v Central Manchester Health Authority [1998] EWCA Civ 596 [1998] PIQR P324 (CA)
33. Chrispin Siingwa v Stanley Kakubo (Appeal No. 7 of 2017)

34. **John Sampa v Brian Mundubile (CCZ/A 36 of 2021)**
35. **Chilufya v Ng'andwe and Another (CCZ/A 32 of 2021)**
36. **Sibongile Mwamba v Kelvin Sampa and Another (Appeal No. 2 of 2017)**
37. **Abiud Kawangu v Elijah Muchima (CCZ Appeal No. 8 of 2017)**

LEGISLATION AND OTHER MATERIALS REFERRED TO:

1. **The Constitution of Zambia, Chapter 1 of the Laws of Zambia, as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016**
2. **The Electoral Process Act No. 35 of 2016**
3. **The Electoral Process (General) Regulations, 2016**
4. **The Electoral Code of Conduct**

1. INTRODUCTION

1.1 Mordecai Sichalwe, the Petitioner herein, having been dissatisfied with the outcome of the results of the Parliamentary Election for the Mpika North Constituency held on 13th August, 2026, filed into this Court a Petition challenging the validity of the election of **Francis Robert Kapyanga,** the 1st Respondent, as Member of Parliament for Mpika North Constituency. He also cited the Electoral Commission of Zambia as the 2nd Respondent being the body responsible for the conduct of the election.

1.2 After the parties complied with the preliminary requirements, the matter proceeded to a trial where a total of 25 witnesses were called - 18 for the Petitioner and 7 for the 1st Respondent. The 2nd Respondent elected not to call any witnesses. At the close of the hearing the parties filed their respective final submissions for consideration by the Court.

1.3 This judgment will first set out a summary of the pleadings that were filed into court by all the parties. These pleadings will comprise the Petition, the summary of the affidavit verifying facts, the respective Affidavits in Response, the list of documents, skeleton arguments and summary of the provided authorities. Thereafter, a summary of the oral evidence, as adduced by the witnesses, will be given. A summary of the final written submissions will then be provided, followed by a restatement of the law as it relates to the conduct of parliamentary elections and the treatment of disputes that may arise from such elections. The Court's analysis will then follow after which the Court's findings and verdict will be provided, in conclusion.

2. PLEADINGS

2.1 THE PETITION

2.1.1 The Petition stated that, at the material time, the Petitioner contested the Mpika North Constituency parliamentary seat

in the Muchinga Province of the Republic of Zambia on the ticket of the United Party for National Development (UPND). The other candidates were Chilufya Sata, an independent candidate; the 1st Respondent, representing the National Reconciliation Party for Unity and Prosperity (NRPUP); and Bernard Chibale, representing the Citizens First (CF). On 15th August, 2026, the 2nd Respondent's Returning Officer for the constituency, Mr. Donatello Singa, declared the 1st Respondent duly elected Member of Parliament with **19,925 votes**, against the Petitioner's **3,806 votes**, Mr. Sata's 298 votes and Mr Chibale's 243 votes.

2.1.2 The Petitioner alleged that, during the campaign period, the NRPUP team, including the 1st Respondent personally or through his agents, engaged in vote buying by giving voters money in exchange for their votes. He further alleged that, during the campaign period and on election day, the 1st Respondent personally or through his agents attacked the Petitioner and his team and assaulted election observers representing the Petitioner, causing them to flee the polling stations and report the incidents at Mpika Central Police. The Petition also alleged that the 1st Respondent, personally or through his agents, publicly urged voters at rallies and during

a radio appearance not to vote for the Petitioner, describing him as an organ harvester.

2.1.3 The Petition further stated that the 2nd Respondent did nothing to stop the violence against the Petitioner's observers and polling officers. It was alleged that, despite the issuance of a police report, police officers neither apprehended the known assailants nor ejected them from the polling station because they feared the 1st Respondent and his campaign team. Aggrieved by the Returning Officer's declaration, the Petitioner challenged the validity of the 1st Respondent's election on the following grounds:

1) ***The 2nd Respondent refused, neglected or omitted to issue GEN 20 forms in most areas of the Petitioner's constituency.***
2) ***The 2nd Respondent's refusal to issue GEN 20 forms at every stage of the electoral process deprived the Petitioner of an opportunity to be granted a free and fair election.***
3) ***That the public, malicious, misleading, insulting and entirely false notion uttered by the 1st Respondent's team with the knowledge, consent and/or approval of the 1st Respondent, labelling the Petitioner as an organ harvester,***

caused mass panic in voters who supported the Petitioner, thereby preventing the majority of voters from voting for him.

4) *The said Presiding Officer, with the knowledge and consent or approval of the 1st Respondent and /or his agents, deliberately and/ or fraudulently refused, neglected and or omitted to perform his role to conduct a transparent, free and fair election to the detriment of the Petitioner.*

5) *The 1st Respondent and the 2nd Respondent, by themselves and/or by their agents, clandestinely misconducted themselves in relation to the Mpika North Constituency Parliamentary Elections held on the 13th August 2026, which actions were against the spirit of the Republican Constitution, the Electoral Process Act and the Electoral Code of Conduct.*

6) *The Petitioner contends that the servants and/or agents of the 2nd Respondent in collusion with some operatives of the 1st Respondent systematically, deliberately and/or fraudulently refused, neglected and/or omitted to perform*

their role to conduct a transparent, free and fair election to the detriment of the Petitioner.

7) *That as a consequence of the aforesaid misconduct committed by the 1st and 2nd Respondent and their agents, the voters in the affected areas and polling stations were prevented from electing a candidate of their preference in the constituency.*

2.1.4 As a consequence of the foregoing the Petitioner prayed for the following reliefs:

1) *A declaration that the election of the 1st Respondent as Member of Parliament for Mpika North Constituency was null and void;*
2) *A declaration that the illegal practices committed by the 1st and 2nd Respondents or their agents affected the election results;*
3) *A declaration that the Petitioner was duly elected as Member of Parliament for Mpika North Constituency;*
4) *An Order that costs be borne by the Respondents; and*
5) *Any other relief that this Honourable Court may deem fit.*

2.2 AFFIDAVIT VERIFYING FACTS

2.2.1 In the Affidavit Verifying Facts, it was deposed that the Petitioner had participated in the General Elections at the Parliamentary level as the UPND candidate for Mpika North Constituency in the Mpika District of the Muchinga Province of Zambia. His official adoption certificate was exhibited as *"MS1"*. It was stated that the constituency comprised 72 polling stations and 7 wards, and that, after his nominations had been filed and before the elections, election and polling agents had been appointed by the Petitioner for each polling station. They were tasked with jointly counting, recording and confirming votes by signing the Gen 20 forms alongside agents and observers belonging to other candidates and the 2nd Respondent.

2.2.2 It was alleged that, during the campaign period, false statements had been made by the 1st Respondent in a Facebook Live broadcast and a separate radio interview that human body parts, including hearts, were harvested by the Petitioner to acquire wealth. A Facebook video and radio recording were exhibited as *"MS2"*, while another radio recording of a similar nature was exhibited as *"MS3"*. It was further alleged that threats and violence had been directed at

the Petitioner's polling agents and election observers by the 1st Respondent's cadres and campaign team. A police report and medical report relating to an assault upon a UPND election observer were exhibited as *"MS4"*. Constituents were allegedly offered between K20 and K50 by NRPUP cadres and campaign personnel on the material day to vote for the 1st Respondent. Although the alleged vote buying was reported to all relevant authorities present at the polling station, no action was taken. Tribal remarks were also alleged to have been made by the 1st Respondent and his campaign team, with the electorate being urged not to vote for a "Tonga party", in reference to the UPND.

2.2.3 It was further deposed that, during the counting of votes and handling of the GEN 20 forms, the Petitioner's agents at numerous polling stations had been intimidated by NRPUP agents, rendering the performance of their duties and preparation of an independent tally nearly impossible. Effective observation at the totalling centre was allegedly prevented through the exclusion of independent persons positioned to monitor the process. A lack of transparency was attributed to the 2nd Respondent, by whom the intimidation of the Petitioner's agents and observers and the defamation,

slander and character assassination of the Petitioner were allegedly permitted, thereby giving the 1st Respondent an unfair advantage. It was consequently contended that the final results and declaration of the 1st Respondent as duly elected Member of Parliament for Mpika North Constituency did not reflect the will and preference of the majority of voters, and that his election was null and void owing to the alleged violence, intimidation and illegal electoral malpractices during the campaign period and on election day.

2.3 SKELETON ARGUMENTS IN SUPPORT OF PETITION

2.3.1 In the skeleton arguments filed with the Petition and Affidavit Verifying Facts, it was submitted that this Court's jurisdiction to hear and determine the Petition was conferred by *Article 73(1) of the Constitution* and complemented by *Sections 96 and 97 of the Electoral Process Act,* under which the reliefs sought could be granted. It was further submitted that the circumstances in which a parliamentary election must be declared void were prescribed by *Section 97(2) of the Electoral Process Act*. Reliance was placed on the Supreme Court's decision in **Michael Mabenga v Sikota Wina and Others**[1] for the proposition that satisfactory proof of a single corrupt

or illegal practice, or of misconduct, was sufficient to nullify an election. The conduct complained of was said to constitute illegal practice and misconduct under *Section 97(2)(a),* attributable to the 1st and 2nd Respondents or committed with their knowledge, consent or approval.

2.3.2 As regards non-compliance, it was submitted that GEN 20 forms signed before votes were cast were in the possession of the 2nd Respondent and that unsigned GEN 20 forms were presented during the announcement of results. Reliance was placed on the Constitutional Court's decision in **Giles Chomba Yamba Yamba v Kapembwa Simbao and Others**[2] for the proposition that an election was to be annulled under *Section 97(2)(b)* where the principles governing the conduct of elections under the Electoral Process Act had not been complied with. It was further submitted that the Respondents could not be assisted by the doctrine of substantial compliance under *Section 97(4).* That provision was said to preclude nullification for an election officer's act or omission where the election was conducted substantially in accordance with the Act and the act or omission did not affect the result. The alleged irregularities were said to have gone beyond

administrative errors and to have compromised the integrity of the electoral process.

2.3.3 Turning to the specific allegations, it was submitted that the Petitioner had been accused by the 1st Respondent, in a Facebook Live broadcast and a radio interview, of harvesting human hearts to acquire wealth. The accusation was said to constitute an illegal practice under the Electoral Process Act and the Electoral Code of Conduct and to have affected the election result. It was also submitted that, during the campaign period and on election day, the Petitioner's polling agents and observers were threatened, intimidated and subjected to violence by persons associated with the NRPUP camp, thereby preventing the agents from independently verifying the vote tally. Further, it was alleged that sums of between K20 and K50 were openly offered to constituents by the 1st Respondent on the day of the poll to induce them to vote for him. This was characterised as vote buying and voter intimidation. At various campaign rallies, constituents were also allegedly urged by the 1st Respondent not to vote for what was described as a "Tonga party", in reference to the UPND. Those remarks were said to constitute illegal practices and to have affected the result.

2.3.4 As to the effect on voters, it was submitted that the violence, intimidation and rhetoric attributed to the 1st Respondent had prevented the majority of voters at the affected polling stations from electing the candidate of their choice. Reliance was placed on the Supreme Court's decision in **Mubika Mubika v Poniso Njeulu**[3] for the principle that an election may be declared void only where the prohibited conduct is shown to have been sufficiently widespread in the constituency to influence a greater number of registered voters to change their preferred candidate.

2.3.5 Further reliance was placed on **Zulu v Kalima**[4], in which it was held by the Supreme Court that defamatory or inflammatory statements directed at a parliamentary candidate's party or its presidential candidate could not be treated as detached from the parliamentary candidate. The reasoning of the Tanzanian court in **Attorney General and Others v Kabourou**[5] was adopted to the effect that uncontroverted defamation repeated at well-attended campaign rallies had to be taken to have affected the election result. On that basis, it was submitted that the defamatory and malicious statements by which the Petitioner was

labelled an organ harvester and a practitioner of witchcraft had materially influenced the outcome and that no effective opportunity to rebut them had been available to him. It was accordingly submitted that the election of the 1st Respondent as Member of Parliament for Mpika North Constituency had been conducted in a manner that fell short of the constitutional and statutory requirements for a free and fair election, and that the Petition ought to succeed.

3. RESPONDENTS' ANSWERS

3.1 1ST RESPONDENT'S ANSWER

3.1.1 In the 1st Respondent's Answer, it was stated that, on 15th August 2026, he was declared duly elected Member of Parliament for Mpika North Constituency, having polled 19,925 votes against the Petitioner's 3,806. It was denied that vote buying or any form of violence against the Petitioner, his agents or any election observer had been engaged in by the 1st Respondent or by any agent acting with his authority before, during or after the election period. It was further stated that the campaign had been conducted in accordance with the Electoral Code of Conduct, that no complaint had ever been lodged against the 1st Respondent with the relevant Conflict Management Committee and that the Petitioner had not been

mentioned by the 1st Respondent at any point during the campaign.

3.1.2 As regards the GEN 20 Forms, it was stated that, to the best of the 1st Respondent's knowledge and information, the forms had been provided to the parties by the 2nd Respondent at the various polling stations. The allegations of collusion, connivance and lack of transparency were denied. It was maintained that no irregularity attributable to the 1st Respondent or his agents and sufficient to affect the outcome had been demonstrated at any of the 72 polling stations.

3.1.3 It was further stated that, to the best of the 1st Respondent's knowledge, votes had been cast without impediment and that the declared result reflected the will of the majority of voters. Accordingly, it was denied that the Petitioner was entitled to any of the reliefs claimed in the Petition.

3.2 **AFFIDAVIT IN SUPPORT OF ANSWER**

3.2.1 In the Affidavit in Support of the Answer, it was deposed by the 1st Respondent that the Mpika North Constituency parliamentary seat had been contested by him, the Petitioner, Chilufya Sata and Bernard Chibale. Upon completion of the counting, verification and tallying of votes, 19,925 votes were recorded for the 1st Respondent against the Petitioner's 3,806, a margin of 16,119

votes. The Declaration of Results of the Poll was exhibited as **"FRK1"**. It was further deposed that a majority of votes was obtained by the 1st Respondent at each of the 72 polling stations in the constituency's 7 wards. Copies of the proceedings prepared and published by the 2nd Respondent for the constituency were exhibited as **"FRK2"**.

3.2.2 It was denied that the Petitioner had been described by the 1st Respondent as a harvester of human body parts in a Facebook Live broadcast or a radio interview or that the Petitioner had been mentioned by him at any point during the campaign. It was maintained that the campaign had been conducted in accordance with the Electoral Code of Conduct and that no complaint against the 1st Respondent had been lodged by the Petitioner with the relevant Conflict Management Committee. It was also denied that the Petitioner's agents or observers had been threatened, subjected to violence or intimidated by the 1st Respondent or his agents. Those allegations were described as false, misconceived and unsupported by credible or substantial evidence. It was further denied that tribal remarks had been made by the 1st Respondent or his agents or that the electorate had been urged by them to refrain from voting for a "Tonga party".

3.2.3 It was further deposed that the election had been conducted transparently, in an orderly manner and in substantial compliance with the applicable law. Copies of the GEN 20 forms reflecting the 1st Respondent's majority were exhibited as **"FRK3(I)"** to **"FRK3(XLVII)"**. It was maintained that the majority of voters had been able to vote without impediment, that the result reflected the will of the eleetorate and that the alleged irregularities had no material effect on the outcome. Malicious falsehoods against the 1st Respondent were, in turn, attributed to members of the Petitioner's campaign team and agents, including statements that they would rig the election if the eleetorate did not vote for the Petitioner's party. The formal complaint made by the 1st Respondent to the 2nd Respondent concerning those statements was exhibited as **"FRK5"**. It was accordingly maintained that no illegality, irregularity or non-compliance eapable of affecting the result or warranting nullification had been demonstrated and that the Petitioner was not entitled to any of the reliefs claimed.

3.3 **SKELETON ARGUMENTS**

3.3.1 In the skeleton arguments filed with the Answer and Affidavit in Support of the Answer, it was submitted that the Petitioner had not discharged the burden of proving that the

election of the 1st Respondent as Member of Parliament for Mpika North Constituency ought to be nullified under *Section 97(2) and (4) of the Electoral Process Act*. Reliance was placed on **Masumba v Kamondo**[6] and **Nkandu Luo v Doreen Sefuke Mwamba**[7] in support of the threshold for nullification. As to the standard of proof, reliance was placed on **Mwiya Mutapwe v Shomeno Dominic**[8] for the proposition that proof to a fairly high degree of convincing clarity was required, higher than the standard in an ordinary civil action but lower than proof beyond reasonable doubt.

3.3.2 It was submitted that no evidence had been adduced to show that any corrupt practice, illegal practice or misconduct had been personally committed, authorised or consented to by the 1st Respondent or had occurred with his knowledge. His role was said to have been limited to that of a candidate. It was argued that the counting of votes, verification of the GEN 20 forms, control of the tallying centre and declaration of the result had not been undertaken by him. It was further submitted that, under *Section 97(4)*, an election could be declared void by reason of an election officer's act or omission only if it was shown both that the election had not

been conducted substantially in accordance with the law and that the act or omission had affected the result. Neither requirement was said to have been established.

3.3.3 The allegations in the Petition were accordingly described as largely unsubstantiated and unsupported by cogent evidence. It was contended that no alleged irregularity had been shown to be material or sufficiently widespread to have prevented the majority of voters in Mpika North Constituency from electing the candidate of their choice. It was therefore prayed that the declaration of the 1st Respondent as duly elected Member of Parliament for Mpika North Constituency be upheld and that the Petition be dismissed with costs.

3.4 **2ND RESPONDENT'S ANSWER**

3.4.1 By its Answer, the 2nd Respondent confirmed that the Petitioner was a candidate in the Mpika North parliamentary election held on 13th August 2026, contested by the Petitioner, the 1st Respondent, Chilufya Sata and Bernard Chibale, and that the Returning Officer declared the 1st Respondent elected with 19,925 votes against the Petitioner's 3,806, the Petitioner being the runner-up.

3.4.2 The 2nd Respondent denied the allegation that the Petitioner's agents or observers fled any polling station for fear of

violence, and averred that it would demonstrate, by documentary evidence, that all accredited observers, monitors and election agents freely attended and witnessed the voting, counting and declaration of results at the polling stations and the totalling centres. It averred that the Returning Officer correctly declared the 1st Respondent duly elected, he having obtained the majority of the valid votes cast.

3.4.3 Contrary to the Petitioner's allegations concerning GEN 20 forms, the 2nd Respondent averred that its Presiding Officers and Returning Officer issued the form to all duly accredited election agents, monitors and observers, including such of the Petitioner's polling agents as were available.

3.4.4 It was averred that the election was conducted freely, fairly, and in substantive compliance with the Constitution and the *Electoral Process Act No. 35 of 2016*, and that the Petitioner was not entitled to any of the relief sought.

3.5 **AFFIDAVIT IN SUPPORT OF ANSWER**

3.5.1 The 2nd Respondent's Affidavit in Support of the Answer was sworn by **Mr Donatello Singa,** who deposed that he was the Returning Officer for Mpika North Constituency during the general election held on 13th August 2026. He deposed that

the 2nd Respondent was a statutory body established under the Constitution, mandated, among other things, to conduct elections and voter registration, and that it was guided in the performance of its functions by the applicable electoral laws.

3.5.2 He deposed that, following the general elections held in all constituencies, including Mpika North, where the Petitioner contested as the UPND candidate and polled 3,806 votes, he declared the 1st Respondent duly elected Member of Parliament for Mpika North Constituency, having obtained 19,925 votes. He stated that the election was conducted in substantial conformity with the applicable electoral laws and procedures.

3.5.3 He denied the allegation that the Petitioner's agents and observers were prevented from effectively observing the electoral process at the totalling centre and deposed that the parliamentary election conducted in Mpika North was free and fair and conducted in substantial compliance with the Constitution, *The Electoral Process Act*, and other electoral laws.

3.5.4 He deposed that the 2nd Respondent, through its presiding officers and the Returning Officer, issued GEN 20 Forms to all duly accredited election agents, monitors and observers, including the Petitioner's polling agents and that there were

no pre-signed GEN 20 forms before the casting of votes nor any unsigned GEN 20 forms presented at the announcement of results, as alleged by the Petitioner.

3.5.5 It was deposed that the 2nd Respondent was transparent in the conduct of the election, denied permitting the 1st Respondent to intimidate or compromise the Petitioner's agents and denied that the 2nd Respondent engaged in any illegal, improper or unlawful conduct in the administration of the election, describing the allegation that the declared result did not reflect the will of the majority of voters as speculative and unsupported by evidence. He deposed that the election was free and fair and that the 1st Respondent was duly declared elected, having received the majority of votes freely cast by the electorate.

4. SKELETON ARGUMENT

4.1 The 2nd Respondent, submitted that the election was conducted in substantial compliance with the Constitution, the *Electoral Process Act*, and the *High Court (Election Petition) Rules*. Reliance was placed on *Article 73(1) of the Constitution* and *Section 97(2)(b) of the Electoral Process Act*, which permits an election to be voided only where non-compliance with the Act relating to the conduct

of elections was proved and it was shown that such non-compliance affected the result.

4.2 On the burden and standard of proof, reliance was placed on **Lewanika and Others v Chiluba**[9], **Brelsford Gondwe v Catherine Namugala**[10] and **Margaret Mwanakatwe v Charlotte Scott**[11] for the principle that the Petitioner bore the burden of proving the allegations to a fairly high degree of convincing clarity, a standard higher than the ordinary civil standard but lower than proof beyond reasonable doubt.

4.3 Addressing the Petitioner's allegations that the 2nd Respondent used GEN20 forms that had been pre-signed before voting and presented unsigned GEN20 forms during the announcement of results and that it had refused or neglected to issue GEN20 forms in most areas of the constituency, the 2nd Respondent denied these allegations.

4.4 It was submitted that contrary to the allegations, GEN20 forms had been issued to all duly accredited election agents, monitors and observers, including the Petitioner's own polling agents. It was further submitted that the mere assertion of these allegations did not establish them. The Petitioner had failed to adduce any evidence in support. Citing **Jonathan Kapaipi v Newton**

Samakayi[12], it was submitted that an election could only be voided where it was proved that the misconduct complained of was so widespread within the constituency that it changed or might have changed the outcome, and that the Petitioner had failed to discharge this further evidential burden.

4.5 It was submitted that the 1st Respondent had polled 19,925 votes against the Petitioner's 3,806. A margin of 16,119 votes, was overwhelming and incapable of being attributed to the limited number of allegedly affected voters. The 2nd Respondent accordingly submitted that the election in Mpika North Constituency was free, fair and conducted in substantial compliance with the law and that the Petition ought to be dismissed for lack of merit.

5. HEARING

5.1 The Petitioner called eighteen (18) witnesses and the 1st Respondent called seven (7). The 2nd Respondent called none.

5.2 **PETITIONER'S CASE**

5.2.1 **Mordecai Sichalwe,** the Petitioner himself was the first witness in his own regard **(PW1)**. On his own affirmation he stated that he was aged 52, a construction businessman of New Town, along Kasama Road, Mpika. He adopted his

Petition and Affidavit Verifying Facts. He then testified that he had campaigned as the UPND candidate from May 2026. He further testified that he visited all seven wards and campaigned on completing unfinished infrastructure projects in the constituency. He estimated initial crowds that attended his meetings at 300 to 400 and said attendance declined from June 2026.

5.2.2 **PW1** testified that he obtained a video of a Kapamba Ward rally from Musukwa after being told that he had been described as a heart harvester. He also received a radio clip from **Lubasi (PW9)** after a call between 3rd and 5th June 2026. He stated that he understood the remarks about satanism, the sale of hearts and the construction of buildings to refer to him, as he was the only candidate resident in Mpika and engaged in construction. He further stated that unnamed business partners, friends and relatives questioned him about the allegations. He also stated that his campaign manager, Mr. Lafest Chipalo, attributed poor attendance at Kanyelele in Mutamba Ward to the remarks.

5.2.3 **PW1** testified that on 13th August 2026, he voted at Mpika Day and then passed through Chitulika Polling Station before he returned home. He testified that he was later told that one

agent had been assaulted there by the 1st Respondent's group in the 1st Respondent's presence. He stated that on his advice, the matter was referred to the police. He further stated that between 22:00 and 23:00 hours, he received reports of violence and of agents being denied GEN20 forms or the opportunity to sign them. He said he had agents at all 72 stations, that forms had been signed at only 20 stations and that 50 forms had not been signed.

5.2.4 In cross-examination, **PW1** denied harvesting organs but accepted that the 1st Respondent had not named him. Further, he did not identify any evidence that voters were told not to vote for persons who removed hearts. He also stated that he did not know of any ECZ grievance committee and had made no complaint to any such committee or to the 2nd Respondent. **PW1** stated that he did not verify the polling station reports in person, identify the agents affected or those who prevented them from signing or producing the forms. He also stated that he was absent when the matter in exhibit *MS4*, the medical report form, was reported and did not know the officer who recorded it. He accepted that *MS4* did not establish that Diamond Kabanda assaulted Mathews Mwamba as an agent of the 1st Respondent or that violence

was widespread. He confirmed that only one agent was said to have been assaulted. He further confirmed that his affidavit did not identify those involved in the alleged threats or vote buying, the affected observers or the official allegedly assaulted and the station concerned. **PW1** confirmed that he did not say how many people were allegedly paid between K20 and K50. He accepted that neither the Petition nor his affidavit alleged that he had won and that no evidence of the alleged victory had been produced.

5.2.5 **Geshom Lyempe** aged 63, a farmer of Shangai Yowani Village, Mpika, was the second witness for the Petitioner **(PW2).** He asserted that he was non-partisan. His evidence was that sometine in July 2026, at a rally at Kabale School the 1st Respondent urged voters not to vote for the Petitioner, whom he described as a criminal who killed people. He testified that when he had asked what the 1st Respondent would do for the people, he was ignored and removed from the rally by unidentified cadres whom he had seen with the 1st Respondent.

5.2.6 **PW2** further testified that at 06:00 hours on 13th August 2026, he saw a vehicle with sneakers in its boot within the voting

perimeter at Kabale Primary School. He said Benson Mfula **(RW2),** the NRPUP council candidate for Lubambala Ward, offered him shoes if he voted "on the lamp". He stated that something was placed in his pocket before he voted. He further stated that after voting, he was asked by someone signalling the NRPUP symbol whether he had voted on the lamp. Also that he found three K10 notes in his pocket. He did not know where the money came from and took it to a councillor who had stood on the UPND ticket. **PW2** did not give the vehicle details, made no police report and said his vote was unaffected by the conduct of the 1st Respondent's agents.

5.2.7 **Theresa Namfukwe**, aged 50, a businesswoman of Tazara, Mpika, Chief Chikwanda, was the Petitioner's third witness **(PW3).** Her evidence was that she attended a rally in July 2026 at Kabale School in Lubambala Ward with Annie, Chanda, Eunice, Mwamba and Mukuka. She said the 1st Respondent campaigned for himself and Mundubile. That during his address he made tribal remarks about President Hakainde Hichilema and linked the Petitioner's wealth to blood money and the removal of hearts. She further stated

that similar remarks were heard at Makumbi. She identified the rally at Kabale School in the video which was produces as exhibit *MS2.* She conceded that the Petitioner was not named in the clip.

5.2.8 **PW3** further testified that on 13th August 2026 at about 08:30 hours about 20 people who were using NRPUP gestures and slogans approached her at Tazara Railways Polling Station. She stated that Clement, Kelvin and Gift, whom she had seen with the 1st Respondent at rallies, gave her pens and reminded her of an instruction delivered by the 1st Respondent against using polling booth pens. She explained that the reasoning was that any mark made on the ballot using the pens provided in the booth would go to President Hakainde Hichilema or the Petitioner. After voting, she was asked whether she had voted "in a chain", meaning for NRPUP candidates at every level. She further stated that she gave the pens to **Fridah Katongo (PW4)**. The pens were not produced in Court. She further confirmed that she had identified herself as a UPND member in Fridah Katongo's petition. **PW3** denied distributing pens and said her vote was unaffected by the activities she had testified about.

5.2.9 **Fridah Katongo**, aged 47, a businesswoman of Tazara, Mpika, was the Petitioner's fourth witness **(PW4).** She stated that she had contested the Lubambala Ward council seat on the UPND ticket. She said NRPUP affiliates had questioned how she could work with the Petitioner, whom they accused of killing people. **PW4** testified that on 11th August 2026 she attended a rally at Kabale School where more than 300 people were in attendance. She further stated that the 1st Respondent allegedly urged voters to carry their own pens when going to vote and to mark the lamp on the ballot paper. **PW4** said the 1st Respondent claimed that votes cast for Brian Mundubile or himself with pens provided for at the polling station would transfer to President Hakainde Hichilema or the Petitioner. She also said the 1st Respondent accused the Petitioner of harvesting hearts, building with proceeds from people's blood and intending to kill people with his councillor.

5.2.10 **PW4** testified that on 13th August 2026 between 06:00 and 07:00 hours she voted peacefully at Tazara Polling Station. She stated that between 08:00 and 09:00 hours, a lady she identified as "Edith Nafukwa", who was **PW3** in these

proceedings, brought green and white pens to her home. She also stated that **PW2** brought three K10 notes, which he attributed to Benson Mfula. **PW4** said **PW2** was a UPND member when they worked together. She stated that agents at Kabale Polling Station and senior UPND members were informed about the money that **PW2** had brought to her but that the K30 and the remarks made by the 1st Respondent were not reported to the police or ECZ.

5.2.11 **Annie Katongo**, aged 54, a businesswoman of Zesco Compound, Lubambala, Mpika, was the Petitioner's fifth witness **(PW5).** She stated that while she served on the Petitioner's campaign team she did not hold any position. She testified that at the first meeting at Chewe, in June 2026, about 150 people were in attendance. She stated that after the 1st Respondent held a meeting there only about 80 people came to their meeting. She stated that Evelyn Sichalwe attributed the decline in attendance to remarks linking the Petitioner's wealth to people's blood. **PW5** stated that she did not hear those remarks herself. She testified that at Kabale School, she heard the 1st Respondent urge voters not to vote for someone with blood money. She stated that she left before

the meeting ended. She confirmed that she had not produced any independent evidence of her attendance or the remarks.

5.2.12 **PW5** testified that she accompanied the Petitioner to Kanyelele, Chewe, Mwalala, Chikwanda, Lubambala, Londokeni and Mutanda. She stated that the allegation that the Petitioner harvested hearts was brought to Mr Chipalo's attention. **PW5** confirmed that there was no report made to the 2nd Respondent, the police or the conflict management committee.

5.2.13 **Justine Mutale**, aged 42, an electrician of Tazara A, Mpika, was the Petitioner's sixth witness **(PW6).** His testimony was that in August 2026, at a rally in Yowani Village the 1st Respondent accused the Petitioner of killing people and building with proceeds from their hearts. Also that he promised money to those who voted for him. He said similar remarks and an appeal to vote on the lamp were made at Kabale School. **PW5** produced no independent proof of his attendance or the remarks. He also confirmed that the Petitioner was known in Tazara A as a heart harvester and killer.

5.2.14 **PW6** testified that when he was at Kabale Polling Station he saw a vehicle containing sneakers and was offered shoes if he voted on the lamp. **PW6** stated that an officer was informed about this activity and those with the vehicle were told to leave and it was moved. **PW6** stated that he did not record the registration number of the vehicle nor did he identify its occupants or recall the officer's name. He stated that he saw the 1st Respondent enter the polling station but did not know what happened inside. He also denied receiving any sneakers. He also stated that he was did not change his vote despite the activities at the Polling station on the material day.

5.2.15 **Sarah Zimba** , aged 49, a businesswoman of Kamwanya, Mpika, was the Petitioner's seventh witness **(PW7).** She stated that she was a UPND polling agent at Mpika Boys. She testified that on 9th July 2026, she arrived at Kamwanya Market after the 1st Respondent had begun speaking and heard him urge voters not to vote for the Petitioner because his shops came from harvested hearts. She said the Petitioner was known in her area as a harvester of hearts.

5.2.16 She testified that at about 15:00 hours on 13th August 2026, she saw the 1st Respondent make the NRPUP gesture at

Mpika Boys, Stream 2. She stated that when she complained an unidentified police officer told her that the 1st Respondent would leave soon. She stated that she witnessed the entire voting process without confusion. She stated that the voting ended at 19:30 hours, and the votes were counted and taken to the 2nd Respondent's Totaling Centre. **PW7** said she was not given anything as an agent. **PW7** was unable to specify what she expected or from whom. She confirmed that she did not make any complaint against the 2nd Respondent.

5.2.17 **Mutale Nkonde**, aged 65, a farmer of Chisowa Village, Mpika and UPND Chairman of Musakanya Ward, was the Petitioner's eighth witness **(PW8)**. He testified that sometime in July 2026 around 19:00 hours when he was at home with Abraham Chanda, Nelson Chanda of Ndola called him. He stated that Nelson Chanda informed him that the 1st Respondent had sent criminals after them because they supported the Petitioner. Also that the 1st Respondent had accused them of harvesting hearts for the Petitioner. He stated that the following morning, Nelson Chanda's mother attributed the information to 'Bana Banda', the wife of a retired police officer, who was said to have heard the 1st

Respondent allege that the Petitioner had deployed people to harvest hearts on his behalf.

5.2.18 **PW8** stated that he reported the matter to the Police and 'Bana Banda' was apprehended. He further stated that, after consulting with the Petitioner, he withdrew the complaint and the detained suspects were released. In cross-examination, he disputed that his evidence was hearsay. He conceded that he had not reported the 1st Respondent to the police.

5.2.19 **Lubasi Albert Namakando** aged 43, a senior signal and telecommunications technician of B414 Tazara Compound, Tazara, Chief Chikwanda, was the Petitioner's ninth witness **(PW9).** His testimony was to the effect that he recorded a radio programme featuring the 1st Respondent. He stated that the programme had been advertised on the Nkumbule WhatsApp group, to air at 19:00 hours on 3rd June 2026. He stated that the said group had about 200 members. He further testified that as he listened to the programme, at about 47 minutes and 25 seconds, he heard the 1st Respondent say that even serial killers could build. He stated that he attributed these remarks to the Petitioner as the Petitioner owns buildings and was a contractor in Mpika District, while

the other candidate, Chilufya Sata, an independent candidate, had no buildings in Mpika and was not a contractor. He also identified Bernard Chibale as the Citizens First candidate.

5.2.20 **PW9** identified Exhibit *MS3* which was played and translated in Court. In the said recording the speaker referred to earning money by selling eggs, recounted a campaigner's claims about his wealth and buildings and questioned whether buildings demonstrated leadership. He said that someone who made money from selling drugs or through satanism could still build. In cross-examination **PW9** accepted that the recording continued beyond the 47 minutes and that a caller asked what was meant by the statements made by the 1st Respondent. He also confirmed that the Petitioner was not named. He also clarified that Mpika District has a population of about 149,000 and the radio station's Facebook following is at about 70,000. He conceded that he did not produce evidence of a live stream or the number of listeners that tuned into listen to the programme. He stated that he retained the recording and supplied it to his lawyers when the Petition was presented. He confirmed that he had supported the Petitioner and was

unhappy with his loss. He also confirmed that the Petitioner had stood unsuccessfully in the 2011 Parliamentary election.

5.2.21 **Christopher Chama** , aged 30, a farmer of Chitulika Village, Mpika, was the Petitioner's tenth witness **(PW10).** He testified that on 13th August 2026 at about 09:00 hours , he saw approximately 50 men making the lamp sign at the windows of Chitulika Secondary School. He stated that Mathews Mwamba was informed and later called him to say he had been beaten. **PW10** stated that when he went behind the school, he found him with a group that included Kabanda, Mutale Sekwila and the 1st Respondent. **PW10** stated that he took Mathews Mwamba to the police where a report was made then Mr Simusokwe, the provincial chairman, took Mwamba to the hospital.

5.2.22 **PW10** further testified that on his way back, at Musakanya Polling Station, he received pens and money from Mwengele, whom he knew from the NRPUP campaigns. He stated that he saw him distributing pens and K10 notes by the road. In cross- examination he stated that he did not use the pens to vote and his choice of candidate was unaffected. He also acknowledged that he had previously communicated with the

1st Respondent but denied sending him a message about the matter or telling him not to testify.

5.2.23 **Gertrude Muke** aged 45, a businesswoman of Kamwanya Township, Mpika and a UPND field monitor, was the Petitioner's eleventh witness **(PW11)**. She testified that in August 2026, the Petitioner promised to provide a proper trading area at Musakanya Market. She further testified that at a later rally, addressed by the 1st Respondent during a slot for an independent candidate, an estimated 500 people were in attendance, she heard, as she stood at a distance, that voters should not vote for people who built by harvesting hearts. She stated that the remarks were made by the 1st Respondent and that he named the Petitioner.

5.2.24 **PW11** testified that on polling day, she visited several stations, including Kamwanya and Chitulika Polling Stations. She stated that she reported finding a case of assault. She further stated that she returned to the polling stattion during counting between 20:00 and 23:00 hours. She stated that most agents did not receive GEN20 forms and a few forms were later obtained at the Council. She cited unsigned forms from Kamwanya, Musakanya, Chipembele, Mutekwe and Lubambala. **PW11** testified that she initially said "unsigned"

meant the agents had not witnessed the process. She then clarified that UPND agents at all stations witnessed voting and counting and confirmed that they did so at Chitulika Polling Station.

5.2.25 On cross-examinatoini **PW11** confirmed that she had no proof of her appointment as an agent. She also conceded that she did not identify any agent prevented from signing or explain any missing signature. She stated that a complaint was reported to the conflict resolution committee after she attended its meeting but produced no evidence of the report.

5.2.26 **Gideon Bwalya**, aged 45, a tailor of Shangai Village, Tazara, Mpika, was the Petitioner's twelth witness **(PW12).** He testified that he served as the Petitioner's agent at Tazara Polling Station. He testified that some people on the queues at the Polling station were encouraging voters to vote "on the lamp" and "make a chain". He stated that Samuel Kabungo, the UPND council chairperson candidate and an ECZ presiding officer had advised him to inform another officer.

5.2.27 He stated that between 14:00 and 15:00 hours, the 1st Respondent allegedly entered the Polling station with a group of people and he was greeted as "honourable". He further stated that after he intervened a police officer removed the

group. He stated that he then heard shouts from outside about voting in a chain. He further testified that members of the group allegedly continued shouting at the windows during counting of the votes.

5.2.28 In cross examination **PW12** confirmed that he witnessed the voting and counting. He stated that both processes went well. He testified that his own tally showed that the Petitioner was losing. He also stated that he had asked to sign the GEN20 forms but that they were not given to them. **PW12** failed to identify the person he had asked for the GEN 20 forms. **PW12** confirmed that he saw completed forms with the signature section unsigned but did not see them being completed nor did he read the figures or know whether other agents signed. He denied that he refused or failed to sign the form because he was dissatisfied with the results.

5.2.29 **Fredrick Chimanga** , aged 45, a farmer and UPND member of Kalimbaya Village, Mpika, was the Petitioner's thirteenth witness **(PW13).** He testified that on 3rd July 2026 he attended an NRPUP rally at Mwateshi in Lwitikila Ward . He said the 1st Respondent discouraged those who were in attendance from recording the rally. He stated that the 1st

Respondent then referred to the forthcoming UPND campaign and said that some people built with money obtained by killing and warned that lives might be lost.

5.2.30 **PW13** testified that on 13th August 2026, he voted in the afternoon at Mwateshi Polling Station because his right leg was hurting. He testified that at about 400 metres from the Polling station, while in the presence of Joseph Chanda and others, Sampa allegedly told him that the pain he was experiencing could be attributed to the Petitioner. He further stated that Sampa accused the Petitioner of killing people and said he wanted **PW13** to kill someone before the 13th. On cross examination **PW13** conceded that he had not produced any proof that Sampa belonged to the NRPUP or was an agent of the 1st Respondent. He also stated that he did not believe the remarks. He also stated that his vote was unaffected and that he had not identified any voter whose choice had changed because of the remarks. **PW13** confirmed that he testified because he was unhappy with the Petitioner's loss.

5.2.31 **Darlington Mulenga** , aged 43 of Mutekwe Ward, Mpika, was the Petitioner's fourteenth witness **(PW14).** He

confirmed that he was a UPND official, a community health worker and vice chairperson of the SIWAK. He stated that between 16th and 18th July 2026 at about 17:00 hours, he attended a meeting at Changalilo Polling Station. He testified that during his address the 1st Respondent apologised for doing nothing after his election in 2021. He stated that he then urged voters to vote in a chain using the lamp and attributed the wealth of others standing on the ruling party ticket to the removal of hearts.

5.2.32 **PW14** stated that the 1st Respondent offered him opportunities and a house in Mutumbu in return for campaign support. He stated that he did not take up the offer. **PW14** testified that on 13th August 2026, he gave placards to Ernest Kankomba, the 1st Respondent's campaign manager and they were posted in designated areas at the polling place. **PW14** testified that he did not see the 1st Respondent that day. He also clarified that he attended only one of the 1st Respondent's rallies from start to finish, at which the 1st Respondent spoke last.

5.2.33 **Matani Sichalwe**, aged 23, a farmer of Fitoki Village, Kapamba Ward, Mpika, Chief Mukungule, was the

Petitioner's fifthteenth witness **(PW15).** He stated that he had contested the elections as a candidate for the council on the UPND ticket. He further stated that he had attended an NRPUP rally at Kaluba Primary School between 31st July and 2nd August 2026. He testified that he heard that the UPND parliamentary candidate removed hearts and should not be voted for. On cross examination he confirmed that his vote was unaffected by what he had heard.

5.2.34 **PW15** testified that while he was at Kaluba on polling day, between 19:00 and 20:00 hours, unidentified men wearing regalia bearing the 1st Respondent's image threatened him. He further stated that while attempting to report to the police at Lushinga Primary Polling Station, he was held by the neck by a man in NRPUP regalia who said they had been told to beat UPND cadres. He further testified that others called for him to be beaten but he escaped and went home. He stated that polling agents had not been given GEN20 forms but he did not identify his agents at the five polling stations or describe any steps taken to collect the forms.

5.2.35 **Philmon Kasalwe** aged 58, a farmer and Community Health Worker of Kamwanya Compound, Mpika, was the sixteenth witness for the Petitioner **(PW16).** He testified that

while he worked at the under-five clinic he had heard women voice their support for the Petitioner because he could develop Mpika. He stated that about a month later, he heard sentiments that the Petitioner was unsuitable for the position of Member of Parliament because he killed people and removed hearts. **PW16** further testified that at RDC Market in Kamwanya the 1st Respondent urged people not to vote for Mordecai. He further stated that the 1st Respondent accused him of removing people's hearts and said that he himself did not kill people. **PW16** said the remarks affected his choice "a bit" but that he voted for the candidate of his choice.

5.2.36 **Peter Zimba**, aged 42, a civil servant and agriculturist with the Ministry of Agriculture, Mpika, of Site and Service House No. 0042, was the Petitioner's seventeenth witness **(PW17).** He testified that on 5th August 2026 between 14:00 and 15:00 hours he attended part of the 1st Respondent's rally at Musakanya Market. He said voters were urged to elect a leader. He also stated that his opponent was described as a murderer. In cross-examination, he said he was at the rally for about 30 minutes and he heard the 1st Respondent speak about being a good leader. **PW17** testified that on polling day,

young men offered him and his wife green pens with white stripes and K10. He stated that they also made a political gesture and said "vote for the honourable". He stated that he brushed aside the offer and voted for the candidate of his choice.

5.2.37 **No. 53690 Constable Malama Mwamba**, a police officer based in Mpika, was the Petitioner's eighteenth witness **(PW18).** His testimony was to mainly identify the Police Medical Report and a docket cover exhibit *MS4.* He confirmed that he was the one that issued the medical report form. He confirmed having received a report of assault on 13th August, 2026 when he was with Sergeant Muluwa. He stated that the report was received from Mathews Mwamba, aged 40, of Tazara Compound. He stated that the report was to the effect that Kabanda and others whom the victim could identify if seen had assaulted him at Chitulika Secondary School. He testified that after issuance of the Medical Report Form, Mathews Mwamba went to hospital, and the docket was forwarded to the CID. **PW18** was not cross-examined.

5.2.38 This marked the close of the Petitioner's case.

5.3 1ST RESPONDENT'S CASE

5.3.1 **Francis Robert Kapyanga,** the first Respondent was the first witness in his own regard **(RW1).** He adopted his Answer and Affidavit in support under oath. He said that he was elected Member of Parliament for Mpika North in the election of 13th August 2026. He stated that after nominations, NRPUP officials formed his campaign team. He furhther stated that he campaigned in Lubambala, Musakanya, Kapamba, Mutekwe, Lwitikila, Chipembele and Mutamba with Mr Andrew Musonda Chishingwa, Mr Francis Chiyendeyende and Ms Catherine Chama Chileshe, using rallies and radio programmes.

5.3.2 **RW1** testified that the rally at Kabale School was held on 25th July 2026 at about 15:00 hours. He stated that he disputed the dates given by the Petitioner's witnesses. He testified that at the rally he spoke about farming inputs and the revitalisation of TAZARA. He denied describing the Petitioner as a heart remover or saying that the Petitioner had blood money. He also denied saying that President Hakainde Hichilema was a satanist or should not be voted for because he was Tonga. **RW1** testified that on 5th August 2026, at

Musakanya Market, Councillor Borniface, Ms Catherine Chama Chileshe, Mr Francis Chiyendeyende, Mr Chola Chilumba and Mr Aron Kababa spoke before him. **RW1** stated that he said that the message concerned development and farming inputs. He said that the message during his visit to Musakanya area on 11th August 2026 concerned roads, fertilizer and the decentralisation of artisanal mining licences. He denied that the Petitioner was mentioned.

5.3.3 **RW1** testified that on 10th June 2026 he visited Mutekwe Ward. He accepted that according to the ECZ timetable he was supposed to be campaigning in Lwitikila Ward that day and that 12th June 2026 allocated to another candidate. **RW1** also explained how he held at Kapoko, Kasheshe and Changalilo Primary School. He also stated that he held more development meetings at Greenhouse in Mateshi, Lwitikila Ward, and at Kanyelele but could not recall the exact dates when these were held.

5.3.4 **RW1** testified that at a rally in Kapamba Ward, held on a date he could not recall but at about 15:00 hours, Bashi Bwalya asked about where he resided. He stated that in his response he distinguished leadership from wealth. He stated

that he then asked whether gold junkies, a farmer, a witch, a human heart remover and a thief could build. The audience answered in the affirmative each time. He said that he used similar examples on Yusifu Catholic Radio Station in June 2026 and explained the distinction when questioned by Chibesa from TAZARA.

5.3.5 In cross-examination, **RW1** stated that the recording in exhibit MS2 was taken at Kaluba. He stated that he did not know whether the Petitioner owned buildings in Mpika. He conceded that when he was campaigning he was seeking votes and had chosen his words carefully. With reference to exhibit *MS3,* **RW1** accepted that the remarks referred to actual candidates in the 2026 elections, including persons other than his opponents. He also conceded that his remarks referring to campaigners and heart removal in both recordings were deliberate. He denied that the remarks would naturally be associated with a particular candidate. He also denied that he knew of any candidate who removed hearts or practised satanism.

5.3.6 **RW1** testified that the campaigns were largely peaceful. He stated that in July 2026, Mr Chishingwa told him of a video in which Mr Mutale Simaye, a UPND coordinator,

reportedly urged support for the Petitioner, threatened to steal the election if forced to do so and accused **RW1** of witchcraft. RW1 referred to his exhibited complaint to the Conflict Management Committee, which resolved the matter to his satisfaction. He said that the 2nd Respondent had explained the grievance procedures at a pre-nomination stakeholders' meeting.

5.3.7 **RW1** said that he voted at Chitulika Primary School at about 10:00 hours on 13th August 2026. He stated that when he had gone to vote two journalists had followed him into the polling station but they were escorted out by ECZ officials. **RW1** stated that after he voted he went home. He stated that at about 11:00 hours, Mr Emos Chiluba Chanda informed him that the councillor for Nachifuku Ward had collapsed. He testified that at about noon, he went to Chilonga Mission Hospital, where he learnt of the councillor's death. **RW1** stated that he remained at the funeral house until about 14:00 hours.

5.3.8 **RW1** further testified that he was informed by Likenzo Kungombe that there was a vehicle at Mpika Boys which was suspected to be carrying ballot papers and that people

intended to gather there. **RW1** said that he called Mr Samuel Nsenga, whom he directed to see Mr Singa. **RW1** further stated that a dispatch document was shown to him indicating that the vehicle was carrying ECZ equipment for transmitting results to the national totalling centre. **RW1** stated that he after the meeting with Mr Singa he went home. **RW1** stated that he had relied on his agents to monitor what was happening at the Polling stations. He denied displaying a political symbol at any polling station, deploying agents to distribute campaign materials to induce voters, encouraging violence or buying votes.

5.3.9 **RW1** said that his agents were all accredited at polling stations and that their accreditation letters and signed GEN20 forms were exhibited to his Affidavit. He confirmed that the agents witnessed the count and were instructed to send the figures to their candidates or parties. He stated that at the stakeholders' meeting, it was explained that the results remained valid if the presiding officer signed the form and that copies were to be requested from the Returning Officer. **RW1** said that his agents signed and collected forms and that he received no adverse report about their issuance. **RW1**

stated that he could not say how many forms he had received and had not sought to collect them all.

5.3.10 **Benson Mfula,** the NRPUP councillor for Lubambala Ward, was the second witness for the 1st Respondent **(RW2).** He testified that he had campaigned exclusively with and for the 1st Respondent. He further testified that on 4th July 2026, they visited Makumbi, Chipita, Sekela, Chinese Compound and Kapiri Compound. He stated that the campaign addressed water and electricity, including water challenges at Chisekela. **RW2** further stated that the 1st Respondent spoke at Makumbi for about one hour after introducing the candidates. He said that he had no evidence of what was said at the 4th July meeting.

5.3.11 **RW2** testified that the rally at Kabale took place at about 15:00 hours on 25th July 2026 and it lasted about one and a half hours. He said that the speakers discussed TAZARA workers' terms and conditions and the need for a main hospital. He denied that anyone was described as a heart remover. He denied that rallies were held in Lubambala Ward in August 2026 or between May and June 2026, as at time the campaigning was done door to door. In cross

examination **RW2** stated that he had lived in Mpika for about 22 years but had never visited either Mordi's Complex or East-End Complex. **RW2** also stated that the 2nd Respondent instructed candidates not to give voters pens, sneakers or money.

5.3.12 **Mukuka Joakim,** headman of Kuku Village, Mpika, was the 1st Respondent's third witness **(RW3).** He stated that the rally at Kabale Primary School took place at about 16:00 hours on 25th July 2026. He said that the councillors spoke first and then the 1st Respondent spoke last. He stated that the address concerned development, the TAZARA road, payment of retirees and arrangements for workers to receive salaries. He denied that any derogatory remarks were made. In cross examination he said that he attended only meetings to which he was invited as headman and had attended none of the Petitioner's rallies. He accepted that he had given no evidence that he was invited to the 1st Respondent's rally.

5.3.13 **Richard Kaluba,** headman of Chipita Village, Mpika, was the 1st Respondent's fourth witness **(RW4).** He stated that those that sought to hold meetings in his village had to get permission to do so. He confirmed that there was a meeting

held on 4th July 2026 between 14:00 and 15:00 hours. He clarified that he had not checked the time but estimated that the 1st Respondent began speaking between 15:00 and 16:00 hours, after a prayer and an announcement that time was limited. He said that the address concerned water and the need for a hospital and denied that derogatory remarks were made about the Petitioner.

5.3.14 In cross examination **RW4** stated that he was born and raised in Mpika. He denied beinf a member of the NRPUP. He confirmed that he had visited Zambeef and East Gate but did not know Mordi's Complex nor did he know whether the Petitioner owned East Gate or the building occupied by Zambeef.

5.3.15 **Martin Nkumbula,** the deputy headman of Yowani Village in Lubambala Ward, Mpika, was the 1st Respondent's fifth witness **(RW5).** He denied that the 1st Respondent had ever visited Yowani Village. He confirmed having attended a rally of each candidate at the Market but did not know their campaign messages. He stated that he had came to Mpika in 1986 but had never visited Zambeef, Pep or East Gate and did not know the buildings.

5.3.16 **Bornface Mwila** a Musakanya Ward councillor, was the 1st Respondent's sixth witness **(RW6).** He stated that he had participated in about ten campaign meetings, including at Chiponya, Kambe, Mbola, Chitulika, Kamwanya, Musakanya Market, Mutengo and Casanova in his capacity as a council candidate. He stated that he had not heard any derogatory remarks by the 1st Respondent and that the address at RDC Market in Kamwanya on 11th August 2026 concerned development. He further stated that he had not received any report of an assault at Chitulika. He further confirmed that he had not given any evidence about the rally of 9th July 2026.

5.3.17 **Hellen Katiba,** a Community Crime Prevention Unit officer of Kamwanya, RDC Market, Musakanya Ward, Mpika, was the seventh witness for the 1st Respondent **(RW7).** She testified that said that she received the 1st Respondent's group at RDC Market at about 16:00 hours and heard him speak about development and fertilizer for farmers. She stated that she was not a member of NRPUP. She further stated that in her capacity as CCPU officer she received all candidates, including the Petitioner, whose message she understood to

concern development. She accepted that the Petitioner owned buildings in Mpika and that the buildings were known. She stated that she attended about six campaign meetings between May and August 2026.

5.3.18 This concluded the 1st Respondent's case.

5.4 2ND RESPONDENT'S CASE

5.4.1 The 2nd Respondent relied on the Answer and Affidavit in Support of the Answer and called no witnesses.

6. FINAL WRITTEN SUBMISSIONS

6.1 THE PETITIONER'S SUBMISSIONS

6.1.1 The Petitioner submitted that *Section 97(2) of the Electoral Process Act* sets out the grounds upon which the election of a Member of Parliament may be declared void. It was contended that during the official campaign period and on polling day, 13th August 2026, the 1st Respondent, by himself and through his agents acting with his consent, engaged in conduct amounting to illegal practices or other misconduct within the meaning of *Section 97(2)(a) of the Electoral Process Act*.

6.1.2 Reliance was placed on the case of **Michael Mabenga v Sikota Wina and Others**[1], where the Supreme Court held that:

"Satisfactory proof of any one corrupt or illegal practice or misconduct in an election petition is sufficient to nullify an election."

6.1.3 It was further submitted that the Court may act on the credible and consistent oral testimony of a single witness where the law does not require corroboration. It was argued, that the Court may rely on the consistent oral evidence of several witnesses and that the absence of documentary evidence did not preclude a finding in the Petitioner's favour, the evidence on record being consistent and mutually corroborative.

6.2 **NON-COMPLIANCE WITH THE ACT IN THE CONDUCT OF THE ELECTIONS**

6.2.1 Further in relation to *Section 97(2)(b) of the Electoral Process Act*, reliance was placed on **Giles Chomba Yamba Yamba v Kapembwa Simbao and Others**[2], where the Constitutional Court stated that:

"Section 97(2)(b) relates to non-compliance with the law in the 'conduct of elections'. It calls for annulment of elections in the event that there has been non-compliance with the principles laid down in the Electoral Process Act in as far as the conduct of elections is concerned."

6.2.2 It was submitted that the 2nd Respondent and its officers failed to comply with the statutory requirements on the issuance and signing of GEN 20 Forms. It was argued that the evidence of the Petitioner and of **Gertrude Muke (PW11)** showed that of the 72 polling stations in Mpika North Constituency, the Petitioner's agents were permitted to sign and collect only about 20 GEN 20 Forms, some of which were not signed by any stakeholder.

6.2.3 Further reliance was placed on the evidence of **Gideon Bwalya (PW12)**, who testified that he was refused the opportunity to sign the form and did not witness it being filled in or signed. It was argued that this conduct prevented stakeholders from confirming the integrity of the count, was inconsistent with a free and fair election and warranted nullification under *Section 97(2)(b) of the Electoral Process Act*.

6.2.4 It was submitted that *section 97(4) of the Electoral Process Act* shielded an election from nullification on account of an election officer's act or omission where the election was conducted substantially in accordance with the Act and the act or omission did not affect the result. It was, however, contended that the conduct of the 2nd Respondent's officers

and of the 1st Respondent constituted serious and grievous malpractices that fell short of substantial compliance.

6.3 **THREATS OF AND ACTUAL VIOLENCE AND INTIMIDATION**

6.3.1 Regarding violence and intimidation it was submitted that the Petitioner's observers were subjected to threats and acts of violence at various polling stations, one of them in full view of the 1st Respondent and the 2nd Respondent's officers. Reliance was placed on the report of assault by Mr Mathews Mwamba, a UPND chairman, against one Diamond Chola Kabanda, said to be a member of the 1st Respondent's campaign team, and the medical report Exhibit "**MS4**", which **PW18** confirmed and in which the victim identified "Kabanda" as the assailant. It was stated that these acts occurred at Chitulika Polling Station during voting and at Lushinga Polling Station during tabulation.

6.3.2 It was stated that **Matani Sichalwe (PW15)**, testified that he was threatened with violence by NRPUP cadres at Lushinga and forced to flee. It was submitted that this conduct amounted to an illegal practice under the *Electoral Process Act* and the *Electoral Code of Conduct* and was sufficient to annul the election.

6.4 **BRIBERY ON ELECTION DAY**

6.4.1 On bribery, *Section 81(1) of the Electoral Process Act No. 35 of 2016* was cited, which, in so far as material, provides:

> ***"81. (1) A person shall not, either directly or indirectly, by oneself or with any other person corruptly—***
>
> ***(a) give, lend, procure, offer, promise or agree to give, lend, procure or offer, any money to a voter or to any other person on behalf of a voter or for the benefit of a voter in order to induce that voter to vote or refrain from voting or corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election; ...***
>
> ***(d) upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procure or engage, promise or endeavour to procure, the return of any candidate at any election or the vote of any voter at any election;"***

6.4.2 It was submitted that agents of the 1st Respondent, including Mr Benson Mfula, the NRPUP councillor for Lubambala Ward, openly offered voters money and sneakers on polling day. By way of persuasion the Court's attention was drawn to

the decision of the Constitutional Court of South Africa in **August and another v Electoral Commission and Others**[13] for the proposition that elections must be conducted in a manner that permits the will of the electorate to be freely expressed and properly ascertained.

6.4.3 Reference was made to *section 89(1)(e) and (f) of the Electoral Process Act* which provide that a person shall not:

"(e) on any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred metres from the entrance to such polling station—

(i) canvass for votes;

(ii) solicit the vote of any person;

(iii) induce any person not to vote; or

(iv) induce any person not to vote for a particular candidate;

(f) on any polling day loiter in any public place within four hundred metres from the entrance to any polling station;"

6.4.4 It was stated that **Geshom Lyempe (PW2)**, testified that a white car was parked within the 400 metre perimeter with numerous pairs of sneakers in its boot, and a Mr Mfula

promised him a pair if he voted for the "pe lampi" candidates, and he placed K30 in his pocket with instructions to vote for the "Lamp" candidates. It was argued that Mr Mfula's presence at the polling station breached the *Electoral Code of Conduct*.

6.4.5 Further reliance was placed on the evidence of **PW3, PW4, PW10** and **PW17,** who testified that green and white pens were distributed to voters in queues at different polling stations, with supporters of the 1st Respondent claiming that the pens provided by the Electoral Commission would cause a vote to be "moved" to the incumbent President while the distributed pens would secure a vote for the 1st Respondent and his presidential candidate.

6.4.6 It was submitted that this was vote buying and an unfair inducement, committed within the 400 metre boundary in breach of *Section 89 of the Electoral Process Act*. The Court was invited to take judicial notice of **Fridah Katongo v Mfula Benson and Electoral Commission of Zambia**[14], in which the pens were produced in evidence. It was submitted that in **Shamwana v The People**[15] and **U-Rest Foams Limited v Puma Botswana (Pty) Ltd and Another**[16] the proposition

that a court may take judicial notice of the proceedings and record of another court, though not of its conclusions, should be applied in this case.

6.5 **CAMPAIGNING ON POLLING DAY**

6.5.1 It was submitted that the campaign period closed at 18:00 hours on 12th August 2026 and that the distribution of pens on 13th August 2026, as per testimonies of **PW2, PW3, PW4, PW10** and **PW17**, was unlawful campaigning after the close of campaigns. It was further submitted that **Darlington Mulenga (PW14)**, testified that Mr Ernest Kankomba, the 1st Respondent's campaign manager, used placards bearing the faces of parliamentary candidates to show voters the 1st Respondent's face and urged them to vote for him. It was argued that the 1st Respondent's agents remained at polling stations distributing pens, money and sneakers and making the "lamp" gesture, in breach of *Paragraph 4(2)(e) of the Electoral Code of Conduct*.

6.6 **DEFAMATORY AND INFLAMMATORY STATEMENTS**

6.6.1 It was submitted that in a Facebook live broadcast and a radio interview, both on record, the 1st Respondent stated that the Petitioner harvested human hearts in order to acquire

wealth and that he was unlike other candidates who campaigned on knowing how to construct buildings and attributed such candidates to serial killers and satanists. It was argued that the Petitioner's campaign centred on construction and the completion of unfinished projects; that he was a contractor widely known to own many buildings in Mpika, a fact admitted by the 1st Respondent's own witness; and that the 1st Respondent testified that he was conversant with the campaign messages of all his opponents.

6.6.2 It was submitted that the message could be characterised as hate speech, spiritual manipulation and extremely defamatory. Reliance was placed on *Paragraph 4(2)(a) of the Electoral Code of Conduct*, which provides that a member or supporter of a political party or a candidate shall not "use language which incites hatred or violence in any form against any person".

6.6.3 The Court's attention was drawn to the evidence of **PW1** and **Lubasi Namakando (PW9)**, as corroborated by **PW3, PW5, PW14** and **PW16.** It was submitted that the statements were broadcast widely across the constituency. It was argued that a person need not be named in order to be defamed, the test being whether the words would reasonably be understood by

those who heard them as referring to him. Reference was made to the evidence of **Hellen Katiba (RW7)** that the Petitioner was well known to own numerous buildings in Mpika. Further reliance was placed on **Mutemba v Zambia Newspapers Limited and Another**[17], where it was stated that:

> ***"Where in their natural and ordinary meaning the words are not defamatory the plaintiff has the burden of showing that there were extrinsic facts, known to a person to whom the words were published, which would cause the words to convey the defamatory imputation on which he relies to a reasonable person with that knowledge. It is for the judge in the first place to determine upon the evidence adduced whether the words are reasonably capable of being understood in the meaning ascribed to them in the innuendo, taking into account the manner and the occasion of the publication and all other facts properly in evidence."***

6.6.4 It was submitted that the evidence was uncontested that, of the three candidates, only the Petitioner was known to own multiple buildings in Mpika, the other two not being resident there, so that the absence of his name was immaterial.

Reliance was placed on **Leonard Banda v Dora Siliya**[18], for the proposition that statements need not be directed at a candidate personally to affect him electorally.

6.6.5 Further reliance was placed on the case of **Margaret Mwanakatwe v Charlotte Scott and Attorney General**[11], where the Constitutional Court stated:

> ***"As was held in Austin Liato v Sitwala Sitwala and in Chrispin Siingwa v Stanley Kakubo, it is not sufficient for a petitioner to prove only that a candidate committed an electoral offence in relation to the election without further proving that the electoral offence was widespread and prevented or may have prevented the majority of the voters from electing a candidate of their choice. We reiterate that as in all other civil cases, the petitioner bears the burden of proof in an election petition but the standard to which the electoral offence complained of must be proved is higher than proof on a balance of probabilities which is required in an ordinary civil action. The evidence adduced in support of allegations in an election petition must establish the issues raised to a fairly high degree of convincing clarity."***

6.6.6 It was argued that the radio recording, the video recording and the oral testimony all carried the same sentiments, which showed that this was the 1st Respondent's campaign message against the Petitioner and that the medium ensured it was accessible throughout the constituency. Reliance was placed on Article 54 of the Constitution of Zambia, which provides that:

> *"A candidate and a political party shall comply with a prescribed electoral code of conduct."*

6.6.7 It was submitted that the 1st Respondent's language violated *Article 54 of the Constitution of Zambia* and that conduct contrary to the Constitution was liable to be declared null and void.

6.7 **EFFECT ON THE MAJORITY OF VOTERS**

6.7.1 It was submitted that the violence, intimidation and rhetoric prevented the majority of voters in the affected areas from electing their preferred candidate, and relied on **Mubika Mubika v Poniso Njeulu**[3], where the Supreme Court held that:

> ***"The provision for declaring an election of a Member of Parliament void is only where, whatever activity is***

complained of, it is proved satisfactorily that as a result of the wrongful conduct, the majority of voters in a constituency were or might have been prevented from electing a candidate of their choice. It is clear that when facts alleging misconduct are proved and fall in the prohibited category of conduct, it must be shown that the prohibited conduct was widespread in the constituency to the level where registered voters in greater numbers were influenced so as to change their selection of a candidate for that particular election in that constituency, only then can it be said that a greater number of registered voters were prevented or might have been prevented from electing their preferred candidate."

6.7.2 It was submittedalso relied on **Saul Zulu v Victoria Kalima**[4], where the Supreme Court, drawing on **Attorney General and Others v Kabourou**[5] and on its earlier decision in **Leonard Banda v Dora Siliya**[18] held that it was inconceivable to detach a parliamentary candidate from false, defamatory or inflammatory statements made against that candidate's presidential candidate and political party, and nullified the election in Kasenengwa Constituency.

6.7.3 Applying those authorities, it was submitted that at a rally in July, as **PW2** testified, the 1st Respondent labelled the Petitioner an organ harvester who derived his wealth from witchcraft; that the Petitioner could not correct that impression; and that attendance at his rallies fell, as the result of the election showed. In addition, reliance was placed on the evidence of **Theresa Namfukwe (PW3)**, who testified that at a rally at Kabale Primary School attended by 300 to 400 people, the 1st Respondent urged the crowd not to vote for the incumbent President or the UPND because the party harboured satanists and the President was himself a satanist.

6.7.4 It was argued that the 1st Respondent's denial was unsupported by any evidence, and that, following **Leonard Banda v Dora Siliya**[18], the statements against President Hichilema affected the Petitioner's campaign and the outcome.

6.7.5 On the interplay between *Section 97(2)(a) and (b) of the Electoral Process Act*, the case of **Giles Chomba Yamba Yamba v Kapembwa Simbao and Others**[2], was cited where the Constitutional Court stated:

"We have already stated above that an election can be annulled on the strength of one incident of corrupt or illegal practice or misconduct provided that, under Section 97(2)(a), such is attributable to the candidate or his duly appointed agent with their knowledge and consent or approval and the majority of the electorates were or may have been prevented from electing a candidate they preferred; or if it is an allegation pursuant to Section 97(2)(b) on non-compliance, cogent evidence must be proffered to show that the results were affected."

6.7.6 It was submitted that the rallies at which the impugned statements were made were attended by many people, some by 300 to 400, so that the conduct must, or may, have affected the outcome.

6.8 **THE RESPONDENTS' FAILURE TO REBUT**

6.8.1 Finally, It was submitted that neither Respondent adduced evidence to corroborate their denials; that the 1st Respondent's evidence and that of his witnesses comprised bare denials; that the 1st Respondent did not deny being the person in both recordings; and that the 2nd Respondent called no witness to support its Answer and Affidavit in Opposition.

While acknowledging that **Margaret Mwanakatwe v Charlotte Scott and Attorney General**[11] placed the burden of proof on the petitioner, it was urged that the Court give no evidentiary weight to the 2nd Respondent's Answer and Affidavit.

6.8.2 In conclusion, it was submitted that the Petitioner had established a pattern of bribery, voter inducement, intimidation, violence, unlawful polling day campaigning and the dissemination of false, defamatory and inflammatory statements attributable to the 1st Respondent personally or through his agents, coupled with substantial non-compliance in the handling, verification and signing of GEN 20 Forms, in addition to breaches of *Article 54 of the Constitution of Zambia* and *Paragraph 4(2)(a) of the Electoral Code of Conduct*. It was submitted that the majority of voters were or may have been prevented from electing their preferred candidate and that the election of the 1st Respondent ought to be nullified.

6.9 THE 1ST RESPONDENT'S SUBMISSIONS

6.9.1 On behalf of the 1st Respondent it was submitted that the 1st Respondent's case was anchored in seven propositions said to be established by the Petitioner's own evidence and concessions.

6.9.2 These were as follows:

1) *The radio and video recordings did not mention the Petitioner and the words were a general illustration that leadership was not about money, which the Petitioner himself treated as mere politicking;*
2) *That no act of violence, bribery or polling-day misconduct was shown to have been committed by the 1st Respondent or by his election or polling agents with his knowledge and consent or approval;*
3) *That the evidence of the single assault at Chitulika was hearsay, the victim not having testified;*
4) *That no voter testified to having been prevented from voting for the candidate of his or her choice;*
5) *That no evidence was led of the results, the margin, or the effect of any misconduct in any of the 72 polling stations;*
6) *That the GEN 20 complaint was unparticularised and undocumented;*
7) *That the Petitioner's case rested on uncorroborated, hearsay, evidence of UPND officials and supporters.*

6.9.3 It was stated that the Petitioner called 18 witnesses, who were mainly officials, candidates, agents, monitors or declared supporters of the UPND, except **PW18** who was a police

officer. Furthermore, that the 1st Respondent, called six other witnesses, where **RW4** and **RW7,** were not members of his party. It was submitted that the framed issues as whether misconduct was committed and, if so, whether it was attributable to the 1st Respondent or his agents; whether the majority of voters were or may have been prevented from electing their preferred candidate; and whether there was non-compliance with the Act affecting the result, regard being had to *Section 97(4) of the Electoral Process Act.*

6.10 **THE GOVERNING LAW**

6.10.1 On the burden and standard of proof, reliance was placed on **Akashambatwa Mbikusita Lewanika and Others v Frederick Jacob Titus Chiluba**[9], followed in **Michael Mabenga v Sikota Wina and Others**[1] and **Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Others**[19], and affirmed in **Margaret Mwanakatwe v Charlotte Scott and Attorney General**[11] and **Austin Liato v Sitwala Sitwala**[20] for the proposition that a petitioner must prove his allegations to a fairly high degree of convincing clarity.

6.10.2 It was added, citing **Khalid Mohamed v The Attorney General**[21] and **Wilson Masauso Zulu v Avondale Housing Project Limited**[22], that a petitioner did not succeed merely because the respondent's case was weak or because a respondent called no evidence. It was also submitted that in following the decision in **Mazoka**[19], that a petitioner was bound by his pleadings.

6.10.3 It was submitted that the requirements of *Section 97(2)(a) of the Electoral Process Act* were cumulative and conjunctive, in that the petitioner had to prove the misconduct, its attribution to the candidate or his agents and its effect on the majority of voters. Reliance was placed on **Nkandu Luo and Electoral Commission of Zambia v Doreen Sefuke Mwamba and Attorney General**[7], where attribution based on mere party membership was rejected, and on **Lewanika v Chiluba**[9], where the Supreme Court said:

> ***"A candidate is only answerable for those things which he has done or which are done by his election agent or with his consent. In this regard, we note that not everyone in one's political party is one's election agent... An election agent has to be specifically so appointed."***

6.10.4 Reference was made to *Section 2 of the Electoral Process Act*, which defines an "election agent" as "a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate's nomination paper" and a "polling agent" as "an agent appointed by a candidate in respect of a polling station". Reference was made to the case of **Lusambo v Kanengo and Another**[23], where the Constitutional Court held that a candidate is only answerable for acts done by himself or herself or by someone else with the candidate's consent or by his duly appointed election or polling agent; and **Siamunene v Sialubalo**[24], as quoted therein, to the effect that proof of a candidate's supporters were involved could not warrant an inference that the candidate incited them, as that would amount to speculation.

6.10.5 On the effect on the majority, it was submitted that the passages in **Mubika Mubika v Poniso Njeulu**[3] and **Margaret Mwanakatwe v Charlotte Scott**[11] were relied on by the Petitioner. It was argued that in **Herbert Shabula v Greyford Monde**[25], the Constitutional Court reversed a nullification founded on defamatory campaign statements because there was no proof that they affected the majority. In

Austin C. Milambo v Machila Jamba[26], the Court held that it would be unsafe to assume that because a statement was made at two meetings the majority of the electorate were exposed to it.

6.10.6 It was argued that **Michael Mabenga v Sikota Wina**[1] was decided under the repealed *Electoral Act, Cap 13*, which did not include the requirement now found in *Section 97(2)(a) of the Electoral Process Act* that the majority of voters were or may have been prevented from electing their preferred candidate and that **Giles Chomba Yamba Yamba**[2] confirmed that a single incident sufficed only where both attribution and the majority requirement were satisfied.

6.10.7 On partisan and hearsay evidence, reliance was placed on **Steven Masumba v Elliot Kamondo**[6], as restated in **Mbololwa Subulwa v Kaliye Mandandi**[27], where the Constitutional Court held:

> ***"... witnesses who belong to a candidate's own political party or who are members of the candidate's campaign team must be treated with caution and require corroboration in order to eliminate the danger of exaggeration and falsehood by such***

witnesses in an effort to tilt the balance of proof in favour of the candidate that they support."

6.10.8 It was added that in **Bowman Chilosha Lusambo v Bernard Kanengo and Others**[28], the Court held that partisan evidence required independent corroboration unless the Court was fully satisfied that it was so credible, cogent and consistent that no corroboration was necessary. Citing **Subramaniam v Public Prosecutor**[29], as applied in **Robert Chiseke Taundi v Mwene Naluwa**[30], it was argued that statements repeated by persons not called were inadmissible hearsay as to the truth of their contents.

6.11 **THE ALLEGED DEFAMATORY AND INFLAMMATORY STATEMENTS**

6.11.1 The Court was urged to decide on what was actually said in the recordings rather than on what partisan witnesses said they heard. It was pointed out that in the Petitioner's own radio recording, the 1st Respondent spoke of his humble beginnings selling boiled eggs and then posed rhetorically whether buildings were leadership, observing that one with money from removing hearts or from satanists could also build buildings.

6.11.2 It was submitted that the unrebutted context was that at the Kaluba meeting an audience member, Bashi Bwalya, challenged the 1st Respondent for renting and owning no house in Mpika, to which he responded that leadership was not about money but about the good heart of a person. It was argued that it was in this context that the 1st Respondent posed a series of rhetorical questions whether a junkie, a farmer, a witch, a heart remover or a thief could build houses. On the radio, when a caller asked whom he meant, he clarified that leadership was not about money, the presenter having warned callers not to name anyone.

6.11.3 It was submitted that the Petitioner, **PW9** and **PW3** conceded that the Petitioner's name was never mentioned and that the 1st Respondent denied having any candidate in mind. The two answers in cross-examination relied on by the Petitioner, namely that he expected his audience to understand him and that it was not a coincidence that both illustrations referred to a heart remover, were said to show consistency of message rather than a hidden accusation.

6.11.4 On the case of **Mutemba v Zambia Newspapers Limited and Another**[17], it was submitted on four points that: the case was a defamation action and a finding of innuendo did not

satisfy *Section 97(2)(a) of the Electoral Process Act*. That even in defamation the burden lay on the claimant to prove the extrinsic facts and that the claim in **Mutemba**[17] in fact failed as being too vague to point at any particular person.

6.11.5 It was stated that the extrinsic fact relied on, the Petitioner's ownership of buildings, was established mainly through **RW7,** who did not say anyone understood the words to refer to him and heard only development messages. That only witnesses who claimed the words referred to the Petitioner, were UPND party members whose evidence was opinion, in part hearsay and embellished, **PW3** and **PW14** having inserted the Petitioner's name into words that the recordings and the Petitioner himself confirm did not contain it.

6.11.6 It was submitted that the Petitioner's contemporaneous conduct showed how the words were understood: on receiving the clip he dismissed the remarks as politics and he never complained to the Electoral Commission despite the existence of a conflict management committee, whereas the 1st Respondent reported to that committee a video in which the UPND coordinator, Mr Mutale Simaye, called him a witch.

6.11.7 On *Paragraph 4(2)(a) of the Electoral Code of Conduct and Article 54 of the Constitution of Zambia,* it was submitted that a general statement that wealth did not make a leader incited neither hatred nor violence and that no witness testified to having been so moved. That *Paragraph 15(1)(c) of the Electoral Code of Conduct,* which provides that a person shall not "make false, defamatory or inflammatory allegations concerning any person or political party in connection with an election", required an allegation concerning an identifiable person.

6.11.8 It was argued further that *Article 54 of the Constitution of Zambia* and the *Electoral Code of Conduct* did not provide a free-standing ground for nullification. According to the 1st Respondent's it was submitted that a breach of the Code was an offence enforced by the Commission under *Paragraphs 4(3), 11 and 15(2) of the Electoral Code of Conduct* and *Section 110 of the Electoral Process Act,* whereas an election could be questioned only by petition under Part IX and nullified only on the grounds in *Section 97(2) of the Electoral Process Act.*

6.11.9 In the alternative, it was submitted that even if the words referred to the Petitioner, the Constitutional Court in **Mbololwa Subulwa v Kaliye Mandandi**[27] and **Muhali**

George Imbuwa v Enock Kaywala Mundia, Selected Judgment No. 12 of 2018[31], reversed nullifications founded on allegations of satanism and heart removal because widespread effect on the majority was not proved. It was pointed out that no voter testified to withholding a vote from the Petitioner on account of the words.

6.11.10 It was argued that the claim of diminishing rally attendance was hearsay from the Petitioner's campaign manager, Mr Lafest Chipalo, who was not called as a witness. It was pointed out that there was no evidence of the radio programme's audience, date or Facebook streaming and that no evidence was led of results or margins. It was noted that the Petitioner conceded he never alleged he had won and that he stood as an independent in 2011 and lost.

6.11.11 As to **Leonard Banda v Dora Siliya and Saul Zulu v Victoria Kalima**[18], it was submitted that both were decided under *Section 93(2) of the repealed Electoral Act No. 12 of 2006*, and that in **Zulu v Kalima**[4] the statements were found as a fact to have been made by the respondent herself. Here, the allegation that the 1st Respondent called President Hichilema a satanist and a Tonga rested on the uncorroborated word of

PW3, whose account was dated July 2026 in evidence but June 2026 in the Petitioner's submissions, and was denied by the 1st Respondent and by **RW2,** who attended the Kabale rally on 25th July 2026 and said only developmental issues were discussed. The Petitioner, it was noted, could not name a single rally at which tribal remarks were made.

6.12 **ALLEGED VIOLENCE AND INTIMIDATION**

6.12.1 It was submitted that the evidence disclosed a single incident and that the Petitioner confirmed only one matter was reported to the police. **PW18** testified that Mr Mathews Mwamba reported at 11:20 hours on polling day that he had been "beaten and assaulted by male Kabanda and other unknown persons" at Chitulika Secondary School, and the docket was referred to the CID. The Petitioner conceded that Exhibit *"MS4"* does not state that the assailant was the 1st Respondent's agent. It was argued that the description of the assailant as a member of the 1st Respondent's campaign team had no evidential foundation.

6.12.2 The Court was urged to place no weight on **PW10,** the only witness who placed the 1st Respondent at the scene because he conceded that he was not present when the assault

occurred. In addition it was submitted that **PW15's** encounters were with unnamed persons, and Bushinga station was the only poll station at which he found any "noise". It was submitted that one alleged assault by an unconnected individual and one uncorroborated altercation, in a constituency of 72 polling stations at which UPND agents were present throughout, could not amount to widespread violence.

6.13 **ALLEGED BRIBERY, PENS, SHOES AND POLLING-DAY CONDUCT**

6.13.1 It was submitted that in cross-examination the Petitioner conceded that he named no person who bribed and no place where the bribery pleaded in paragraph 11 of his Affidavit Verifying Facts occurred. It was argued that *Section 81 of the Electoral Process Act* requires proof that a person "corruptly" gave money "in order to induce" a voter, a serious criminal allegation requiring cogent proof.

6.13.2 As to **PW2's** evidence, it was submitted that **Benson Mfula (RW2)** was himself the NRPUP candidate for Lubambala Ward and was not shown to be the 1st Respondent's election or polling agent. **PW2** found K30 only after he had voted and said it did not influence his vote. **PW2** gave no vehicle

registration, took the money to a UPND councillor rather than the police and although he was claiming to be non-partisan it was confirmed by **PW4** that he was in fact a member of UPND and that Mr Mfula, testifying as **RW2**, said the meetings he attended with the 1st Respondent concerned development only.

6.13.3 In relation to the pens, it was submitted that a pen was not a bribe as it came with a superstitious message rather than as a reward for voting. **PW3** identified the distributors only as supporters named Clement, Kelvin and Gift and put the pens in her bag before voting. It was submitted that **PW10** conceded he had no evidence that "Mwengele" was the 1st Respondent's agent and was not influenced. That **PW17** brushed the pens off and that **PW4's** evidence was hearsay. **PW6** received nothing from unknown persons in an unidentified vehicle, while **RW5**, testified that the 1st Respondent never held a rally at Yowani.

6.13.4 On *Section 89(1)(e) and (f) of the Electoral Process Act* and *Paragraph 4(2)(e) of the Electoral Code of Conduct*, it was submitted that the Petitioner could not reintroduce the unpleaded polling day campaigning allegation through the

conduct of supporters. It was stated that **PW14** conceded he never saw the 1st Respondent give campaign materials to anyone on 13th August 2026 and did not say where or when he saw Mr Kankomba, who was not shown to be an agent. It was further stated that the "lamp" gestures were attributed to unnamed persons.

6.13.5 It was argued that *Sections 81 and 89 of the Electoral Process Act* created offences that any person may commit, and that proof that an unidentified supporter committed one of them did not, without more, engage *Section 97(2)(a) of the Electoral Process Act*. In support of this reliance was placed on the cases of **Lusambo v Kanengo**(23) and **Mwanakatwe v Scott**(11) in support.

6.14 **GEN 20 FORMS**

6.14.1 On *Section 97(2)(b) of the Electoral Process Act*, it was submitted that three things must be proved being:

1) *Non-compliance with a provision of the Act relating to the conduct of elections;*
2) *That the election was not conducted in accordance with the principles of that provision; and*
3) *That such non-compliance affected the result.*

6.14.2 Reference was made to *Section 97(4) of the Electoral Process Act*, which provides as follows:

> ***"(4) An election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court or a tribunal that the election was so conducted as to be substantially in accordance with the provisions of this Act, and that such act or omission did not affect the result of that election."***

6.14.3 It was submitted that no unsigned GEN 20 form was produced, with **PW11** having said they were "with the lawyer". It was stated that no agent who was refused a form was named and no polling station other than Tazara identified. It was further submitted that, on the Petitioner's own evidence, about 20 forms were signed, and that **PW12,** the only polling agent called, testified that he would have signed because the count and the announced figures were correct, he saw the forms filled in, and conceded that his candidate was losing. It was submitted that UPND had agents at all polling stations who witnessed voting and counting, those being the duties prescribed by *Paragraph 5(1)*

of the Electoral Code of Conduct and that no agent complained to a presiding or returning officer. Furthermore, the Petitioner offered no alternative figures and alleged no alteration of results.

6.14.4 Reference was made to *Paragraph 5(2) of the Electoral Code of Conduct*, which provides that :

> ***"An election or polling agent shall counter sign the election results duly announced or declared by a presiding officer or returning officer, as the case may be, except that failure to countersign the election results by such election agent or polling agent shall not render the results invalid."***

6.14.5 It was submitted that *Paragraph 5(2) Electoral Code of Conduct* and *Section 97(4) of the Electoral Process Act*, were a complete answer, and that the allegation of intimidation of agents had been conceded as unproved.

6.15 **"BARE DENIALS" ARGUMENT AND THE MISSING WITNESSES**

6.15.1 It was submitted that the Petitioner's complaint of "bare denials" inverted the burden of proof, since a respondent cannot be required to prove a negative. It was argued that in any event the 1st Respondent gave a full account of the Kaluba exchange, the radio programme, his movements on

polling day and his report to the Conflict Management Committee, supported by two non-partisan witnesses.

6.15.2 By contrast, the Petitioner failed to call Mr Mathews Mwamba, Mr Lafest Chipalo, Mr Musukwa, who allegedly sent the video or any polling agent allegedly denied a GEN 20 form. It was submitted that the Court ought to draw an adverse inference on the authority of **Wisniewski v Central Manchester Health Authority**[32], per Brooke LJ.

6.15.3 In conclusion, it was submitted that the Petitioner had proved neither misconduct attributable to the 1st Respondent or his agents, nor an effect on the majority of voters nor non-compliance affecting the result. It was submitted that the election substantially complied with the Act.

6.15.4 The 1st Respondent prayed that the Court determine that no ground under *Section 97(2)(a) or (b) of the Electoral Process Act* had been proved, and to dismiss the Petition, thereby declaring him duly elected as Member of Parliament for Mpika North Constituency, with costs.

6.16 **THE 2ND RESPONDENT'S SUBMISSIONS**

6.16.1 The 2nd Respondent submitted that the Electoral Commission of Zambia as established administered the electoral process and that under *Section 4(1) of the Electoral*

Process Act, the Commission administers and enforces the Act and is not subject to the direction or control of any person or authority in the exercise of its functions under the Constitution and the Act.

6.16.2 It was submitted that the Commission conducted the general election in accordance with the law, in a free and fair manner and that the 1st Respondent, having polled 19,925 of the valid votes cast, was declared duly elected.

6.16.3 On the burden and standard of proof, reliance was placed on **Akashambatwa Mbikusita Lewanika and Others v Frederick Jacob Titus Chiluba**[9], in that Parliamentary election petitions are required to be proved to a standard higher than a mere balance of probabilitie therefore issues raised are required to be established to a fairly high degree of convincing clarity.

6.16.4 Reliance was also placed on **Margaret Mwanakatwe v Charlotte Scott and Attorney General**[11] and **Brelsford James Gondwe v Catherine Namugala**[10], where it was stated that:

"The burden of establishing the grounds lies on the person making the allegations, and in an election petition, it is the

Petitioner in keeping with the well settled principle of law in civil matters that he who alleges must prove. The grounds must be established to the required standard in election petitions, namely a fairly high degree of convincing clarity."

6.16.5 It was submitted that only 4 of the Petitioner's 18 witnesses, namely **PW1, PW11, PW12** and **PW15**, testified about GEN 20 Forms, and that none proved the allegation to the requisite standard. It was argued that the Petitioner did not disclose who denied his agents the forms or at which polling stations, in addition he did not produce the 20 forms he said were signed. He also admitted that he never reported the matter to the Commission.

6.16.6 It was argued that, **Gertrude Muke (PW11)**, the Petitioner's field monitor, said she obtained 20 forms from the Council, most unsigned but did not produce them. Further, she gave no reason why the agents did not obtain or sign the forms. It was submitted that she admitted that the Petitioner's agents monitored voting and counting peacefully.

6.16.7 It was submitted that **Gideon Bwalya (PW12)** did not produce any proof, such as the GEN 1 Form oath, that he was an accredited polling agent, exemplified in Exhibit

"**FRK4**". It was submitted that **PW12** admitted that voting and counting went well. Also that he recorded the results independently and noted that the Petitioner was losing at his station. It was stated that **Matani Sichalwe (PW15),** was a council candidate rather than a polling agent and did not establish any entitlement to the form.

6.16.8 On the effect on the majority, reliance was placed on **Jonathan Kapaipi v Newton Samakayi**[12], where the Constitutional Court stated that:

> ***"The provision for declaring an election of a Member of Parliament void is only where, whatever activity is complained of, it is proved satisfactorily that as a result of that wrongful conduct, the majority of voters in a constituency were, or might have been prevented from electing a candidate of their choice, it is clear that when facts alleging misconduct are proved and fall into the prohibited category of conduct, it must be shown that the prohibited conduct was widespread in the constituency to the level where registered voters in greater numbers were influenced so as to change their selection of a candidate for that particular election in that constituency; only then can it be said that a greater***

number of registered voters were prevented or might have been prevented from electing their preferred candidate."

6.16.9 It was submitted that although the Petitioner said he had agents at all 72 polling stations, only one purported polling agent testified and could not speak to stations at which he was not present. It was further submitted that **PW11** mentioned only Kamwanya and Chitulika and did not produce the forms she said she obtained from Musakanya, Chipembele, Mutekwe and Lubambala, among others; and that, by contrast, the 1st Respondent produced 47 GEN 20 Forms, most signed by both the UPND and NRPUP agents, exhibited as "**FRK3 i**" to "**FRK3 xlvii**". It was pointed out that the 1st Respondent polled 19,925 votes against the Petitioner's 3,806, a margin of 16,119 votes, which could not reasonably be attributed to a limited number of allegedly affected voters.

6.16.10 It was submitted in conclusion that the election was free and fair and conducted in compliance with the Constitution and the electoral laws, and urged the Court to dismiss the Petition.

6.17 **PETITIONERS REPLY**

6.17.1 In reply the Petitioner filed a composite reply to the final submissions of both Respondents. In response to the alleged defamatory language it was submitted that the Petitioner had testified that his campaign was built on his being an independent construction contractor who would use that expertise to bring development to Mpika North and that the 1st Respondent had conceded he was familiar with the Petitioner's campaign message. It was argued that this showed that the defamatory and insulting language, said to be corroborated by **PW2, PW3, PW4, PW5, PW7, PW11, PW13, PW14, PW15, PW16** and **PW17**, was directed at the Petitioner in an effort to de-campaign him.

6.17.2 It was contended that it was immaterial that the 1st Respondent did not name the Petitioner in the video and radio recordings. It was argued that what was material was the 1st Respondent's own statement that he expected the crowds at his rallies to understand whom he meant when he said that he was not like the other candidates who would come to campaign after him. That, of the other candidates, the Petitioner alone was resident in Mpika town and campaigned on his construction expertise.

6.17.3 It was submitted that the 1st Respondent's linking of a candidate who campaigned on construction expertise and owned many buildings with a satanist, a serial killer or a remover of hearts was no coincidence but was meant to convey a message about the Petitioner to those attending rallies in Mpika North and to the more than 70,000 listeners of the radio interview. It was argued that this went beyond mere politicking and amounted to misconduct in violation of the *Electoral Process Act*. Relying on **Mutemba v Zambia Newspapers Limited and Another (supra)**[17] and **Leonard Banda v Dora Siliya(supra)**[18], it was argued that the 1st Respondent had admitted that he expected his audience to understand "what he was talking about", so that he intended them to grasp the innuendo. While accepting that those authorities required the statements to be directed at a candidate personally, it was submitted that what was material was the electoral impact of the statements.

6.17.4 It was stated that the 1st Respondent's submissions were misleading that the misconduct had not been shown to be widespread. In that the record showed between 100 and 400 people at each rally, the radio interview was broadcast widely across Mpika and that the video of the 1st Respondent

uttering the words was posted on an online platform. It was submitted that reliance on **Margaret Mwanakatwe v Charlotte Scott and Attorney General (supra)**[11], was well founded, as the Petitioner's evidence, that of his witnesses and the unrebutted evidence of **Hellen Katiba (RW7)** showed that the 1st Respondent's campaign message referred to the Petitioner. All pointing to conduct in violation of the *Electoral Process Act*, the *Electoral Code of Conduct* and the *Constitution*.

6.17.5 In addressing the bribery and polling day conduct in the 1st Respondent's submissions, that giving pens to voters is not of itself an offence, it was stated that **PW3, PW4, PW10** and **PW17** testified that when they were given pens by the 1st Respondent's agents at different polling stations, they were expressly told to use them to vote for the 1st Respondent and the NRPUP candidates. This, it was argued, was solicitation of votes and an attempt to induce the electorate to vote for the 1st Respondent.

6.17.6 It was further submitted that, according to **PW2**, Benson Mfula offered him a pair of sneakers within the 400 metre boundary set by the 2nd Respondent to induce him to vote for

the 1st Respondent, and, after he had voted, asked him whether he had voted as instructed. It was stated that Mr Mfula was an agent of the 1st Respondent and of his party, and that his conduct was expressly prohibited by *Section 89 of the Electoral Process Act* and warranted nullification of the election.

6.17.7 Turning to the requirements of *Section 97(2)(a) of the Electoral Process Act*, it was stated that the section required three things for an election to be nullified, which were that there must be proof that a misconduct, illegal practice or a corrupt practice was committed, secondly it should be the candidate or his agent to commit them and that the court should look at the effect of the majority. On the first issue, it was submitted that the evidence showed misconduct by the 1st Respondent in breach of *Paragraph 4(2)(a) of the Electoral Code of Conduct*. On the second issue, it was argued that the element was satisfied because it was undisputed that the 1st Respondent himself was the person in the video and radio recordings.

6.17.8 On the third issue, reliance was placed on the testimony of **PW9** that Mpika FM Radio and Yusuf Radio programmes were broadcast throughout Mpika, with Mpika FM having about 70,000 followers, and on evidence that an

advertisement for the radio interview was posted in the Mukungule WhatsApp group, which had about 200 members. The Court was asked to take judicial notice that the cyberspace in which the WhatsApp application exists is wide reaching and borderless. It was submitted that the words were therefore widespread, as *Section 97 of the Electoral Process Act* required and from the above all three requirements had been met.

6.17.9 Reliance on **Michael Mabenga v Sikota Wina and Others (supra)**[1] was maintained for the proposition that a single act of misconduct, illegal practice or corrupt practice suffices to nullify an election, and submitted that the 1st Respondent's dissemination of inflammatory and insulting words referring to the Petitioner was sufficient for that purpose.

6.17.10 As to the 1st Respondent's reliance on **Steven Masumba v Elliot Kamondo, (supra) Judgment No. 53 of 2017**[6], it was accepted that the Constitutional Court held that the evidence of witnesses belonging to a candidate's own political party must be corroborated, but argued that the oral evidence of the Petitioner's witnesses was mutually corroborative and therefore met that requirement.

6.17.11 In reply to the 2nd Respondent, it was submitted that the contention that the 2nd Respondent failed to comply with the statutory requirements on the issuance and signing of Forms GEN 20 remained undisputed, and that the Petitioner had discharged the burden and standard of proof on this issue, particularly through the evidence of **PW11** and **PW12**. It was reiterated that **PW12** was outrightly refused the opportunity to sign the forms at Tazara Polling Station and although he saw that the forms had been filled in, he did not witness them being filled in or signed by any agent, therefore could not verify that the figures on them matched the votes tabulated at that station. It was submitted that this conduct of the 2nd Respondent and its agents, as described by **PW11 and PW12,** amounted to non-compliance with the *Electoral Process Act*.

6.17.12 In conclusion, it was submitted, on the strength of the reply and the initial submissions this was a proper case for the Court to exercise its jurisdiction to safeguard the integrity of the electoral process and to nullify the election of the 1st Respondent as Member of Parliament for Mpika North Constituency.

7. LAW

7.1 JURISDICTION AND THE CONSTITUTIONAL TIME LIMIT

7.1.1 The jurisdiction of the High Court to hear and determine an election petition arising from the election of a Parliamentary candidate is conferred by *Article 73 of the Constitution* as amended which provides as follows:

> ***"73. (1) A person may file an election petition with the High Court to challenge the election of a Member of Parliament.***
>
> ***(2) An election petition shall be heard within ninety days of the filing of the petition.***
>
> ***(3) A person may appeal against the decision of the High Court to the Constitutional Court.***
>
> ***(4) A Member of Parliament whose election is petitioned shall hold the seat in the National Assembly pending the determination of the election petition."***

7.1.2 Following the presentation of a Petition the reliefs available are those provided for under *Section 99 of the Electoral Process Act* which states as follows:

> ***"99. Any of the following reliefs may be claimed in an election petition:***
>
> ***(a) a declaration that the election was void; or***

(b) a declaration that any candidate was duly elected."

7.1.3 *Section 108 of the Electoral Process Act* prescribes the determinations open to the Court at the conclusion of the trial as follows:

"108. (1) At the conclusion of the trial of an election petition, the High Court or a tribunal shall determine whether the respondent, or any other, and which, person, was duly elected, or whether the election to which the election petition relates was void [...]

(2) Where the High Court or a tribunal determines that the respondent was duly elected, the election shall be and remain valid.

(3) Where the High Court or a tribunal determines that the respondent was not duly elected but that some other person was duly elected, that other person shall be deemed to have been elected accordingly.

(4) Where the High Court or a tribunal determines that the respondent was not duly elected, and that no other person was duly elected, at the election concerned, the vacancy in the membership of the National Assembly or a Council in

respect of which that election was held shall be deemed to continue until duly filled."

7.1.4 The grounds on which an election shall be void are provided for under *Section 97(2), (3) and (4) of the Electoral Process Act* as follows:

"(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;

(b) subject to the provisions of subsection (4), there has been non-compliance with the provisions of this Act

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

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

(3) Despite the provisions of subsection (2), where, upon the trial of an election petition, the High Court or a tribunal finds that a corrupt practice or illegal practice has been committed by, or with the knowledge and consent or approval of, any agent of the candidate whose election is the subject of such election petition, and the High Court or a tribunal further finds that such candidate has proved that—

(a) a corrupt practice or illegal practice was not committed by the candidate personally or by that candidate's election agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent;

(b) such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and

(c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent; the High Court or a tribunal shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void.

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

7.1.5 The requirements of *section 97(2)(a) of the Electoral Process Act* are cumulative. In **Steven Masumba v Elliot Kamondo**[6], the Constitutional Court stated as follows:

"In this respect, we agree entirely with the submission by Mr. Katolo that in order to meet the thresholds set by Section 97

(2) (a) of the Electoral Process Act for nullification of an election of a member of parliament, a petitioner must prove through evidence at trial, that a corrupt practice, an illegal practice or misconduct was committed by a candidate or that candidate's election agent or with the candidate's knowledge, consent or approval. And that the petitioner must also demonstrate that by reason of the alleged corrupt practice, illegal practice or other misconduct, the majority of the voters in the constituency were or may have been prevented from electing a candidate whom they preferred"

7.1.6 In **Nkandu Luo and the Electoral Commission of Zambia v Doreen Sefuke Mwamba and the Attorney General**[7], the Constitutional Court stated:

"In order for a petitioner to successfully have an election annulled pursuant to section 97(2)(a) there is a threshold to surmount. The first requirement is for the petitioner to prove to the satisfaction of the court, that the person whose election is challenged personally or through his duly appointed election or polling agents, committed a corrupt practice or illegal practice or other misconduct in connection with the election, or that such malpractice was committed with the

knowledge and consent or approval of the candidate or his or her election or polling agent…"

"…in addition to proving the electoral malpractice or misconduct alleged, the petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorate from electing the candidate of their choice."

7.2 **LIABILITY OF A CANDIDATE: ELECTION AGENTS AND POLLING AGENTS**

7.2.1 *Section 2 of the Electoral Process Act* defines the relevant terms as follows:

"corrupt practice" means any conduct which is declared to be a corrupt practice in accordance with section eighty-one;

"election agent" means a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate's nomination paper;

"illegal practice" means an offence which is declared under this Act to be an illegal practice;

"polling agent" means an agent appointed by a candidate in respect of a polling station;"

7.2.2 *Section 35(1) of the Electoral Process Act* permits a candidate to appoint agents as follows:

"35. (1) A candidate may appoint—

(a) two polling agents for each polling station; and

(b) two election agents for each venue where counting of the votes will take place."

7.2.3 *Section 35(3) of the Electoral Process Act* states as follows:

"35.(3) The appointment and revocation of appointment of a person as an election or polling agent shall be effected in the prescribed manner."

7.2.4 In **Chrispin Siingwa v Stanley Kakubo, CCZ Appeal No. 7 of 2017**[33]; the Constitutional Court held that:

"The question, however, was whether the Lundales were election agents of the Respondent within the meaning of regulation 55(1) of the Electoral Process (General) Regulations. Regulation 55(1) reads as follows:

"A candidate shall name an election agent in the nomination paper and, subject to the other provisions of this regulation, the person named shall be the election agent of the candidate for the purpose of that election." Regulation 55(1) is succinct.

An election agent must be specifically named in the candidate's nomination paper."

"We further wish to state that the Electoral Process (General) Regulations, 2016 are promulgated pursuant to the Electoral Process Act. Section 2 defines "election agent" as:

".. .a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate's nomination paper;"

Regulation 55(1) is in line with the definition in section 2 above.

The Appellant suggests that there are "ambiguities and lacunas" requiring our attention to straighten out. We disagree. In that regard, we agree with the Respondent that the Appellant has shown no basis upon which the term election agent requires clarification.

We also agree with Mr. Chungu that not only is it untenable for us to stretch the meaning of agent beyond what the law clearly provides, but for us to do so would also entail ascribing fault to candidates for electoral malpractices committed by persons who are not appointed by the candidate as election agents. The fact that the Legislature was specific

on the definition of election agent was meant, in our considered view, to avoid endless permutations of who an agent is in particular circumstances."

7.2.5 In **Margaret Mwanakatwe v Charlotte Scott and another**(11) it was held as follows:

"Section 2 of the Act defines an election agent as:

"a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate's nomination paper." A candidate is responsible only for illegal or corrupt acts or other misconduct which the candidate commits or which are committed with the candidate's knowledge and consent or approval or that of his election agent. In Lewanika and Others v Chiluba,(14) the Supreme Court observed thus:

"We are mindful of the provisions of the Electoral Act that a candidate is only answerable to those things which he has done or which are done by his election agent or with his consent. In this regard, we note that not everyone in one's political party is one's political agent since under regulation 67, an election agent has to be specifically so appointed." We agree with these observations"

7.2.6 Membership of the candidate's political party, or support for the candidate, does not without more make a person his agent. *Section 35(2) of the Electoral Process Act* states as follows:

> ***"An election or polling agent—***
>
> ***(a) shall be a Zambian citizen or resident permit holder; and***
>
> ***(b) shall not be a candidate in an election."***

7.2.7 In **Bowman Chilosha Lusambo v Bernard Kanengo and the Electoral Commission of Zambia**[23], the Constitutional Court qualified them foregoing position when it was stated as follows:

> ***"We agree that a candidate is only answerable for those acts done by himself or herself or by someone else with the candidate's consent or that of his election or polling agent who are duly appointed. The Supreme Court in the case of Lewanika v Chiluba, put it clearly when it stated that: "A candidate is only answerable for those things which he has done or which are done by his election agent or with his consent. In this regard, we note that not everyone in one's political party is one's election agent...An election agent has to be specifically so appointed."***

This is the correct position of the law and we in fact affirmed this position in the case of Siamunene v Sialubalo1 cited above. In that case, we put it thus: "Mere proof that UPND supporters were indeed involved in the said acts could not warrant an inference that the respondent had directly or indirectly incited the supporters to act as they did. To do so would amount to speculation and it is not the duty of this Court to make assumptions based on nothing more than party membership and candidacy in an election".

7.3 **PROOF OF WIDESPREAD STANDARD**

7.3.1 On what amounts to "widespread", the Constitutional Court in **Mbololwa Subulwa v Kaliye Mandandi**[27] stated:

"we adopted the meaning of the term 'widespread' given by the Supreme Court in the Mazoka v Mwanawasa1 case. Although the latter case involved determination of a presidential election petition , the meaning given in that case adds some clarity. The Supreme Court put it thus:- "Since a presidential election involves all the 150 constituencies; the petitioners must prove electoral malpractices and violations of electoral laws in at least a majority of the constituencies." The Supreme Court echoed the above guidance in Zulu v

Kalima which involved a parliamentary election petition and stated as follows:- "what was of import in the court below is whether the distribution of chitenge materials and bicycles was done on such a large scale that the majority of voters in that Constituency were or may have been prevented from electing a candidate of their choice." In the latter case, the Supreme Court went further and guided that whether or not the majority of voters were or may have been prevented from electing a candidate of their choice is a question of fact that must be determined based on the evidence before the court."

7.3.2 The Constitutional Court has applied that requirement consistently. In **Richwell Siamunene v Gift Sialubalo**[24], misconduct proved in isolated instances, not shown to be widespread, did not warrant a nullification. It was held as follows:

"We have perused the record. We agree with the trial Court. There is evidence of violence but no cogent evidence of its widespread impact. It was incumbent upon the Appellant to prove his case to the required standard by providing cogent evidence not just of the incident of violence but also of its effect or likely effect on the majority. Just because an offence

has been found to be proved against the Respondent whether directly or indirectly does not mean a nullification is warranted because evidence of an offence does not necessarily constitute evidence of a negative and widespread impact. The impact on the electorate must be proved in its own right by the party alleging it to the same standard of a fairly high degree of convincing clarity. In this case the Appellant's own witnesses testified that they voted freely in spite of the violence they witnessed. We cannot fault the trial Court on its findings and see no reason to interfere. Ground one has no merit and it is dismissed."

7.3.3 In **Jonathan Kapaipi v Newton Samakayi**[12], the Court required proof that the misconduct was so widespread that it affected, or may have affected, the outcome. It was among other things as follows:

"Thus, it is not sufficient for a petitioner to only prove that a candidate committed an illegal or corrupt practice or engaged in other misconduct in relation to the election without proof that the illegal or corrupt practice or misconduct was widespread and therefore prevented or may have prevented

the majority of the voters from electing a candidate of their choice."

7.3.4 After the 2021 general elections, the Court distinguished malpractices that sway voters in **John Sampa v Brian Mundubile**[34], holding that an unproven or isolated act of violence during the counting of votes cannot, without clear proof of its effect on voters, nullify an election. It was stated as follows:

"We wish to say right from the outset that the lower court was on firm ground in finding that the incident, was alleged to have occurred after voting had closed and could therefore not have impacted the voters by swaying them from their preferred choice. It was indeed extraneous to the campaign and casting of votes when voters exercise their choice of who to vote for. We say so because of the wording of section 97(2) which distinguishes between malpractices which relate to the swaying of minds of voters in subsection (a) and malpractices that relate to the results process in subsection (b). We want to clarify therefore, that the timing of the alleged discharge of a firearm, did not remove the incident from the ambit of the electoral process as a whole. We agree with both parties that

the counting of votes and announcement of results are part of the electoral process, and to the trial court's credit, at no point did it say it was not. The trial court confined its remarks to section 97(2) (a). It said the incident had no bearing on the voting process and the results thereof as envisaged by section 97(2) (a). It is therefore clear that the trial court was alive to the fact that the incident was not excluded from a related provision on post voting processes of vote counting and announcement of results namely section 97(2) (b).

7.4 **CORRUPT PRACTICE: BRIBERY**

7.4.1 *Section 81 of the Electoral Process Act* provides, so far as is relevant, that:

"81. (1) A person shall not, either directly or indirectly, by oneself or with any other person corruptly—

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

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

(2) A person who contravenes any provision of subsection (1) commits an offence.

(3) Nothing in this Act shall be construed as applying to any money paid or agreed to be paid for, or on account of, any expenditure bona fide and lawfully incurred in respect of the conduct or management of an election."

7.4.2 Section 89(1)(e) of the Electoral Process Act provides, so far as is relevant that:

"89. (1) A person shall not—

(e) on any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred metres from the entrance to such polling station

(i) canvass for votes;

(ii) solicit the vote of any person;

(iii) induce any person not to vote; or

(iv) induce any person not to vote for a particular candidate;"

7.4.3 *Paragraph 15(1)(h) of the Electoral Code of Conduct,* set out in the Schedule to the Act, provides that among other things:

"A person shall not—

offer any inducement, reward or bribe to any person in consideration of such person—

(i)....

(ii)...

(iii) voting or not voting;".

7.4.4 In **Chilufya v Ng'andwe and Another**[35], on bribery under *Section 81 of the Electoral Process Act* it was stated that:

"The Appellant thus had the onus of proving to the required standard whether the charitable works which were undertaken by the 1st Respondent in Mambilima Constituency constituted bribery. We are fortified in our position by what we held in the Abuid Kawangu' case in which we distinguished a philanthropic activity from a campaign action by stating that the difference lies in the purpose and timing of the act. The aspect of timing was established by the 1st Respondent's own admission. The

petition filed by the Appellant in the court below as can be seen from the record of appeal, did not raise any allegation in respect to the 1st Respondent's engagements in philanthropic works. The Appellant solely relied on the 1st Respondent's evidence in her examination in chief. It is our considered view that it was not enough for the Appellant to merely argue that the 1st Respondent undertook charity works in Mambilima Constituency during the campaign period. The Appellant needed to prove before the trial court that the said acts by the 1st Respondent prevented the majority of the electorate from voting for their preferred candidate. From the evidence on record, there was no evidence adduced before the lower court to show that the 1st Respondent's activities prevented or may have prevented the majority of the electorate from voting for their preferred candidate in contravention of section 97(2) of the EPA. Indeed, as rightly, argued by the 1st Respondent, this cannot be assumed. It remained the Appellant's burden as petitioner to prove the allegation of bribery to the required standard."

7.5 VIOLENCE, INTIMIDATION AND UNDUE INFLUENCE

7.5.1 *Section 83 of the Electoral Process Act* provides, so far as is relevant that:

> ***"83. (1) A person shall not directly or indirectly, by oneself or through any other person—***
>
> ***(a) make use of or threaten to make use of any force, violence or restraint upon any other person;***
>
> ***(b)...***
>
> ***(c) do or threaten to do anything to the disadvantage of any person in order to induce or compel any person—***
>
> ***(i)...***
>
> ***(ii) to vote or not to vote;***
>
> ***(iii) to vote or not to vote for any registered political party or candidate;***
>
> ***(iv) to support or not to support any political registered party or candidate; ...***
>
> ***(2) Subject to the other provisions of this Act, a person shall not prevent another person from exercising a right conferred by this Act. ...***
>
> ***(3)...***
>
> ***(4)...***

(5) A person who contravenes any of the provisions of subsections (l) to (4) commits an offence."

7.6 **THE RIGHTS OF POLLING AND ELECTION AGENTS**

7.6.1 *Section 36 of the Electoral Process Act* provides as follows:

"36. (1) An election or polling agent may observe the proceedings during-

(a) voting;

(b) the counting of votes; and

(c) the announcement and declaration of the result of an election.

(2) The absence of an election or polling agent from a gazetted or prescribed place where an electoral proceeding is being conducted shall not invalidate those proceedings."

7.6.2 *Section 38(1) and (2) of the Electoral Process Act* place the duty to maintain order at the polling station on the presiding officer as follows:

"38. (1) A presiding officer shall coordinate and supervise the voting at a polling station so as to ensure that the election at the polling station is free and fair.

(2) A presiding officer—

(a) shall exercise the powers and perform the duties assigned to a presiding officer by or under this Act;

(b) shall ensure orderly conduct at a polling station; and

(c) may order a police officer to assist in ensuring orderly conduct at that polling station and the police officer shall comply with the order."

7.6.3 The Electoral Code of Conduct is to the same effect. *Paragraph 14 of the Electoral Code of Conduct* provides as follows:

"14. A person or a member of a law enforcement agency, civil society, a Church, faith-based organisation, traditional leader, political party or media shall not, by means of threats, violence or sanction, coerce or intimidate another person during campaigns, public debates or elections."

7.6.4 In addition *Paragraph 15(1)(a) of the Electoral Code of Conduct* provides that :

"A person shall not—

(a) cause violence or use any language or engage in any conduct which leads or is likely to lead to violence or intimidation during an election campaign or election;"

7.7 FALSE STATEMENTS CONCERNING A CANDIDATE

7.7.1 To ground nullification, the statement must be false; it must relate to the personal character or conduct of the candidate; it must be calculated to influence voters; and it must be of a nature that harms the candidate's reputation and adversely affects how the voters who received it perceive him.

7.7.2 *Section 84 of the Electoral Process Act* provides as follows:

> ***"84. (1) A person shall not, before or during an election, publish a false statement of the illness, death or withdrawal from election of a candidate at that election for the purpose of promoting or procuring the election of another candidate, knowing that statement to be false or not believing it to be true.***
>
> ***(2) A person who, contravenes subsection (1) commits an illegal practice, unless that person had reasonable grounds for believing, and did believe, the statement to be true."***

7.7.3 *The Electoral Code of Conduct* is to the same effect. *Paragraph 15(1)(c) of the Electoral Code of Conduct* provides that:

> ***"A person shall not—***
>
> ***...***

(c) make false, defamatory or inflammatory allegations concerning any person or political party in connection with an election;"

7.7.4 In **Austin Liato v Sitwala Sitwala**[20], the Constitutional Court held that a breach of *paragraph 15(1)(c) of the Code* is "other misconduct" within the meaning of *section 97(2)(a) of the Act.*

7.7.5 In **Mbololwa Subulwa v Kaliye Mandandi**[27], the Court stated as follows:

"From the above, it is clear that in order for a statement to qualify as character assassination pertaining to a candidate in an election, that statement must be a false statement of the personal character or conduct of a candidate that is calculated to influence the voters in an election. The nature of the statement in question must be one that causes harm to the reputation of the individual and adversely affects how he/she is perceived by its recipients who in an election are the voters"

7.7.6 The court went on to state that:

> ***"Although the first aspect of Section 97 (2) (a) of the Act was satisfied, as regards the finding that each one of the three litigants did character assassinate each other, the second requirement or aspect of that Section , that it must also be proved that the act complained of was widespread as to have affected the election result, was not proved as the evidence on record does not support the finding that the character assassination in question by the three litigants against each other was widespread. Although It was submittedfor the Appellant did also argue under ground 4 that the finding by the learned trial Judge that the character assassination was widespread was contrary to the evidence of the election results on record which , according to Counsel, showed that the majority of the people in Sioma Constituency voted for the other candidates and not the Appellant as shown by the aggregate total of 7,551 votes polled against the Appellant's 4,288 votes our brief response is that we find this argument on its own insufficient ground for***

reversing the findings of the trial Judge more so, in view of the position that we have taken above. As such, we need not consider it any further"

7.8 **COMPLAINTS RELATING TO GEN 20 FORMS**

7.8.1 The complaint concerning Form GEN 20 is brought under *Section 97(2)(b) of the Electoral Process Act* which reads as follows:

"97(2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be, that-

(a)...

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

7.8.2 The aforesaid provision ought to be read with *Section 97(4) of the Electoral Process Act* which guides as follows:

> ***"97(4) An election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court or a tribunal that the election was so conducted as to be substantially in accordance with the provisions of this Act, and that such act or omission did not affect the result of that election."***

7.8.3 *Section 71 of the Electoral Process Act* requires the presiding officer to complete "a form, as may be prescribed" and to announce the result publicly:

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

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

7.8.4 An agent who disputes the count has a remedy at the polling station under *Section 70 of the Electoral Process Act:*

"70. (l) An election or polling agent may object to an alleged inaccuracy in the counting of the votes or the announcement of a result under section seventy-one.

(2) An objection under subsection (l) shall be made to a presiding officer, in the prescribed form, at any stage before the presiding officer has announced the result."

7.8.5 *Paragraph 5 of the Electoral Code of Conduct* sets out the duties of agents:

"5. (1) An election agent or polling agent shall, subject to this Code, have the following duties during an election: ...

(a)...

(b)...

(c) witness the count of ballot papers for candidates;

(d) witness the announcement of results; and

(e) witness the declaration of results, where applicable.

(2) An election agent or polling agent shall counter sign the election results duly announced or declared by a presiding officer or returning officer, as the case may be, except that failure to countersign the election results by such election agent or polling agent shall not render the results invalid."

(emphasis in underlining mine)

7.8.6 In **Sibongile Mwamba v Kelvin Sampa and Another**[36], the Constitutional Court considered the evidential weight of the results forms in a challenge under *section 97(2)(b),* and dismissed the appeal for want of proof that any non-compliance affected the result. It was stated that:

"Upon the lower Court's finding that five (5) GEN 12 forms were irregular in that they lacked the names of the polling stations, presiding officers and signatures

despite being signed by polling agents at the back, it went on to hold that the said irregularities which affected all the candidates, did not affect the results to warrant the voiding of the election. We have perused the record of appeal which reveals that it was not five but six (6) GEN 12 forms at pages 214, 226, 246, 288, 296 and 302 that were signed by both the Presiding Officers and the polling agents but did not indicate the names of the presiding officers and of the polling stations. Of these, the GEN 12 form at 288 also had the name of the polling station. The polling agents of the Appellant and 1st Respondent also signed form ECZ 19 which was the consolidation of the results as well as form GEN 14 being the declaration of the results form. It is clear from section 97 (2) (b) and (4) that for these two grounds of appeal to succeed, the Appellant was required to prove to the required standard that the election was not conducted or not signed by presiding officers who also did not indicate their names and those of polling stations. Further, Halsbury's Laws of England at paragraph 658 states

that failure to comply with provisions regarding the forwarding of documents after the close of the poll is not sufficient to avoid the election. Paragraphs 652 and 653 of Halsbury's Laws of England highlight examples of such failures to include the failure to date the forms or ballot paper accounts and the failure to indicate names of the constituency or electoral area, as the case may be. In the instant case, the irregularity concerns 6 out of 60 GEN 12 forms. The Appellant's argument is that the 6 forms established that there was substantial non-compliance with the law or that the irregularity in the conduct of the election was deep rooted. We do not agree. Six (6) out of 60 polling stations does not prove that the irregularity was deep rooted or that there was substantial non-compliance with the law. The Appellant's other argument that the six (6) GEN 12 forms that had irregularities affected the result is not tenable in the absence of actual proof that the results were affected. For the defect to be said to have affected the result, the Appellant ought to have shown that it actually changed the results. This was not so in this

case and hence the consolidation of results form ECZ 19 and the declaration of results form GEN 14 were signed by the Appellant's polling agent. The burden was on the Appellant to show to the required standard that the election results were actually affected by the irregularity. It is not sufficient to merely state in broad terms and it is not for the trial Court to speculate, that the results were affected. As the trial Judge rightly observed, the irregular forms also affected all the other candidates but their effect on the result was not shown. Further, the signing of the six (6) forms by the polling agents of the concerned parties showed that there was no dispute as regards the results reflected thereon and this was acknowledged by the Appellant in her evidence. In the instant case, the lower Court therefore rightly considered this issue and found that there was no proof that the results were affected or that the results which were recorded in the six (6) GEN 12 forms in issue were wrong. We accede to the principle set out in Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Electoral Commission of Zambia

that the effect of the irregularities have to result in the election being so flawed that the defects actually and significantly affected the result which could no longer reasonably be said to represent the true free choice and will of the majority of voters."

7.8.7 *Section 36(2) of the Electoral Process Act* provides as follows:

"36.(2) The absence of an election or polling agent from a gazetted or prescribed place where an electoral proceeding is being conducted shall not invalidate those proceedings."

7.9 BURDEN AND STANDARD OF PROOF

7.9.1 As in all matters the burden of proving an allegation lies on the party that asserts it, in this case the Petitioner. This is an elementary principle of law and cuts across all legal suits, not only in election matters. In the case of **Brelsford James Gondwe v Catherine Namugala**[10], the Supreme Court stated as follows:

"the burden of establishing the grounds lies on the person making the allegation and in election petitions, it is the petitioner in keeping with the well settled principle of law in civil matters that he who alleges

must prove. The grounds must be established to the required standard in election petitions namely fairly high degree of convincing clarity."

7.9.2 That burden does not shift because a respondent's answer is weak. In **Khalid Mohamed v The Attorney General**[21], Ngulube D.C.J., as he then was, said as follows:

"An unqualified proposition that a plaintiff should succeed automatically whenever a defence has failed is unacceptable to me. A plaintiff must prove his case and if he fails to do so the mere failure of the opponent's defence does not entitle him to judgment. I would not accept a proposition that even if a plaintiff's case has collapsed of its inanition or for some reason or other, judgment should nevertheless be given to him on the ground that a defence set up by the opponent has also collapsed."

7.9.3 In relation to the standard of proof in election matters in **Akashambatwa Mbikusita Lewanika and Others v Frederick Jacob Titus Chiluba**[9], the Supreme Court held that parliamentary election petitions have long been required to be proved to a standard higher than a mere balance of

probabilities and that the issues raised must be established to a fairly high degree of convincing clarity.

7.9.4 The Constitutional Court confirmed that this was the standard in **Abiud Kawangu v Elijah Muchima**[37], where it held that:

> ***"The standard remains higher and distinct from that required in an ordinary civil matter but lower than the standard of beyond reasonable doubt required in criminal matters. As the Supreme Court opined in the case of Lewanika and Others parliamentary election petitions are required to be proved to a standard higher than on a mere balance of probabilities and issues raised to be established to a fairly high degree of convincing clarity."***

7.10 **EVALUATION OF PARTISAN EVIDENCE**

7.10.1 In **Steven Masumba v Elliot Kamondo**[6], the Constitutional Court held that witnesses from a litigant's own political party are, generally, partisan witnesses. Their evidence must be treated with caution and requires corroboration, to eliminate the danger of exaggeration and falsehood. Corroboration is independent evidence that

confirms or strengthens the evidence to be corroborated. In **Masumba**[7] it was stated in part as follows:

> *" In the case of Kamba Saleh Moses v Hon. Namuyangu Jennifer, the Court in Uganda had the occasion of considering the need in election petitions for corroboration of the evidence of witnesses who belong to the same political party. The Court put it thus:- "Kataike's evidence is evidence of a confessed supporter of the respondent. It is also evidence of an accomplice under S68 (2) of the PEA. Such evidence is suspect. Partisan witnesses, as Kataike is in the instant case, are likely to exaggerate their evidence in an effort to tilt the balance of proof in favour of the candidate they support. What was needed in this case was for the learned trial judge to look for independent evidence from a non partisan and independent witness to corroborate the evidence of Kataike. I find no such evidence on record. In Wadada Rogers v Sasaga Isaiah Jonny & EC the court in Uganda reechoed the above requirement and observed that:- "No number of witnesses is required to prove a fact. In election matters*

partisan witnesses have a tendency to exaggerate claims about what might have happened during elections. In such situations it is necessary to look for 'other' evidence from an independent source to confirm the truthfulness or falsity of the allegation."

8. ANALYSIS

8.1 Burden and standard of proof

8.2 It must be understood from the outset that the burden of establishing the grounds on which the election is challenged rests on the Petitioner as is established in **Brelsford James Gondwe v Catherine Namugala[10], Akashambatwa Mbikusita Lewanika and Others v Frederick Jacob Titus Chiluba[9]** and **Abiud Kawangu v Elijah Muchima[37].** It is also well settled that the applicable standard was stated to be proof to a fairly high degree of convincing clarity. It is higher than proof on a balance of probabilities and lower than proof beyond reasonable doubt. It is also settled as stated in **Khalid Mohamed v The Attorney General[21],** the burden is not discharged by weakness in the Respondents' case. The absence of oral evidence from the 2nd Respondent therefore does not, by itself, establish any allegation

against it nor does the lack of rebuttal evidence on each and every allegation raised against the 1st Respondent.

8.3 Two routes to nullification are relied upon. Under *section 97(2)(a) of the Electoral Process Act,* the alleged corrupt practice, illegal practice or other misconduct must be established. It must also be shown to have been committed by the candidate or with the knowledge and consent or approval specified in the provision. It must further be established that the majority of voters in the constituency were or may have been prevented from electing their preferred candidate. As explained in **Steven Masumba v Elliot Kamondo**[6] and **Nkandu Luo and the Electoral Commission of Zambia v Doreen Sefuke Mwamba and the Attorney General**[7], those requirements are cumulative. The conduct and its effect or likely effect on voters must each be established to the required standard.

8.4 Under *section 97(2)(b),* read with *section 97(4),* the alleged non-compliance with the provisions governing the conduct of the election must be identified and proved. The Court must consider whether the election was conducted in accordance with the principles laid down by the Act and whether the non-compliance affected the result. **Sibongile Mwamba v Kelvin Sampa and**

Another[36] distinguishes defects in election forms from defects shown to have actually and significantly affected the result. The constitutional requirements of a free, fair and transparent election inform the assessment of both grounds.

8.5 In weighing the evidence, the caution stated in **Steven Masumba v Elliot Kamondo**[6] is applicable to partisan testimony on either side. The role and interest of each witness, the opportunity to observe what was alleged, the consistency of the account and the availability of independent corroboration must be considered. A recording may corroborate words spoken without establishing the identity of the person referred to, the size of the audience or the effect on voters. Likewise, a police record may corroborate that an assault was reported without establishing who committed it or on whose authority.

8.6 **ALLEGED FALSE, DEFAMATORY AND INFLAMMATORY STATEMENTS**

8.7 The allegation that the Petitioner was portrayed as a person who harvested human hearts was supported by several kinds of evidence. **PW1** relied on recordings and on what was reported to him by others. **PW9** recorded the radio programme. Other witnesses gave accounts of remarks they said they heard at rallies. **RW1** denied accusing the Petitioner of harvesting hearts but

accepted that the possibility of persons who removed hearts acquiring money and constructing buildings was raised in his campaign remarks. He also accepted that real candidates were referred to, although he said that the remarks were neither confined to his opponents nor directed at any particular candidate.

8.8 The recordings should be considered separately. The location of the rally in MS2 was variously associated with Kapamba Ward, Kabale School and Kaluba. That uncertainty limits the extent to which MS2 can corroborate testimony about a particular rally. As to MS3, the translation recorded in the draft refers to buildings, wealth, drugs and satanism. It does not reproduce the reference to serial killers recalled by **PW9** or the reference to heart removal acknowledged by **RW1**. Those versions cannot be combined and treated as a single proved statement. What is supported by the recordings and **RW1's** admissions is that, in a campaign context, references to wealth and buildings were made alongside examples involving grave wrongdoing.

8.9 The Petitioner's name was not used in the recordings identified by **PW1, PW3** and **PW9.** Under the approach in **Mutemba v Zambia Newspapers Limited and Another**[17], on which the

Petitioner relied, a person may nevertheless be identified by facts known to the audience. **PW1** and **PW9** gave evidence about the Petitioner's construction activities and ownership of buildings in Mpika. **RW7** accepted that he owned buildings and that they were known. The reported enquiries from business associates, friends and relatives provide some support for **PW1's** evidence that the allegations had become associated with him. Those enquiries do not establish which statement each person heard or how widely the association was made. The ownership evidence supports the inference that some listeners could have understood the remarks as referring to the Petitioner. The evidence of that association is stronger than the evidence that the same accusation was made at each of the rallies pleaded or described.

8.10 The direct evidence must also be considered. **PW16** attributed the express use of "Mordecai" to **RW1** at RDC, Kamwanya. That account is distinct from the recordings in which no name was used. **PW7** described remarks at Kamwanya Market on 9th July 2026. **RW6's** account of a meeting at RDC Market concerned 11th August 2026 and the date of the meeting described by **RW7** was not specified. Their testimony cannot be treated as a direct rebuttal of **PW7** or **PW16** unless it is

established that they were describing the same meeting. The Kabale accounts likewise differ as to dates, timing and content. **RW2** and **RW3** supported **RW1's** account of a rally on 25th July 2026, whereas **PW4** placed the remarks she described on 11th August 2026. The defence evidence about 25th July does not determine what was said on a different date. Equally, the differences in the Petitioner's evidence prevent the accounts from being treated as uniform corroboration of a single event. The evidence before the Court shows that the remarks were made by 1st Respondent.

8.11 The allegations were serious and capable of prejudicing a candidate. The direct evidence of accusations are accepted and the statements are found to constitute misconduct under *section 84 of the EPA* or the *Electoral Code of Conduct*. However, the requisite effect on the electorate still has to be established. **PW1** and **PW5** described declining attendance. **PW5's** figures were estimates and the reason for the decline at Chewe was reported to her by Evelyn Sichalwe. **PW1** received a similar report from Mr Lafest Chipalo. A decline in rally attendance is some evidence of a change in public engagement but its cause and electoral effect were not established. **PW16** described a change in

conversation at the clinic, yet the speakers and the dates were not specified. His evidence that the remarks affected his choice "a bit" was qualified by his statement that he voted for the candidate of his choice. The radio station's Facebook following and the membership of the WhatsApp group do not establish how many voters heard the programme or were influenced by it.

8.12 While it can be said that the statements were circulated there is little or no evidence of their effect on the electorate. On the evidence as a whole, it has not been established to a fairly high degree of convincing clarity that the majority of voters in Mpika North Constituency were or may have been prevented by the remarks from electing the candidate they preferred. The ground is dismissed.

8.13 **ALLEGED TRIBAL REMARKS**

8.14 **PW3** attributed tribal remarks concerning President Hakainde Hichilema to the 1st Respondent at Kabale School. The Petitioner also alleged that voters were urged not to vote for a "Tonga party". The remarks were denied by **RW1. PW3's** account provides evidence in support of the allegation but the recordings do not independently establish the tribal appeal alleged. The date and identity of the relevant meeting are also uncertain in light of the differing Kabale accounts.

8.15 The statements attributed to the men distributing pens at Tazara Railways Polling Station, including remarks about President Hakainde Hichilema, do not independently establish that a tribal appeal was made or authorised by **RW1.** The persons concerned were seen with him at rallies but the required knowledge and consent or approval were not thereby established. The pleaded tribal campaign and its effect or likely effect on the majority of voters were not proved to the requisite standard. That ground fails.

8.16 **ALLEGED VIOLENCE, THREATS, INTIMIDATION AND INTERFERENCE WITH OBSERVERS**

8.17 The strongest evidence concerning Chitulika is that a complaint of assault was made by Mathews Mwamba on polling day. **PW18** received the complaint with Sergeant Muluwa, identified MS4 and explained that a medical report form had been issued and that the docket was forwarded to the CID. **PW10** said that he found Mathews Mwamba after the reported assault and took him to the police. That evidence supports the existence of a contemporaneous complaint. **PW18** did not witness the assault, Mathews Mwamba did not testify and **PW10** declined to answer whether he saw the assault. **PW1's** account of the incident was received from others making it hearsay evidence.

8.18 **PW10** placed **RW1** behind Chitulika Secondary School after the reported assault, together with a group that included Kabanda and Mutale Sekwila. That evidence warranted consideration alongside **RW1's** account of voting at Chitulika Primary School and his subsequent movements. Even if **PW10's** evidence of presence is accepted, it does not establish when **RW1** arrived, what he witnessed or whether the assault was committed with his knowledge and consent or approval. There is also insufficient evidence of the capacity in which Kabanda or the other persons acted. The inference drawn from the evidence of participation and presence in **Bowman Chilosha Lusambo v Bernard Kanengo and the Electoral Commission of Zambia**[28] cannot be drawn on presence alone in the circumstances recorded here.

8.19 **PW15's** account of being threatened at Kaluba and held by the neck at Lushinga Primary Polling Station was direct evidence of what he said he personally experienced. The regalia worn and the statement that the men had been told to beat UPND cadres were relevant to the circumstances of the incident. The men were unidentified and the source of the alleged instruction was not established. **PW8's** evidence concerning threats was received through others. It explains the steps taken by him and the report

made to the police but it does not establish that the 1st Respondent sent anyone to threaten the Petitioner's supporters.

8.20 The evidence also falls short of proving that agents or observers were driven out of polling stations or systematically prevented from discharging their duties. **PW7** and **PW12** witnessed the voting and counting at their respective stations. **PW11** confirmed that the agents at Chitulika witnessed both processes. The persons allegedly excluded from the totalling centre and the circumstances of their exclusion were insufficiently identified. The allegation that officers of the 2nd Respondent permitted or participated in intimidation was not established by the evidence of particular incidents.

8.21 Accordingly, the evidence of reported violence and threats does not establish the attribution required by *section 97(2)(a)* or a widespread effect or likely effect on voter choice. As stated in **Richwell Siamunene v Gift Sialubalo**[24] and **Mbololwa Subulwa v Kaliye Mandandi**[27], proof of violence at a particular place does not itself establish the requisite impact on the electorate. The grounds based on violence, intimidation and exclusion of agents or observers have not been made out.

8.22 **ALLEGED BRIBERY, VOTER INDUCEMENT AND DISTRIBUTION OF MONEY, SHOES AND PENS**

8.23 *Section 81 of the EPA* and the provisions of the Electoral Code of Conduct require attention to what was offered or given, by whom and for what purpose. A conditional offer may be material even where it was rejected or the witness's vote was unaffected. Whether a practice was committed, whether it was attributable to the candidate and whether it had the requisite electoral effect are separate questions.

8.24 **PW2** gave direct evidence that Benson Mfula offered him shoes if he voted "on the lamp". **PW6** independently described a vehicle containing sneakers at Kabale Polling Station and a similar conditional offer. The similarity gives weight to the evidence that shoes were offered as an inducement at Kabale. **PW6** did not identify the person who made the offer to him. **PW2** identified Benson Mfula, who accepted that he campaigned with and for the 1st Respondent and was himself the NRPUP council candidate. That relationship is relevant but it does not establish his appointment as the 1st Respondent's election or polling agent or the 1st Respondent's knowledge and consent or approval of the offer. The agency requirements discussed in **Chrispin Siingwa v Stanley Kakubo**[33] and **Margaret**

Mwanakatwe v Charlotte Scott and Another[11] cannot be satisfied by party affiliation or joint campaigning alone.

8.25 The K30 found by **PW2** must be considered separately. **PW2** did not know the source of the money. **PW4's** account of what **PW2** told her does not independently identify the person who put it in his pocket. The attribution of that payment to Benson Mfula is therefore not established to the required standard. **PW2** also said that he discovered the money after voting and that his vote was unaffected.

8.26 **PW10** gave direct evidence that pens and money were received from Mwengele near Musakanya Polling Station. **PW17** described being offered pens with K10 by young men who used a political gesture and said "vote for the honourable". **PW3** said that pens were given to her at Tazara Railways Polling Station with a message calculated to influence how votes were cast. **PW4's** evidence that the pens were later brought to her supports receipt of pens by **PW3.** It does not independently establish what was said at the polling station or who authorised the distribution. The words, gestures and accompanying cash or claims about the polling booth pens support an inference of an electoral purpose in some of the incidents. The identity, authority and connection to

the 1st Respondent of the persons concerned were not established with convincing clarity. **PW4's** evidence that **RW1** himself urged voters to bring their own pens was disputed and must be weighed against the uncertainty surrounding the Kabale meeting she described.

8.27 Two further allegations require separate consideration. **PW6** said that **RW1** promised money to persons who voted for him at Yowani Village. **RW5** disputed that **RW1** had ever been there and the alleged promise was not independently corroborated. **PW14** said that opportunities and a house in Mutumbu were offered by **RW1** in return for campaign support. The alleged offer was expressly linked to campaign assistance in **PW14's** account. It was not accepted and no further evidence was given to establish the offer or that it formed part of a broader practice. Finally, the general allegation that constituents were offered sums of K20 to K50 by the 1st Respondent was not established by the specific evidence of K10 offers or the unexplained K30 found by **PW2.**

8.28 The evidence supports concern about particular offers and distributions. It does not establish a scheme attributable to the 1st Respondent or the number of voters reached, the extent of the

practice across the constituency or its effect or likely effect on the majority. **PW2, PW3, PW6, PW10** and **PW17** each gave evidence consistent with retaining their choice of candidate. Their evidence does not determine what happened to other voters but the broader impact alleged was not established by other evidence. The ground based on bribery and inducement therefore fails.

8.29 **ALLEGED CAMPAIGNING ON POLLING DAY**

8.30 The evidence of campaigning at or near polling stations is to be considered under *section 89 of the EPA* and the provisions of the Electoral Code of Conduct. For each incident, regard must be had to the conduct alleged, its location in relation to the polling station and the person to whom it is attributed.

8.31 **PW7** said that **RW1** made the NRPUP gesture at Mpika Boys, Stream 2, at about 15:00 hours. Her account is material because she was present as a polling agent. **RW1** acknowledged attending Mpika Boys in connection with a report about a vehicle but denied displaying a political symbol. His explanation concerning the ECZ equipment accounts for his stated reason for attending. It does not resolve whether a gesture was made. Even if **PW7's** account is accepted and the gesture is treated as canvassing, she

described no confusion at the station and observed the process through to the count.

8.32 **PW12** described calls to vote "on the lamp" and "make a chain" in the queue at Tazara Polling Station. He also said that RW1 entered with a group and that the group was removed by a police officer. Shouts by others cannot be attributed to **RW1** solely because he was greeted as "honourable" or was present. **PW12** witnessed the voting and counting and said that both proceeded well. As to **PW14,** the placards were said to have been posted in designated areas. The evidence did not specify the relevant distance from the entrance or otherwise establish that the placement constituted prohibited canvassing or loitering. The evidence of offers at Kabale, Tazara Railways and Musakanya is relevant to this ground as well but the same deficiencies in attribution and proof of electoral effect remain.

8.33 Taken together, the accounts indicate isolated instances of conduct capable of amounting to polling-day canvassing. They do not establish to the requisite standard that unlawful polling-day campaigning attributable to the 1st Respondent prevented or may have prevented the majority of voters from electing their preferred candidate.

8.34 **GEN20 FORMS AND ALLEGED NON-COMPLIANCE BY ELECTORAL OFFICERS**

8.35 Four distinct complaints were raised concerning GEN20 forms. These were pre-signing before voting, presentation of unsigned forms, denial of an opportunity to sign and failure to issue copies. Each requires separate consideration. A polling agent's missing signature, an omission by a presiding officer and a failure to supply a copy have different implications for the proof of compliance and the reliability of the recorded result.

8.36 No specific form was identified in the evidence as having been signed before voting. **PW12** saw completed forms on a table with the signature section unsigned. That observation does not support pre-signing. He did not see the forms being completed, read the figures or know whether other agents subsequently signed. The evidence therefore does not establish that the forms used for the declaration were unsigned by the responsible presiding officer or that the recorded figures were incorrect.

8.37 **PW12** gave direct evidence that he requested an opportunity to sign at Tazara Polling Station and was not given the forms. That account is entitled to weight as evidence of his experience at that station. The person to whom the request was made was not identified. **PW12** nevertheless observed voting and counting,

recorded an independent tally on which the Petitioner was losing at the station and did not identify a discrepancy between his tally and the declared result. His inability to compare the two is relevant to the complaint about access but it supplies no basis for finding that the official figures differed from the count he witnessed.

8.38 **PW1's** evidence about other stations came from reports he did not verify. The affected agents, officials and stations were not identified with sufficient particularity. The figures of 72 stations, 20 stations with signed forms and 50 unsigned forms do not reconcile on the assumption of one form per station. **PW11** said that a few forms were obtained at the council and identified areas from which forms were said to be unsigned but the forms were not produced. Her explanation that missing signatures meant agents had not witnessed proceedings was inconsistent with her evidence that UPND agents had witnessed voting and counting at all stations. **PW15's** evidence about his own agents likewise did not identify those agents or specify the steps taken to obtain the forms.

8.39 The 47 forms exhibited by **RW1** provide documentary evidence concerning the stations they cover. They cannot be treated as

proof of what occurred at every one of the 72 stations. Equally, the absence of the remaining forms from that exhibit cannot establish that those forms were withheld, irregular or inaccurate. The complaint must be determined from the evidence of the particular failures alleged. On that evidence, the Court could accept that a difficulty in obtaining or signing a form was experienced at Tazara Polling Station without finding that the practice was systematic.

8.40 No comparison was presented showing a difference between a witnessed count and the tally incorporated in the declaration. No station was identified at which votes were omitted, added, credited to the wrong candidate or otherwise wrongly reflected in the declared result. Nor was it shown that a particular failure to permit observation, signature or access materially compromised verification of the constituency result. Applying **Sibongile Mwamba v Kelvin Sampa and Another,** the evidence does not establish substantial non-compliance or that the result was actually and significantly affected. The ground under *section 97(2)(b), read with section 97(4) of the EPA* fails.

8.41 **ALLEGED COLLUSION, FRAUD AND LACK OF TRANSPARENCY**

8.42 The allegations of collusion and deliberate or fraudulent conduct require evidence connecting identified acts of electoral officers to the alleged common purpose. The complaints about forms, the reported disturbances and the alleged exclusion of observers do not establish that officers of the 2nd Respondent acted in concert with the 1st Respondent or his supporters. No proved manipulation of a count, form or tally was identified. The alleged omissions by the police and electoral officers at particular places do not establish an agreement, authorisation or deliberate suppression of the Petitioner's vote.

8.43 The 2nd Respondent's failure to call oral evidence may limit the weight to be given to a general denial where specific evidence of an incident was led. It does not fill the gaps in proof of fraud or collusion. Those allegations have not been established to the applicable standard. The related complaints under the constitutional principles and the Electoral Code of Conduct likewise do not supply a proved basis for nullification.

8.44 **CUMULATIVE EFFECT AND RELIEF**

8.45 The evidence has also been considered cumulatively. The allegations concerned more than one place and more than one

form of conduct. Repetition of the heart-harvesting allegation, evidence of particular inducements and complaints at polling stations were all relevant to whether the majority of voters may have been prevented from electing their preferred candidate. Under **Mubika Mubika v Poniso Njeulu**[3] and **Jonathan Kapaipi v Newton Samakayi**[12], however, the reach and likely electoral effect must be established by evidence. The possibility contemplated by *section 97(2)(a) of the EPA* must be supported by facts from which the effect on the majority can reasonably be inferred.

8.46 The reported decline in attendance, the circulation of allegations and the incidents identified at particular polling stations do not establish the number or proportion of voters affected or otherwise demonstrate a constituency-wide impact to the required degree of convincing clarity. The declared totals of **19,925 votes** for the 1st Respondent and **3,806 votes** for the Petitioner provide context. The margin of **16,119 votes** does not substitute for the statutory inquiry or excuse proved misconduct. In relation to the GEN20 complaint, it remains material that no demonstrated discrepancy or other proved irregularity was connected to a change in the result.

8.47 The alternative prayer for a declaration that the Petitioner was duly elected must be determined separately. The declaration is a form of relief contemplated by *section 99 of the EPA.* No evidence was identified on which the Court could determine under *section 108 of the EPA* that the Petitioner was duly elected. The prayer accordingly fails.

9. VERDICT

9.1 The grounds for declaring the election void under *section 97(2)(a)* or *section 97(2)(b) of the Electoral Process Act* have not been established. The prayer for a declaration that the Petitioner was duly elected is refused. The Petition is dismissed.

9.2 Pursuant to *section 108 of the Electoral Process Act,* it is determined that Francis Robert Kapyanga was duly elected as Member of Parliament for Mpika North Constituency. The election remains valid.

9.3 It is hereby ordered that each party shall bear its own costs.

9.4 Any party that is dissatisfied with the outcome of this Petition is granted leave to appeal the decision.

Signed, Sealed and Delivered at Chinsali this 19th day of November, 2026.

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
19 NOV 2026
C. M. LOMBE
P.O. BOX 60110, LIVINGSTONE

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C. M. LOMBE
HIGH COURT JUDGE