

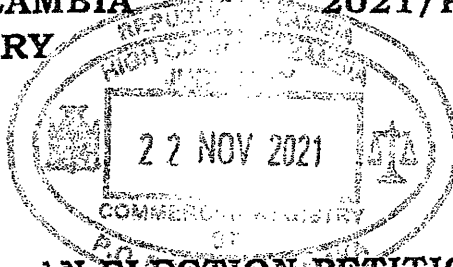
**IN THE HIGH COURT FOR ZAMBIA**

**2021/HP/EP/008**

**AT THE PRINCIPAL REGISTRY**

**HOLDEN AT LUSAKA**

*(Election Petition Jurisdiction)*



**IN THE MATTER OF:**

**AN ELECTION PETITION**

**IN THE MATTER OF:**

**THE PARLIAMENTARY ELECTION  
PETITION RELATING TO THE  
PARLIAMENTARY ELECTIONS  
FOR NAKONDE CONSTITUENCY IN  
THE NAKONDE DISTRICT,  
MUCHINGA PROVINCE OF THE  
REPUBLIC OF ZAMBIA, HELD ON  
THE 12<sup>th</sup> AUGUST, 2021.**

**IN THE MATTER OF:**

**ARTICLE 73 OF THE  
CONSTITUTION OF ZAMBIA  
(AMENDMENT) ACT NO. 2 OF  
2016, CHAPTER 1 OF THE LAWS  
OF ZAMBIA**

**IN THE MATTER OF:**

**SECTIONS 81, 83 (1) (C) & (6), 84,  
96, 97, 98, 99 & 100 OF THE  
ELECTORAL PROCESS ACT NO 35  
OF 2016 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF:**

**REGULATION 15 OF THE  
ELECTORAL CODE OF CONDUCT  
2016**

**BETWEEN:**

**SIMON PATSON SIMWANZA**

**PETITIONER**

**AND**

**LUKA SIMUMBA**

**1<sup>st</sup> RESPONDENT**

**THE ELECTORAL COMMISSION OF ZAMBIA**

**2<sup>nd</sup> RESPONDENT**

**Before Hon. Mr. Justice Bonaventure C. Mbewe in Open Court.**

**Marshal : Esther Ng'uni**

**Research Advocate : Mwiche Ntinda**

*For the Petitioner : Mr. W. Chitundu of Messrs. Wallace & Company*

*For the 1<sup>st</sup> Respondent: Mr. J. Kayula and Mr. P. Chola of Messrs. Lewis Nathan Advocates*

*For the 2<sup>nd</sup> Respondent: Mr. A. Kalikiti of Messrs. MSK Advocates.*

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## **JUDGMENT**

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### **Legislation Referred To:**

- 1. Electoral Process Act, No 35 of 2016;*
- 2. Electoral Code of Conduct 2016;*
- 3. Rules of the Supreme Court of England and Wales, 1999 Edition, Volume 1;*
- 4. National Registration Act, Chapter 126 of the Laws of Zambia;*
- 5. National Registration Regulations, S.I No 257 of 1963;*

6. *Constitution of Zambia (Amendment) Act, No 2 of 2016.*

**Cases Referred To:**

1. *William David Carlisle Wise v. Hervey Limited* (1985) ZR 179;
2. *Austin Liato v. Sitwala Sitwala* - Selected Judgment No. 23 of 2018;
3. *Nkandu Luo, The Electoral Commission of Zambia v. Doreen Sefuke Mwamba, the Attorney General* - Selected Judgment No. 51 of 2018;
4. *Giles Chomba Yambayamba v. Kapembwa Simbao, Electoral Commission of Zambia, Attorney General* - Selected Judgment No. 6 of 2018;
5. *Michael Mabenga v. Sikota Wina, Mafo Wallace Mafiyo and George Samulela* SCZ 15 of 2003 (SC);
6. *Christopher Kalenga v. Annie Munshya and Others* 2011/HK/EP/03;
7. *Nabukeera Hussein Hanifa v. Kibule Ronald and Another* (2011) UGCH 72;
8. *Akashambatwa Mbikusita Lewanika and Others v. Fredrick Jacob Titus Chiluba* (1998) ZR 99;
9. *Brelsford James Gondwe v. Catherine Namugala* - Appeal No. 175 of 2012.

**Other Works Referred To:**

1. *The Oxford English Dictionary 8<sup>th</sup> Edition* Edited by Charlotte Brown, Oxford University Press.
2. *The Oxford Language Dictionary*, 2021, Oxford University Press.

## 1.0. **INTRODUCTION**

- 1.1. The Petitioner, Mr. Simon Patson Simwanza, commenced this action by way of Petition against the First Respondent, Luka Simumba and the Second Respondent, the Electoral Commission of Zambia, on the 25<sup>th</sup> of August 2021. The Petitioner, is the losing Parliamentary Candidate under the United Party for National Development (UPND) in the 12<sup>th</sup> August, 2021, Nakonde Constituency election. The First Respondent, Mr. Luka Simumba is the winning Parliamentary Candidate under the Patriotic Front (PF) party in the same election and the Second Respondent, the Electoral Commission of Zambia is the body responsible for arranging and conducting elections in Zambia.
- 1.2. This action is brought by way of a Petition pursuant to the **Electoral Process Act No. 35 of 2016**, whose prayer is for the nullification of the election of the 1<sup>st</sup> Respondent as Member of Parliament for Nakonde Constituency and a declaration that the Petitioner was instead duly elected.
- 1.3. The Petition is made pursuant to **Sections 81, 83 (1) (c) & (6), 84, 96, 97, 98, 99 and 100 of the Electoral Process Act No. 35 of the Laws of Zambia; Regulation 15 of the Electoral Code of Conduct 2016; and Article 73 of the Constitution of Zambia (Amendment) Act No 2 of 2016, Chapter 1 of the Laws of Zambia.**

## **2.0. THE PETITIONERS CASE**

2.1. The Election Petition of Simon Patson Simwanza, sheweth;

That, contrary to the declaration by the Returning Officer one Hastings Kayira from the 2<sup>nd</sup> Respondent – the Electoral Commission of Zambia (ECZ), that the Petitioner was duly elected, the said 1<sup>st</sup> Respondent was not validly elected. That the results for each of the 3 Candidates by the Returning Officer were as follows;

i. Simumba Luka	PF	22,384 votes
ii. Simwanza Simon	UPND	16,826 votes
iii. Namutowe Lunda K.	SP	638 votes

2.2. That, the said invalid election of the 1<sup>st</sup> Respondent was as a result of the widespread electoral malpractices, illegal practices, corrupt practices, violence, undue influence and intimidation demonstrated by the 1<sup>st</sup> Respondent.

2.3. That, during the days prior to the polling date, the 1<sup>st</sup> Respondent so conducted himself in a manner that was designed to promote or procure his own election in contravention of the Regulations made under the **Electoral Process Act, Number 35 of 2016**.

- 2.4. That, prior to the polling date, but within the campaign period, the 1<sup>st</sup> Respondent and his election campaign team engaged in acts of removal of the Petitioners campaign materials in the entire Nakonde Constituency, which *inter alia* included posters and banners. Such acts, according to the Petitioner, included removal of UPND campaign materials generally wherever they were found and replacing the same with the 1<sup>st</sup> Respondent's campaign materials and those of the PF Party.
- 2.5. That, on 31<sup>st</sup> May, 2021, the 1<sup>st</sup> Respondent and his campaign team demolished all the makeshift stalls along Malawi Road in Old Fife Ward belonging to anyone that was perceived not to support his candidature.
- 2.6. That, on or about the 3<sup>rd</sup> of August, 2021, when the President of his party, now President of the Republic, Mr. Hakainde Hichilema visited Nakonde Constituency, the 1<sup>st</sup> Respondent rounded up and organized his supporters from PF whose instructions were to block the Petitioner who was in the company of the President of the UPND.
- 2.7. That, the said supporters who, according to the Petition, were stationed from Chiyanga Village situated near the border between Zambia and Tanzania to Wulongo Check-point, which is the access route from Great North Road to Nakonde District, engaged in acts of beating up everyone perceived to be the Petitioner's supporters and instructing the Police to throw tear

gas cannisters at the Petitioner, his campaign team and his supporters to instill fear into them.

2.8. That, during the campaign period leading up to the election, the 1<sup>st</sup> Respondent together with his campaign team were found distributing bicycles and mattresses to the voters. The voters were also at the time advised to vote for the 1<sup>st</sup> Respondent and not the Petitioner on the day of voting for reasons that the Petitioner belonged to the UPND which according to 1<sup>st</sup> Respondent was a party for people of the Tonga tribe only.

2.9. That, during the campaign period, the 1<sup>st</sup> Respondent together with his campaign team and while in the company of one Dr. Chishimba Kambwili issued tribal remarks against the Petitioner at a rally held at Ntindi Secondary School Football Ground in Ikumbi Ward of Nakonde Constituency. According to the Petitioner, the tribal remarks made were to the effect that the Petitioner is tribalist and belongs to a tribal party that only has Tongas from the Southern Province of the Republic of Zambia as its members and supporters. That the said remarks were covered by Chete and Nakonde Radio stations.

2.10. That, during the campaign period, the 1<sup>st</sup> Respondent and his campaign team were found distributing money, mealie-meal and cooking oil to voters who had been assembled in queues in various wards which included; Mukulika, Mulalo, Ng'umba,

Mwanga, Luchinde, Chimwanza, Ilonda, Musyani, Nakonde and Old Fife.

2.11. That, during the campaign period to the day of elections, the 1<sup>st</sup> Respondent together with his campaign team were involved in various acts of violence against the Petitioner, his campaign team members and UPND supporters, which acts of violence were reported to the Police.

2.12. That, the 1<sup>st</sup> Respondent's campaign team beat up and assaulted the Petitioner's supporters and campaign team members in the majority of the wards within Nakonde Constituency, causing them to sustain deep wounds. Part of the wards wherein such acts of violence were perpetrated were: Mukulika, Mulalo, Ng'umba, Mwanga, Luchinde, Chimwanza, Ilonda, Musyani, Nakonde, Old Fife and various other wards.

2.13. That, during the campaign period and on the day of elections, the 1<sup>st</sup> Respondent visited all market places in Nakonde Constituency including Nakonde main market and Chiyanga market among others, distributing money to marketeers in the said market areas as an inducement for votes in his favour.

2.14. That, two (2) days before the polling day, the 1<sup>st</sup> Respondent was seen in the company of the former Minister of Foreign Affairs, one Mr. Joseph Malanji distributing money to marketeers at



Chiyanga village, Nakonde Main Market and to all other people who attended this political rally.

2.15. That, on the morning of the polling day, the 1<sup>st</sup> Respondent went around all 15 wards within the Nakonde Constituency distributing face masks, money and instructing all voters who were given the said face masks and money to vote for him and not the Petitioner as he had installed cameras in each polling booth and would follow up on the voting if he lost elections. Such acts were notably observed at Chilowa, Kantongo, Ntatumbila, Musanza, Nega, Mwenzo, Iwula, Ikomba, Chikoti, Mukalamba, Nankungulu, Kazembe, Chiyanga and Nakonde Primary School polling stations.

2.16. That, during the voter registration period, the 1<sup>st</sup> Respondent and his fellow PF officials facilitated the registration of foreigners from Tanzania and Malawi to acquire National Registration Cards (NRCs) and voters' cards, and in addition the said foreigners were on the polling date ferried and taken to polling stations in Musundano Village of Mukulika Ward and Mukalizi Village of Mulalo Ward among others.

2.17. That, during the campaign period, the 1<sup>st</sup> Respondent, who was favoured by Nakonde Police was allowed to hold campaign rallies using a public address (PA) system while the Petitioner was either stopped or hindered by the use of teargas by Nakonde Police each time he attempted to gather people for the

purposes of addressing them and articulating his intended developmental programs within the Constituency. That the reason given to the Petitioner by the Police for such hinderance of the Petitioner's gatherings was always said to be compliance with COVID – 19 guidelines. That the said selective application of the COVID guidelines is alleged to have had an adverse effect on the Petitioner who was not able to assemble and address voters or hold any meaningful public addresses in the Constituency.

2.18. That, the 1<sup>st</sup> Respondent was heard on several occasions during his political rallies threatening to cease Social Cash Transfer Fund payments meant for the aged and allowing for the suffering of the people within the District if he was not voted for.

2.19. That, the 1<sup>st</sup> Respondent was involved in empowerment schemes and donations for personal gain, some of which acts included the donation of desks and money to schools, marketeers and churches in various wards within the Constituency. It is alleged that desks were donated to Nakonde and Chitamawe Primary Schools and the sum of ZMW16, 000.00 was donated to marketeers at Nakonde main market.

2.20. That on the back of the aforelisted allegations, the Petitioner therefore submits that the acts and events by the 1<sup>st</sup> Respondent set out in his Petition, greatly and substantially

placed the 1<sup>st</sup> Respondent at an advantage as compared to the Petitioner and as a consequence of the aforesaid corrupt, illegal acts and electoral malpractices committed by the 1<sup>st</sup> Respondent and his election agents and campaign team, the majority of the voters in the affected areas and many polling stations were prevented from electing the candidate whom they preferred in the Constituency, that being the Petitioner.

2.21. The Petitioner therefore prays for the following relief:

1. *“For a declaration that the election of the 1<sup>st</sup> Respondent as a Member of Parliament for Nakonde Parliamentary Constituency is Null and Void;*
2. *For a declaration that the various illegal malpractices committed by the 1<sup>st</sup> Respondent and/or his agents substantially affected the Election results and that the said elections ought to be nullified;*
3. *For a declaration that your petitioner was duly elected;*
4. *For an order that the costs of and incidental to this Petition be borne by the Respondents.”*

2.22. The Petitioner's Affidavit Verifying Election Petition of 25<sup>th</sup> August 2021 substantially repeats the same allegations as set out in the Petition and exhibits various documents in support of the facts attested to at paragraphs 3, 5, 6 and 9(vii) therein.

### **3.0. THE SCHEDULING HEARING**

3.1. At the Scheduling Conference held on the 8<sup>th</sup> of September 2021 at Lusaka and attended by counsel for the respective parties, the Court issued its Order for Directions in the matter pursuant **Order 19 Rule 3 of the High Court Rules, Chapter 27 of the Laws of Zambia** and further ordered the Payment into Court of security for costs by the Petitioner in the amount of ZMW2,400.00 on or before the 10<sup>th</sup> of September, 2021 and set down the Petition for hearing at Chinsali, Muchinga Province from 4<sup>th</sup> October, 2021 to 15<sup>th</sup> October, 2021.

### **4.0. THE RESPONDENTS' CASE**

#### **THE 1<sup>st</sup> RESPONDENT'S ANSWER**

- 4.1. The 1<sup>st</sup> Respondent filed an answer to the Petition on the 9<sup>th</sup> of September, 2021, in which he stated, that contrary to the Petitioner's claim in paragraph 8 of the Petition, he was duly elected Member of Parliament for the Nakonde Constituency in accordance with the law.
- 4.2. In his Answer, the 1<sup>st</sup> Respondent denies all the allegations contained in the Petition *seriatim*, averring that in some instances neither he nor his electoral agents carried out the alleged acts and in other instances that he was not present or

anywhere near where the alleged acts took place at the said times or that he had knowledge and consent or approved the acts and that he would put the Petitioner to strict proof on each allegation at trial.

- 4.3. The 1<sup>st</sup> Respondent contends, that the Petitioner is not entitled to any of the reliefs sought in his Petition.
- 4.4. The 1<sup>st</sup> Respondent's Affidavit Verifying Answer of 9<sup>th</sup> September, 2021, repeats the averments set out in his answer.

#### **THE 2<sup>ND</sup> RESPONDENT'S ANSWER**

- 4.5. The 2<sup>nd</sup> Respondent filed an Answer into Court on the 14<sup>th</sup> of September, 2021, in which it denied all the allegations against it contained in the Petition, averring that it would put the Petitioner to strict proof on each allegation at trial.
- 4.6. The 2<sup>nd</sup> Respondent specifically denied the allegation by the Petitioner of having a right to be elected as a Member of Parliament for the Nakonde Constituency and put the Petitioner to strict proof thereof.
- 4.7. It is the averment of the 2<sup>nd</sup> Respondent that the Petitioner is not entitled to any one or more of the reliefs sought within his Petition.

**5.0. PETITIONER'S REPLY TO 1<sup>ST</sup> AND 2<sup>ND</sup> RESPONDENTS' ANSWERS**

- 5.1. The Petitioner filed his Affidavit in Reply to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Answers on the 20<sup>th</sup> of September 2021.
- 5.2. In his Affidavit, the Petitioner repeats the contents of his Petition and posits that the 1<sup>st</sup> Respondent was not validly or duly elected as Member of Parliament for the Nakonde Constituency by reason of the many corrupt activities, bribery, undue influence, illegal and serious electoral malpractices orchestrated all at the instance of the 1<sup>st</sup> Respondent and his electoral agents including his supporters.
- 5.3. The Affidavit further attests, that as a consequence of the aforesaid acts as well as the tribal remarks issued by the 1<sup>st</sup> Respondent and his Election Agents and Campaign team, a majority of the voters in the affected areas and many polling stations were prevented from electing the Petitioner as their candidate of choice as they feared further brutalization by the 1<sup>st</sup> Respondent's electoral agents, supporters or sympathizers.
- 5.4. The Petitioner repeats his assertion, that he verily believes that the 1<sup>st</sup> Respondent was not validly elected as a Member of Parliament for the Nakonde Constituency and his election into office was and is null and void *ab initio*.

## 6.0. THE 2<sup>ND</sup> RESPONDENT'S PRELIMINARY ISSUE

6.1. The 2<sup>nd</sup> Respondent filed a Notice of Intention to Raise Preliminary Issues pursuant to **Order 33 Rule 3** of the **Rules of the Supreme Court of England and Wales, 1999 Edition, Volume 1**.

6.2. The preliminary issues the 2<sup>nd</sup> Respondent asked to be determined are that;

- i. *The Petitioner did not pay the amount of 8,000 fee units as security for costs.*
- ii. *The Petition herein does not disclose any cause of action against the 2<sup>nd</sup> Respondent.*

6.3. The notice was accompanied by a list of authorities which argues that **Section 102 (2) and (3)** of the **Electoral Process Act No 35 of 2016** provides that after the presentation of an Election Petition, a petitioner shall give security for costs not exceeding the amount of 8,000 fee units as prescribed. The 2<sup>nd</sup> Respondent cited the case of **William David Carlisle Wise v. Hervey Limited (1)** in support of ground (ii) of its preliminary issue.

### **Petitioner's Opposition to the Preliminary Issue**

- 6.4. The Petitioner filed an Affidavit in Opposition to the 2<sup>nd</sup> Respondent's Notice to Raise Preliminary issue accompanied by a List of Authorities and Skeleton Arguments on the 20<sup>th</sup> of September, 2021.
- 6.5. The Petitioner in paragraph 3 of its Affidavit, confirmed to have immediately after filing the Petition on the 25<sup>th</sup> of August, 2021, filed a Notice for Payment into Court for the security for costs in readiness for payment of the 8,000 fee units translating to ZMW2,400.00.
- 6.6 The Affidavit avers that the Petitioner's Advocate, in the presence of the Petitioner, requested to make such payment for the said security for costs but was instead advised by the Registry Supervisor at the High Court Principal Registry, that the Bank Account in which security for costs for all Petitions within Lusaka were to be deposited was yet to be availed.
- 6.7. The Petitioner further posited that, at the Scheduling Conference of 08<sup>th</sup> September, 2021, the Court issued an Order for Directions which allowed for the payment of security



for costs which was duly paid into Court on the 9<sup>th</sup> of September 2021.

6.8. The Petitioner in opposing the application, argues that Paragraphs 3 and 4 and indeed the entire Petition does clearly set out a cause of action against the 2<sup>nd</sup> Respondent wherein the Petitioner states that the Returning Officer from the 2<sup>nd</sup> Respondent ECZ declared the 1<sup>st</sup> Respondent as being the duly elected Member of Parliament for Nakonde Constituency when in fact not, and this despite all electoral malpractices committed by the 1<sup>st</sup> Respondent of which the 2<sup>nd</sup> Respondent was aware.

6.9. The Petitioner's List of Authorities and Skeleton Arguments argue that security for costs were duly paid in accordance with the Order for Directions issued by the Court and indeed the provisions of **Section 102 of the Electoral Process Act No 35 of 2016.**

6.10. The Skeleton Arguments pray that the hearing on 4<sup>th</sup> to 19<sup>th</sup> October, 2021 continues and the 2<sup>nd</sup> Respondents Preliminary issues be dismissed for lacking merit with costs to the Petitioner.

#### **Ruling On Preliminary Issue**

6.11. The Court rendered its Ruling on the application prior to the commencement of trial, dismissing both grounds of the 2<sup>nd</sup> Respondent's Notice of Intention to Raise Preliminary Issues.

## **7.0. TRIAL**

7.1. Trial of the matter took place at Chinsali. This was to accord witnesses who would otherwise have been unable to attend Court at Lusaka, a nearer location for their attendance.

### **Petitioner's Evidence at Trial**

7.2. The First Witness for the Petitioner (**PW1**) was **Adam Chimfwembe** a clearing agent. He testified that on 7<sup>th</sup> June, the United Party for National Development (UPND) held a youth meeting at the UPND Secretariat in Nakonde which he attended and while there he received a phone call from the Muchinga Provincial Youth Chairman one Misheck Kabwe informing him that he (Mr. Kabwe) and other party officials were at the Police Station in Nakonde reporting a matter but were afraid to exit the Police Station because a lot of Patriotic Front (PF) supporters had crowded the outside of the said Police Station. That Mr. Kabwe requested PW1 to make his way to the Police Station with Four (4) other people and he did as was told.

7.3. According to the Witness, he arrived and parked near Nakonde Police Station in a taxi with four (4) other people he did not name and found more than twenty (20) PF supporters outside the Police Station. The Witness further stated that he decided to leave the people he was with inside the taxi and proceeded on his own toward the entrance of the Police station to meet his colleagues.

7.4. The Witness testified that as he made his way through the crowd and toward the entrance of the Police Station people within the crowd began to shout saying *"this is kamwemfu whom we want"*. The Witness was then taken into the Police Station by Police Officers who, according to him, told him to go in or else he would be killed.

7.5. The Witness further testified that inside the Station, he was taken to the inquiries area and put behind a table. He told the Court that a man whom he had found in Police custody told the Police that he (PW9) is the one this person broke a vehicle with.

7.6. According to the Witness, specifics of the said incident he was accused of, were not availed to him. The Witness further told the Court that one Aaron Sichimata the employer or boss of the person he had found in custody asked how much the cost of

repair to the damaged vehicle was and he was told that it was pegged at ZMW3,800.00. Mr Sichimata who is a taxi driver and also a member of the UPND party according to the Witness, then paid the said sum.

7.7. The Witness (PW1) testified that the Police then went on to accuse him and the person in custody of having assaulted someone and before statements could be taken, he heard shouting from unknown people who stated that UPND officials were outside the Police station.

7.8. The Witness stated that he then realized that leaders of the UPND had arrived outside the Police Station and he saw the following people: Passion Sinyinza, Emmanuel Mwamba, Ackim, whose last name he did not know and a fourth (4<sup>th</sup>) person whose name he did not know.

7.9. According to the Witness, the PF members who had been crowded outside had among other vehicles a PF branded minibus, a brown range rover –owned by the 1<sup>st</sup> Respondent and a Fortuner – white in colour, wherein the PF candidate, Luka Simumba was seated.

7.10. It was PW1's evidence that PF supporters among them: persons he knew as Pungwa and Zondi, armed with weapons such as screw drivers and iron bars got hold of Mr. Mischeck Kabwe, the UPND Youth Chairman, and began beating him with the said weapons for the reason that he is a member of the UPND. When PW1 attempted to get up and rescue Mr. Kabwe he was allegedly restrained by the Police who told him that he was going to get killed if tried to do so. The Witness stated that all this occurred in the presence of the 1<sup>st</sup> Respondent who was seated in his vehicle.

7.11. It is the Witness' testimony that an injured Mr. Kabwe ran towards the Police Station and when inside was placed in custody together with PW1 and the both of them were charged by the Police for assault.

7.12. The Witness testified that he was only released on Police bond after four (4) days as several prior attempts were denied by the Police. He further stated that at the time of his release, campaigns had been closed by the 2<sup>nd</sup> Respondent because of the said happenings.

7.13. PW1 also told the Court that sometime in August he and other members of his party put up some campaign flags and posters of the Petitioner and his Party within Nakonde town center PF members known by the names of Kapilipili and Slim tore down.

7.14. Following this incident, PW1 stated that he, together with other persons unnamed, went to the Police Station within the district asking the Police to help summon the leaders of the PF in order that a resolution could be struck between members of the two parties. It was his evidence that leaders of both parties agreed to sit down and resolve the issues between them.

7.15. The said meeting was, according to the Witness, attended by four (4) UPND officials i.e., PW1 being a district youth chairman, one Metus a district vice chairman and one Mr. Machila a district top secretary and another person unnamed. The Witness stated that the PF were also represented by four (4) of their officials who in the meeting introduced themselves as: a constituency chairman, two from the security wing of the party and one other from the district structure.

7.16. The Witness informed the Court that before conclusion of the meeting the PF Constituency Chairman whom he did not name shouted that that the area the UPND was operating in was a PF stronghold and therefore they (the PF), would not allow another party's campaign materials. The Witness testified that Mr. Phiri the Policeman, who was chairing, disagreed saying he wanted that all parties should put up materials. The meeting resolved and it was agreed that each party would be

allowed to place its campaign materials within Nakonde without interference.

7.17. PW1 further testified that when the parties were asked to agree to the same in writing the PF officials refused to do so and the meeting was at that point called at an end. The Witness stated that following the end of the meeting he tuned in to radio *Chete* when the 1<sup>st</sup> Respondent was being hosted on radio. It is his evidence that during the question time the 1<sup>st</sup> Respondent was asked why his people were taking down UPND campaign materials and his response was that the area was a PF strong hold and anyone from the opposition that intended to put up flags or posters was to do so from Katongo area (a place 30km from town) and beyond. The Witness stated that upon hearing that response, he concluded that all members of the PF party were aware of the removal of posters, flags and violence and had perpetuated the same because the responses given in the meeting, he had attended were similar to the responses given by the 1<sup>st</sup> Respondent on radio.

7.18. In Cross-examination, PW1 confirmed the reason he went to Nakonde Police Station in the company of four other people was because the UPND members had called for him and were inside the Police Station and were afraid to go outside the Station. He did confirm that this reason remained valid

irrespective of the fact that he had left the other four (4) passengers at a short distance away inside the taxi and made his way into the Police Station on his own.

7.19. The Witness also stated in cross-examination, that on the said date he was charged with the offences of malicious damage and assault at Nakonde Police Station and had been and was still appearing before the Subordinate Court in Nakonde for these offences. The Witness also confirmed that in mentioning the 1<sup>st</sup> Respondent's vehicle he did not mention the registration number of the said vehicle he claimed was owned by the 1<sup>st</sup> Respondent. PW1 also stated that he did not have any pictures to confirm that the 1<sup>st</sup> Respondent's vehicle was parked outside Nakonde Police Station on the said date as per his testimony in chief.

7.20. When further interrogated on whether he had pictorial or video evidence of the 1<sup>st</sup> Respondent at the Police Station on the date specified, the Witness answered in the negative and stated that him having seen him for himself was proof of his allegation.

7.21. The Witness did also state in cross-examination, that despite being a leader in the UPND, he was unaware of whether there was any official notification or letter from the 2<sup>nd</sup> Respondent that campaigns in Nakonde had been closed due to violence.



The Witness was not cross-examined by the 2<sup>nd</sup> Respondent. There was no re-examination.

**7.22. PW2, was Jackson Chomba** a clearing agent from Nakonde.

PW2 testified that on 7<sup>th</sup> June, 2021 at around 11:00 hours in the morning, while headed to the Zambia Revenue Authority (ZRA) Customs Office at Nakonde border to inspect some documents, he witnessed a man wearing PF regalia placing PF Chitenge material on a banner that the UPND had already stuck campaign material on. The Witness stated that this occurrence was in Ikumbi Ward.

7.23. PW2 testified that he left for the customs yard and upon his return at 13:00hrs, he heard noise coming from the same place he had passed before and when he turned to look, he saw a small crowd of about ten (10) men. Among these men were Gabriel Phiri and Kennedy Sikaonga whose nick name is Tao, members of the PF party. PW2 stated that he witnessed these men who wore UPND regalia taking down the UPND material at the said location and decided to take pictures and videos of the same using his mobile phone. According to the Witness one male Gabriel Phiri waited in the driver's seat of a vehicle while the others took down the said material. The Witness identified the person at the centre of page 13 of Petitioner's Bundle holding an iron bar as Kennedy Sikaonga.

7.24. PW2 told the Court that the group of men was armed with catapults, machetes, iron bars and taser guns and once Gabriel Phiri noticed PW2 taking pictures he instructed the crowd to apprehend PW2. PW2 stated that he was then pursued and surrounded by the group and that he was only rescued by members of the public.

7.25. According to PW2 he then decided to send the pictures and videos he took on his mobile phone to the one Mr. Derrick Banda the UPND Chairperson who advised him to report the said incident to the Police. PW2 stated that he took a motorbike to Nakonde Police Station to report the said indent and upon his arrival found many members of the Patriotic Front inclusive of the ones that he had met earlier outside and at the entrance of the station and was afraid to go in but still managed with the help of an officer to gain entry to the Police Station.

7.26. PW2 stated that upon his entry into the Police Station he witnessed PF leaders leaving the office of the Police Inspector as he was being referred to the office of the Criminal Investigations Officer (CIO) of the Police Station. While in that office it came to PW2's attention that dockets had been opened within the station wherein he was named as having assaulted

Isaac or Haggai Sinkala and Kennedy Sikaonga and the Police locked him in an office.

7.27. The Witness testified that while locked in the office, he heard commotion outside and when he was let out, he found one Misheck Kabwe, who was injured and he gave Mr. Kabwe First Aid by tearing his vest and wrapping it around his bleeding head. PW2 further stated that he was taken back into the office while Mr. Kabwe was taken to hospital.

7.28. PW2 stated that the reason he did not report the incident that had occurred to him was because he was told that one Isaac or Haggai Sinkala and Kennedy Sikaonga who were the driver and an employee of the 1<sup>st</sup> Respondent had already reported to the Police that they had been assaulted by the Witness.

7.29. PW2 stated that he stayed in Police custody and later appeared in Court charged with assault. He told the Court that his accusers in the said assault case did not show up at Court and the matter was later withdrawn on grounds of reconciliation.

7.30. In **cross-examination**, PW2 testified that he found it wrong for a member of one party to wear the regalia of another especially when committing a wrong doing because the same was used as a disguise.

7.31. When referred to page 13 of the Petitioners Bundle of Documents by the 1<sup>st</sup> Respondent's Counsel, PW2 stated that the person he had earlier identified in the picture as Kennedy Sikaonga was not dressed in anything that had the PF party name but said that the pieces of cloth on his head and neck are what caused the Witness to identify him as a member of the PF. The Witness further stated that the 1<sup>st</sup> Respondent was not in the picture referred to.

7.32. **PW2 in cross – examination**, also confirmed that he was not present when Mr. Kabwe was allegedly assaulted though Mr. Kabwe did tell him who had assaulted him. PW2 further gave evidence that he regarded all the acts he testified about, as electoral malpractice and stated that he did report the said acts to the 2<sup>nd</sup> Respondent's Conflict Management Resolution Committee, though a copy of his complaint was not before the Court. The Witness was not Cross-examined by the 2<sup>nd</sup> Respondent. There was no Re-examination.

7.33. The next witness **PW3** was **Joseph Sinyinza**, a clearing agent of Katozi village. The Witness testified concerning events of 5<sup>th</sup> August, 2021, stating that at a camp known as 'barrack', ran by the 1<sup>st</sup> Respondent, the 1<sup>st</sup> Respondent accommodated people called *manguluweni* who attacked people in Nakonde

during the night. PW3 told the Court that he did on the said date see vehicles parked outside the said camp being a white Toyota, a white Toyota Fortuner, two Ford Rangers – one white and the other brownish gold and three land cruisers – one white, another black and another green in colour.

7.34. PW3 further testified that on the said date these vehicles ferried the said *manguluweni* to Wulongo Check-point in the Nakonde Ward and when they returned to the camp to make a second trip he followed them behind in his Toyota Allion. The Witness stated the vehicles later stopped at a location near Wulongo Check-point as he as well stopped at a close distance to continue his observation. That all the people in the vehicles disembarked and he recognized some of them whom he referred to as Kapilipili and Pungwa. He further mentioned that the driver of the black Land Cruiser was King and the driver of one of the other vehicles among the convoy was known as Mweemba. The Witness testified that all vehicles were owned by the 1<sup>st</sup> Respondent.

7.35. PW3 stated that later that day at 14:00hrs, he and some other people were tasked with the duty of meeting the then UPND Party President and Presidential Candidate who is the current Republican President Mr. Hakainde Hichilema at Wulongo Check-point. He was visiting Nakonde District. The Witness stated he and the others accompanying him, mostly youths

made their way to Wulongo Check-Point in a convoy consisting of Two (2) Fuso trucks a Canter a vehicle belonging to the Petitioner. It is the Witness's evidence that stones were thrown at their convoy a few meters before the Wulongo Check-point.

7.36. PW3 testified that the people throwing stones at the convoy could not be seen as they were hiding behind buildings and bushes which prompted the two vehicles in the convoy to park at open areas near the Wulongo check-point for safety and the said attack ceased. According to the Witness, some minutes later the UPND President's motorcade, in the company of the Petitioner, arrived and the Policemen at the check-point blocked the way using the check-point barricade to prevent the motorcade from crossing over into the Nakonde area. According to the Witness, none of the people at that place dispersed and the Police began firing tear gas at them forcing their dispersal from that area.

7.37. PW3 further testified concerning a similar stoning incident occurring at around 19:00hrs on the same date during a public address at ZANACO area hosted by the UPND President and the Petitioner. He stated that while gathered at the said location stones began to be thrown towards the direction of the speakers and the crowd causing disruption of the meeting. The Witness reiterated that on this occasion he as well could not

identify the people that threw the stones as it was dark at that time of day. The Witness was not cross-examined by the 2<sup>nd</sup> Respondent. There was no Re-examination.

7.38. In **Cross – examination**, the Witness stated that he could not recall the registration numbers of the vehicles he had listed in his evidence in chief but could only recall their colours. The Witness further gave evidence that he did report the attacks on residents of the said *manguluweni* to the Police but had not tendered any Police report before the Court to prove the same.

7.39. The next witness **PW4**, was **Friday Sinkonde**, a farmer of Chilonga village. **PW4** testified that on the 11<sup>th</sup> of August, 2021, while in a shop called Willard Simutowe in Kokomozi Ward in Chilonga village, one Steven Silwizya who was at the said location with him received a phone call instructing him (Mr Silwizya) to gather people because Lucas Simumba was on his way to give out some money. PW4 stated that a short while thereafter, the 1<sup>st</sup> Respondent then arrived and handed the owner of the shop one Mr. Willard Simutowe a sum of ZMW300.00 for the purpose of purchasing Mojo drink because according to the 1<sup>st</sup> Respondent they were to vote “*pa maka*” i.e., with the hand showing the PF salute, the following day. According to the Witness the said Mojo drink was purchased

and distributed to people around and they left women drinking and later proceeded to a local bar in the same location.

**7.40. PW4** stated that he followed close behind while the 1<sup>st</sup> Respondent in the company of one Christopher Sinyangwe proceeded with the crowd of people to the nearby bar and the 1<sup>st</sup> Respondent bought two jerry-cans of beer and pork. The Witness stated that the 1<sup>st</sup> Respondent and Mr. Sinyangwe then proceeded to Nakonde leaving the crowd drinking alcohol inside the bar.

**7.41. PW4** further testified that on the 12<sup>th</sup> of August 2021 he got up early in the morning and went to Waitwika Polling Station to cast his vote. After he cast his vote at around 09:00hrs he witnessed the 1<sup>st</sup> Respondent arriving at the Polling Station. According to the Witness, he noticed a vehicle on the road leading to the Chief's home and he sent two boys: Juniour Simfukwe and Lameck Siame to approach the said vehicle. It is PW4's further evidence that both boys were handed ZMW300.00 wrapped in masks by whoever was in the vehicle. **PW4** stated that as they showed him the money and told him that the people, they had received the money from told them to go and vote "*pa maka*", meaning for the PF as that is their slogan.



7.42. In **Cross-examination, PW4** stated that the act of the 1<sup>st</sup> Respondent buying Mojo drinks worth ZMW300.00 and beer worth ZMW300.00 seemed to him as an act of malpractice and not an act of generosity. The Witness however stated that he neither reported the said acts to the Police nor the 2<sup>nd</sup> Respondent. The Witness further stated that though he had not brought other evidence such as pictorial evidence, his testimony that the said acts did occur was sufficient proof as he saw the events. The Witness was not cross-examined by the 2<sup>nd</sup> Respondent. There was no Re-examination.

7.43. The 5<sup>th</sup> Petitioner's Witness (**PW5**) **Lastone Banda**, a farmer from the Chisesi Village in Nakonde District, testified that following a meeting on the 5<sup>th</sup> of August 2021 in Mumumba Ward at whose conclusion the 1<sup>st</sup> Respondent stated that *"I am asking for a vote... you shouldn't worry on 12<sup>th</sup> you will eat beef."* The Witness said that he found beef, 5 bags of mealie meal and a bucket of cooking oil at his wife's home, Mirriam Nambela in Ilola ward where she is a village headwoman on the 12<sup>th</sup> of August. That upon PW5 making further inquiry concerning the foodstuff, he was told by his wife that it was none of his concern because he was UPND and the foodstuff was for the PF.

**7.44. PW5** informed that Court that he proceeded from his wife's home to visit some polling stations as he was at the time an election monitor for all polling stations in Mumumba Ward. He stated that on the 12<sup>th</sup> of August 2021 he visited nine (9) polling stations within the ward and received various complaints from members of the UPND party who complained that they had been excluded from the feasts of nshima and beef enjoyed by PF party members only.

7.45. In **Cross – examination** the Witness testified that he did not witness the 1<sup>st</sup> Respondent buy the said food allegedly shared out to PF party members, but was told the same by people who he found the foodstuff with. The Witness was not cross-examined by the 2<sup>nd</sup> Respondent. There was no Re-examination.

7.46. The 6<sup>th</sup> Petitioner's Witness (**PW6**) **Arthur Sinyangwe**, a farmer from Kanyonga Village in Nakonde District testified on events that occurred on the 9<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup> of August, 2021. He told the Court that on 9<sup>th</sup> of August, 2021, at the advice of one Edison Sinkala, he in the company of another person proceeded to an unnamed location where food stuff was being distributed. It was the Witness's evidence that he saw one Nachimata (Female), Edison Sinkala and Mathews Siame distributing mealie meal and cooking oil at the said location.

7.47. According to the Witness, on 10<sup>th</sup> of August, 2021, the 1<sup>st</sup> Respondent bought two cows, one from Mr. Enock Sikaonga at the price of ZMW5,000.00 and the second from Mr. Edison Sinkala at the price of ZMW3,000.00. The Witness stated that the said Mr. Sikaonga is the one who made these purchases on behalf of the 1<sup>st</sup> Respondent and the same were slaughtered on the 11<sup>th</sup> of August 2021 and the beef kept in sacks. The Witness stated that some persons whom he did not name gave instructions that only people who would vote for the 1<sup>st</sup> Respondent would benefit from the distribution of the beef on the 12<sup>th</sup> of August 2021.

7.48. PW6 stated that on 12<sup>th</sup> August, 2021, when he passed through the home of one Mathews Siame, he noticed another cow that was purchased at the price of ZMW2,000.00 had been slaughtered and was being distributed to, among others, Namwila, Nambeya, Joyce and Queen Nalwimba on instructions that any person who received any of this beef was to vote or should have been returning from voting for the 1<sup>st</sup> Respondent. **PW6** further stated that such instruction came with the warning that there was a camera in the polling booth and consequences would follow those who did not adhere to such instruction. PW6 therefore stated that he took some of the beef and proceeded to vote for the 1<sup>st</sup> Respondent because he believed it would not be well with him if he did not.

7.49. In **Cross – examination**, the Witness confirmed that this was not his first time to vote and he found what was said about cameras being placed in the polling booth strange. The Witness further stated that he did not find a camera in the polling booth and therefore the alleged threats could not have influenced him in any way. The Witness was not cross-examined by the 2<sup>nd</sup> Respondent. There was no Re-examination.

7.50. The 7<sup>th</sup> Witness for the Petitioner was (PW7) **Mr. Paul Ngenda** of Tenga Village. **PW7** informed the Court that on 11<sup>th</sup> August, 2021, as he was seated beside the shops at a place called Tenga when he saw the 1<sup>st</sup> Respondent's Toyota Hilux approach. The Witness stated that people around that area went to the vehicle to greet the occupants and the 1<sup>st</sup> Respondent who was among the people inside the vehicle told the crowd that because of their warm welcome, he would leave them pleased and further instructed them to cast a vote in his favour on 12<sup>th</sup> August, 2021. It was the Witness's evidence that the 1<sup>st</sup> Respondent summoned one Dyness Nankamba, a lady working in a nearby bottle store, gave her ZMW300.00 and instructed her to distribute both beer and drinks to people in the crowd. The 1<sup>st</sup> Respondent further informed the crowd, according to the Witness, that on the 12<sup>th</sup> of August 2021 after the polls, all who would've voted for him should proceed to one Dorica Lumpa's house to have a meal of nshima and beef.

7.51. In **Cross – examination**, the Witness testified that he did not pay particular attention to the number plate of the said Toyota Hilux. The Witness also stated that he did not bring to the Court any video or pictorial evidence showing the 1<sup>st</sup> Respondent giving out the money aforementioned. The Witness was not cross-examined by the 2<sup>nd</sup> Respondent. There was no Re-examination.

7.52. **PW8, Kelvin Siwale**, a business man of Chilolwa in Nakonde District gave evidence that on the 12<sup>th</sup> of August, 2021, he was a UPND polling agent at Chilolwa Polling Station and while there, immediately after his handover to a fellow agent one Salome Nachimata, he witnessed the 1<sup>st</sup> Respondent in the company a Mr. Lackson Simukombe – the Ward Councilor and a Mr. Alex Simbeye – a campaign agent, arriving at the Polling Station. He stated that he saw the 1<sup>st</sup> Respondent handing out face masks to people in a queue. That he raised a complaint concerning the said issue to the Presiding Officer at the Polling Station whom he did not name but described as the headmistress of the school where the station was located. PW8 further stated that the headmistress directed him to a Police Officer named Simwanza whom he also told of the events telling him that only 2<sup>nd</sup> Respondent had the authority to hand out face masks.

7.53. **PW8** stated that following this, the Police Officer, in his presence, stopped the 1<sup>st</sup> Respondent from continued distribution of masks. That the 1<sup>st</sup> Respondent then allegedly called the PW8 aside and handed him a ZMW50.00 which he told him to buy a drink and water for himself, and the 1<sup>st</sup> Respondent went into his vehicle. That as PW8 made his way out to buy the said items the 1<sup>st</sup> Respondent allegedly called for him again and handed him a mask that had a ZMW20.00 note inside it and left. PW8 stated that he did inform the ward chairman who told him to keep the money and the mask and call him if anything. That many people were given masks.

7.54. In Cross – examination, the Witness further testified that he did report the 1<sup>st</sup> Respondent to the Presiding Officer and the Police for the second time after he was handed the ZMW20.00 note but did not show her the ZMW50.00 note because he was told to buy food and a drink with it and saw nothing wrong with this. PW8 also testified that he did report this incident to the 1<sup>st</sup> Respondent and gave his report to the 2<sup>nd</sup> Respondent on the Form Gen 20 though the same was not brought as evidence before the Court. The Witness was not cross-examined by the 2<sup>nd</sup> Respondent. There was no Re-examination.

**7.55. PW9, Edwin Simusamba** a farmer, village headman and Chiefs

Advisor residing in the Izuwa Village of Nakonde testified that on the 12<sup>th</sup> of August 2021 in the early hours of the morning he and the mother of his child proceeded to Makalizi Polling Station in Mulalo Ward to cast his vote. PW9 stated that immediately after voting while he was buying a drink from a stand opposite the Station. The Witness testified that, he noticed a land cruiser that was dark grey in colour and had no number plate parked near where he was standing. It is his testimony that he was called by the occupants of the said vehicle and when he approached, he saw four people inside it, two of whom he identified as Suwi and one Wila Simutanda. The Witness also noticed two pistols on the glove box inside the car. It is his evidence that while he stood close, the occupants began to question him asking what authority he had to stop Tanzanians from “coming to vote”. He then responded, asking where they had gotten this information from and the said occupants of the vehicle told him that he had advertised the same at a funeral.

7.56. According to the Witness, the said men took his phone to call the 1<sup>st</sup> Respondent and they discovered he had the 1<sup>st</sup> Respondents number saved on his phone which made them more aggressive and began questioning him about how he obtained the said contact. **PW9** stated that when the said men began to raise their voices, it caught the attention of people

nearby who began to approach the vehicle and the Witness took that opportunity to flee the scene.

**7.57. PW9** further testified that, later that day between 12:00 and 13:00 hours, as he stood at a lay-by near his home, he saw One (1) fuso truck full of Tanzanian nationals driven by Wila and a land cruiser driven by Suwi. He stated that the said vehicles went to his home and he noticed that a person he identified as one Laska Sikombe being held at gun point inside the land cruiser. According to the Witness, Suwi called to him saying "*you are the one we want*" and told him that they had apprehended Laska Sikombe whom the Witness had sent to block the road near his (PW9's) farm with logs to prevent the entry of Tanzanian nationals. It is at this point that Wila and some other people began to verbally and aggressively order PW9 to follow them. This raised the attention of people that were nearby and caused the aggressors to flee the scene.

7.58. PW9 stated that he immediately called the Petitioner to inform him that Laska Sikombe had been abducted and was being held gun point. PW9 stated that he also informed others being Chieftainess Waitwika and the Police Deputy CIO in Nakonde one Mr. Simusamba who responded that he could not do much as he did not have man power as most of his men were in polling stations at the time. That the Petitioner came to the



Polling Station and left. Laska was later released. The Witness was not cross examined by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

7.59. The 10<sup>th</sup> and final Witness (**PW10**) for the Petitioner was the Petitioner himself Mr. **Simon Patson Simwanza** a businessman of Katozi village in Nakonde. He began his testimony by giving details of the demographic makeup of Nakonde District. He stated that Nakonde is a District that is partly rural and partly urban and the same has Fifteen (15) wards namely: Nakonde, Ikumbi, Old Fife, Musele, Mpande, Mukulika, Musiyani, Ngumba, Muchinde, Mulalo, Kokomozi, Mwanga, Isunda, Ilonda and Chiwanza Wards. He stated that Nakonde central business district comprises three (3) wards being: Ikumbi, Old Fife and Nakonde Ward. He Further told the Court that three (3) Wards account for close to half registered voters i.e., Ikumbi Ward had registered voters numbering of 12,536, though only 6,094 voted; Old Fife Ward has 9,652 though only about 6,032 voted; and Nakonde Ward had 9,532 registered voters, but only 6,013 voted. The total registered voters are 63,178.

**7.60. PW10** informed the Court that in the Presidential and General Elections of the 12<sup>th</sup> of August, 2021, he was the UPND Parliamentary Candidate running against two others; one from the Patriotic Front party and another from the Socialist

Party. He stated that he is aware that during or just before the beginning of the campaign period, the 1<sup>st</sup> Respondent acquired a property which was formerly a lodge called Brookes Garden. He stated that the lodge is situated adjacent to the Nakonde Civic Center.

7.61. The Witness testified that there was a group in Nakonde that was at the center of criminal activities such as rape, assault and murder and the group was known as the “*manguluweni*.” **PW10** stated that he did not know who led or owned the group, but did, around the time of campaigns, come across a Facebook post by Radio Chete, a local radio station where he watched a video of the 1<sup>st</sup> Respondent holding a rally in Chiyanga village of Nakonde at which, whilst on stage, he invited people whom he referred to as the *manguluweni*, telling people that he had given the said *manguluweni* jobs and they would no longer be a terror to the community. He stated that one of the Manguluweni went on stage and addressed the crowd stating that the 1<sup>st</sup> Respondent had bought them boots and given them work to do. PW10 stated that he later made the effort to check within the formal institutions such as education, health and the Council to see if he could find any of the members of the said *Manguluweni* employed there but did not succeed in his search as he had found none.

**7.62. PW10** told the Court that following these investigations, he later discovered that the said *manguluweni* had been accommodated at the 1<sup>st</sup> Respondent's lodge as well as some officials of the PF party under the youth wing namely, one Samuel Kasonde AKA Zondi the PF Youth Vice Chairman, Alan Musachi AKA Kapilipili, Miracle Dube AKA Slim, Niza Chella and Clifford Pampa. PW10 stated that the said lodge was referred to as a "command center" by the 1<sup>st</sup> Respondent and the area was not to be visited by just anyone because such visit would result in trouble for any inquisitive person or visitor.

7.63. PW10 testified that following his acquisition of UPND party regalia which included posters with his image as a parliamentary candidate and UPND Chitenge material, which he displayed in the town center he noticed on one particular day that people from the PF command center made their way to the town center and began tearing down the said posters and party regalia. The Witness testified that they advanced toward the town center in the same manner as a protesting mob and were dressed in PF regalia and armed with weapons such as machetes and iron bars. PW10 stated that he called the Police Commanding Officer a Mr. Simwanza for assistance who told him he would work on the matter. The Witness stated that the Police were in a land cruiser following and watching the mob tear down the UPND party regalia and chitenge's hang

up as flags and the Police only escorted the mob out of the town center without any further repercussions for the said acts.

7.64. PW10 testified that in the same manner and on a different unspecified date, at a place called Malawi station near his residence, a mob from the PF command center stormed the station and took down UPND campaign material and proceeded to beat up people that were found in the area as well as destroy their tools of trade or business. The victims of the said attacks did, according to the Witness' report to the Police the following morning and were given medical report forms which are before the Court at page 42, 43 and 44 of the Plaintiffs Bundle of Documents. The Witness stated that despite dockets having been opened for the said incidents of assault, the matters had not been actively pursued by the Police.

7.65. The Witness told the Court that the UPND and other opposition parties were at the time under serious oppression from the PF party which was the ruling party then, saying the said party used State machinery such as the Police to punish and intimidate the opposition. PW10 stated that even after having re-affixed the UPND posters and flags within the town center, the mob of *manguluweni* from the PF command center on the 7<sup>th</sup> of July, 2021 tore them down once again, and this third

incident was captured on video and witnessed by a UPND party member who subsequently booked a motorbike and rushed to the Police to report the incident.

7.66. It was the Witness' evidence, that as he and another party member, whose name he did not mention, arrived at the Police station, he found that the PF party members had also made their way to the Police station in their personal and branded vehicles. According to the Witness, these are the same people that assaulted the UPND Chairman one Misheck Kabwe right outside the Police station and evidence of Mr. Kabwe's injuries was, tendered before Court in the form of pictures and a video at page 9, 11 and 12 of the Plaintiff's Bundle of Documents.

7.67. PW10 testified that these happenings caught the attention of the 2<sup>nd</sup> Respondent who banned PF and UPND campaigns within Nakonde Constituency for 14 days. The Witness testified that this ban was effected in the month of July but on dates he could not recall and the same was only against the PF and UPND parties while other parties could freely campaign within the area.

7.68. It was PW10's testimony that prior to the close of campaigns, he did on an unspecified date visit the Conflict Resolution

Team chaired by a Mr. Bango Raphael Khondowe (now deceased), who told him that he could not set up a meeting between the Petitioner and 1<sup>st</sup> Respondent because the latter would not attend. It was at this point that the Witness says he made a personal effort to call the 1<sup>st</sup> Respondent who in their conversation stated to him that he was not involved in anything and that the Petitioner needed to speak to his people if he (the Petitioner) and his people were inciting or involved in any violent acts. The Witness said that the phone call ended there.

7.69. PW10 told the Court that acts of violence in Nakonde Constituency continued and the same got the attention of the Police Commissioner of Muchinga Province, one Miss Lizzy Machina who summoned members of the UPND and the PF for a meeting. At the said meeting attended by: the 1<sup>st</sup> Respondent, one Manfred Sinkala – PF District Chairman, Patrick Singoyi – PF constituency Chairman, The Petitioner himself, one Derrick Banda – UPND District Chairperson, one Edward Silomba – UPND Constituency Chairperson and one Michael Sinkala – UPND constituency Treasurer, a verbal agreement was reached by the parties. However, when the Commissioner suggested that PW10 and the 1<sup>st</sup> Respondent go to any radio station to denounce violence and encourage peace to assure the people, the PF District Chairperson stated that the Respondent would only do so after some consultations were made. According to

the Witness, the said joint radio statement was never made though he later heard the 1<sup>st</sup> Respondent on radio saying that though the UPND were desirous for their regalia to be stuck in the Nakonde town center, they should go to far off Wards outside town such as Chiwanza and Mwanga which wards had around 1500 – 2000 voters. It was the Witness' testimony that he continued to witness acts of violence within Nakonde Constituency and he therefore decided to advise his party members to stop putting up UPND campaign materials for their own safety.

7.70. PW10 further testified that other unfair acts during the campaigns involved how COVID – 19 Guidelines were applied toward the UPND. He testified that he personally was neither allowed to campaign with more than one vehicle nor a public address system. The Witness also stated that each time he gathered groups of people for his campaigns, the Police acting under the influence of the 1<sup>st</sup> Respondent would disrupt the said campaigns. The said Police were, according to the Witness, empowered by the 1<sup>st</sup> Respondent and would on occasion use his personal private vehicles to carry out their patrols.

7.71. PW10 recalled, an occasion on an unspecified date, when the Vice - Presidential Candidate of the UPND visited Nakonde

Constituency to support him, the Police restricted them from having any gatherings or visiting any places until her departure. That the Police in riot gear stormed the UPND Secretariat where she was meeting a small group of party officials and escorted her out of the District. The Witness stated that on 5<sup>th</sup> August, 2021, the UPND Presidential Candidate also visited Nakonde Constituency to render support. That to his surprise, he saw the 1<sup>st</sup> Respondent's vehicle ferrying people to the Wulongo check-point at 10:00hrs in the morning though did not think much of it. The Witness stated that he recognized the people being ferried in the 1<sup>st</sup> Respondents vehicles as people from the PF command center and identified Paul Bwembya and Samuel Kasonde (Zondi) among the said crowd. The Witness stated that his vehicle was hit with a stone right before Wulongo check-point but he did not know or inquire where it had been thrown from. PW10 further testified that the people ferried toward Wulongo check-point realized that they had been outnumbered by supporters of the UPND and decided to flee the area. The Witness testified that one Mr. Phiri, a Police officer who was at Wulongo check-point grouped other officers who stood in the way, preventing entry of the Witness and other UPND members beyond Wulongo check-point. The Witness stated that despite their pleas, Mr. Phiri stated that he was working under instructions but refused to give the identity of who had instructed him. PW10 stated that the Police then threw tear gas cannisters toward the Witness and his people and fled the scene. The Witness stated that the



tear gas caused harm and injury to him and some people with him and by the time he made effort to locate the UPND Presidential Candidate the time was between 18:00 and 19:00 hours and no public address could be made by him. The Witness stated that the UPND Presidential Candidate had to entreat the Police to seek accommodation within the Nakonde Constituency. The Witness stated that the 1<sup>st</sup> Respondent in contrast did on the other hand received an entourage of PF members such as one Chishimba Kambwili and was allowed to hold public addresses within Nakonde a few days before the 12<sup>th</sup> August, Presidential and General Elections.

- 7.72. PW10 further testified that the afore mentioned PF functionaries and many more including the former Foreign Affairs Minister Mr. Malanji did visit the Constituency in support of the 1<sup>st</sup> Respondent and handed out money at markets, though pictorial evidence of the same could not be acquired for fear being assaulted and other acts of violence. The Witness stated that the said practice of handing out money was common place for members of the PF party including the 1<sup>st</sup> Respondent who engaged in such acts and video evidence at page 45 of the Bundle had been produced to the Court as evidence. The said video within the bundle showed the witness telling a crowd of people: *"I have left this ZMW16,000. You will see what you are going to do with it."* The Witness also testified that he did notice the 1<sup>st</sup>

Respondent's vehicles had prior to the election period been branded 'voter registration facilitated by Looknet Company owned by the 1<sup>st</sup> Respondent.

7.73. The Witness stated in his evidence that following the elections, he carried out surveys and made note of many concerning issues. Firstly, the Witness stated that while going through the Voters Register for Musundano Polling Station in Nkulika Ward, he noticed that a person whom he knew well as one Mr. Alfred Siame or Chief Kameme of Malawi was among the voters listed in the Register and upon further perusal his sub-chief one Mr. Boyd Siame was also among the voters listed in the Voters Register. The Witness stated that he was able to retrieve a Malawian citizenship card and voters' card from a lady who had been in the voters register at Mukumbe polling station and the same was produced in the Bundle of Documents.

7.74. The Witness testified that during the period of voter registration, the 1<sup>st</sup> Respondent, through his company and using his resources, facilitated the registration of voters by ferrying them to nearby polling stations. The Witness stated that during the period after the election he found carcasses of animals in many different areas and was given information by local residents of those places that voters in those areas were being given meat and other foodstuff for voting. It was therefore

the Witness' conclusion upon the gathering of the said information that he did not lose the said election and the same was not conducted fairly.

7.75. In Cross – examination, the witness testified that he formerly held the position of District Youth Chairman in the PF party and left that party to join the UPND when he was not selected to represent the party as parliamentary candidate following the party adoption process. The Witness however clarified that he was not bitter concerning that turn of events.

7.76. The Witness also confirmed that none of the picture and video evidence tendered before Court showed the 1<sup>st</sup> Respondent engaging in alleged acts of assault, tearing down of the UPND campaign material and destruction of makeshift stores. PW10 further stated that there was no picture or video evidence showing the said demolition or destruction of makeshift stores.

7.77. PW10 stated further that there were no Police statements produced before Court regarding the alleged illegalities of assault and demolition of makeshift stalls despite the same having been reported to the Police. Concerning the testimony that the 1<sup>st</sup> Respondent said that the UPND should display campaign material in wards further than the Nakonde town,

the Witness stated that he had not tendered any other evidence to support this testimony.

7.78. In relation to the testimony and video evidence wherein the 1<sup>st</sup> Respondent gave out ZMW16,000.00. The Petitioner stated under cross – examination, that he knows of the 1<sup>st</sup> Respondent runs a company called Looknet but was not aware that the same was into charity works. The Witness clarified that the said video evidence produced had no date and it was not possible to tell when the said video was taken. The Witness stated that none of the people shown within the video – the 1<sup>st</sup> Respondent included, were dressed in political party regalia.

7.79. PW10 however stated that the video he produced did contain a campaign message and highlighted the statement of the 1<sup>st</sup> Respondent wherein he said: *“you will know what to do with this money”* as being a campaign message.

7.80. PW10 stated that he did not make any statement before the Conflict Management Committee because he did not bother to know its procedure even though he was aware it existed. In relation to his testimony concerning the UPND President visiting Nakonde Constituency, the Witness urged the Court to record the date of visitation as having been 5<sup>th</sup> August and not 3<sup>rd</sup> August as stated within the Petition as the same was a typing error.

7.81. When referred to paragraph 5.4 and 5.5 of the Petition, the Witness clarified in cross-examination that the correct position of the reported incident was that the 1<sup>st</sup> Respondents team in the company of one Chishimba Kambwili made tribal remarks against the UPND party and not the Witness as an individual. Concerning the allegations within the Petition that the 1<sup>st</sup> Respondent was during the campaign period distributing money, mealie meal and cooking oil to residents of Nakonde the Witness testified that he had not tendered any further evidence before the Court to prove the said allegation.

7.82. PW10 stated in cross – examination, that he did not report the activities of the group called *manguluweni* on any given occasion because he was not a personal victim of their attacks. The Witness further testified that he as well did not report the unfair application of COVID-19 restrictions by the Police to the Conflict Management Committee.

7.83. In relation to the Witness's testimony concerning voters' cards being issued to foreigners, the Witness stated that anyone in possession of a green National Registration Card (NRC) and a voter's card is eligible to vote and that the 2<sup>nd</sup> Respondent is not the issuing authority of green National Registration Cards. The Witness further clarified that any person who had in their possession an NRC with the numbers ending stroke one (/1)

was Zambian as the said numbers were reserved for Zambian citizens and non – citizens would be issued with NRC numbers ending stroke two (/2). When referred to page 18 to 85 of the Petitioners bundle the Witness confirmed that every green NRC exhibited in the said bundle ended stroke one (/1). The Witness was not cross-examined by the 2<sup>nd</sup> Respondent. There was no Re-examination.

### **Respondent's Evidence at Trial**

7.84. The 1<sup>st</sup> Respondent only had one (1) Witness **RW1**, Mr. Luka Simumba being the 1<sup>st</sup> Respondent himself. The Witness testified that in the PF adoption process for a Parliamentary Candidate, 6 Candidates including the Petitioner and himself ran and he emerged as the most popular scooping 12 out of the 15 Wards. That he emerged as the most popular at Constituency, District and Provincial levels as well leading to his adoption at National level and was given a certificate of adoption to contest the election.

7.85. That he appointed 2 Election Agents, a Mr. Alex Simbeya and a Mr. Peter Sikalumba. That all parties made a campaign timetable with the ECZ which all parties followed.

7.86. That he was declared the duly elected Member of Parliament for Nakonde by polling 22,324 votes against the Petitioner's 16,826 votes winning by over 6,000 votes.

7.87. The Witness denied removing the Petitioner's campaign materials, or demolishing any makeshift stalls. That he never issued tribal remarks against the Petitioner. The Witness told the Court that he made the donation of ZMW16,000.00 in March 2021 before he became a Candidate referring the Court to Page 1 in the 1<sup>st</sup> Respondents Bundle of Documents. That he has no role to play in social cash transfer which is a Government Programme. That he never gave out face masks.

7.88. RW1 testified that he runs a limited company known as Looknet which is also involved in charity work in Nakonde. He stated that the company helps all kinds of people including women, youths, vulnerable people and the Real Nakonde Football Club. RW1 stated that the donation he made and was captured on video was made in the month of March prior to his adoption as parliamentary candidate for the Patriotic Front. The Witness added that he brought evidence in his bundle to that effect.

7.89. The 1<sup>st</sup> Respondent, told the Court that he and his Agents conducted his campaign within the confines of the applicable

electoral laws, and refuted all the allegations raised by the Petitioner.

7.90. In Cross-examination, the Witness testified that his campaign manager was one Mr. Edwin Sikalangwe who was not a member of the Patriotic Front. stating that a campaign manager could be anyone inclusive of a non-member. The Witness further testified that he knew the individuals: Alan Musachi AKA Kapilipili, Ignatius Musonda and Mabvuto Muganza AKA commander one. He stated that he was aware that Mr. Musonda was a member of the PF though he did not know his specific position and that Mr. Musonda did not assist him in any way during his campaigns. The Witness further agreed to knowing one Mr. Ken Sikaonga who is his driver, Mr. Mathew Silomba who was the PF Constituency Youth Chairman and one Mr. Peter Sikalumba. The Witness however testified that he did not know anyone who goes by the name Zondi.

7.91. RW1 told the Court that he was aware of a place called Brookes Lodge in Nakonde but not that the said location was popularly known as a "command center". RW1 stated that the person who owns the said lodge was a Mr. Siame and the Witness did lodge and conduct meetings at the said location during the campaign period. The Witness also clarified that during the



campaign period he lived together with two of his electoral agents at Mukoma Village in Nakonde.

7.92. RW1 stated in cross-examination that he only expressed interest to stand in the 2021 Parliamentary Elections for Nakonde in April 2021 and was adopted by the party on 4<sup>th</sup> May, 2021. The Witness was not cross-examined by the 2<sup>nd</sup> Respondent. There was no Re-examination.

#### **The 2<sup>nd</sup> Respondent's Evidence at Trial**

7.93. The 2<sup>nd</sup> Respondent did not call any witnesses.

#### **8.0. SUBMISSIONS**

8.1. All the parties filed written submissions in this matter which I have duly considered, and will refer to in the course of my judgment. I have also very carefully considered the *viva voce* evidence of all the witnesses that testified in this Election Petition and analyzed the documents that are on record. I wish to express my gratitude to Counsel for arguing their cases within the set time frames and tendering in written submissions for my attention.

## **9.0. JUDGMENT**

9.1. It is an agreed fact that the Petitioner and the 1<sup>st</sup> Respondent were both Parliamentary Candidates in the Nakonde Constituency Parliamentary Elections held on the 12<sup>th</sup> of August, 2021. It is also an agreed fact that the Petitioner contested that election as a parliamentary candidate under the United Party for National Development (UPND) Political Party, while the 1<sup>st</sup> Respondent contested the election as a parliamentary candidate under the Patriotic Front (PF) Political Party. The 1<sup>st</sup> Respondent was declared the duly elected Member of Parliament for the Nakonde Constituency by the 2<sup>nd</sup> Respondent and it is that decision that the Petitioner challenges by this action.

9.2. I will, for the sake of clarity and sequence, address the allegations in the Petition in order of presentation. To this end, the numbering of the paragraphs will remain unchanged as set out in the Petition.

9.3. In his Petition of 25<sup>th</sup> August 2021, the Petitioner advanced various allegations of electoral malpractice, bribery and corruption (vote buying), intimidation, undue influence and

acts of violence and seeks the reliefs as set out within the Petition and reiterated under 2.21 of this Judgment. Perusal of the Petition shows that the detailed allegations against the 1<sup>st</sup> Respondent are outlined in Paragraph 5 of the Petition.

### **The Standard of Proof and Burden of Proof**

9.4. At the outset, it is pertinent to establish that the governing law in relation to the challenging of election petition results in Zambia is **Section 97 of the Electoral Process Act (1)**. The provision states in part:

**97. (1) An election of a candidate as a Member of Parliament, mayor, council chairperson or councilor shall not be questioned except by an election petition presented under this Part.**

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

**(a) a corrupt practice, illegal practice or other misconduct has been committed in connection with the election—**

**(i) by a candidate; or**

**(ii) with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred;**

9.5. The burden of proof in an election petition lies with the Petitioner to prove that the candidate committed: a corrupt practice, illegal practice or other misconduct in relation to the election or that the same was done by another with his/her knowledge and consent or approval; or of that candidate's election agent or polling agent. **Part VII (Sections 81 – 95) of the Act**, which is of similar importance outlines corrupt, illegal practices and other election offences.

9.6. In addition to proving the aforestated, **the Act** provides that a petitioner must further prove that the said misconduct prevented or may have prevented the majority of voters in a

constituency, district or ward from electing the candidate whom they preferred.

- 9.7. On this aspect, the Constitutional Court, in the case of **Austin Liato v. Sitwala Sitwala (2)**, pronounced itself as follows:

**“.... It is not sufficient for a petitioner to prove only that a candidate committed an illegal or corrupt practice or engaged in another misconduct in relation to the election without proof that the illegal or corrupt practice or misconduct was widespread and prevented or may have prevented the majority of voters in the constituency, district or ward from electing a candidate of their choice.”**

- 9.8. The standard of proof for an election petition has to be proved to a standard higher than the mere balance of probability which later standard applies to ordinary civil suits. The Constitutional Court in the case of **Austin Liato v. Sitwala Sitwala (2)** aforecited, stated that:

**“... the balance of establishing any one of 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 ground(s) must be established to the required standard in election petitions namely a fairly high degree of convincing clarity." (J53)**

9.9. The legal threshold and principles of law outlined above in relation to election petitions have been established, upheld and reiterated by the Constitutional Court in some of its earlier decisions. I am therefore fortified by the decisions of the said Superior Court in the cases of **Nkandu Luo and another v. Doreen Sefuke Mwamba and another (3)** and **Giles Chomba Yambayamba v. Kapembwa Simbao and 2 others (4)**. The Supreme Court in the case of **Michael Mabenga v. Sikota Wina, Mafo Wallace Mafiyo and George Samulela (5)** held as follows regarding the burden and standard of proof in election petitions;

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

9.10. The enacted law and established principles are the guidance on which this Court places its reliance in determining this Election Petition or case *in casu*.

9.11. The Court cautions itself on the weight to attach to the evidence of the various witnesses for the parties, who appeared before it.

9.12. The said witnesses can be classified into various categories namely;

- i. Witnesses who are supporters of the Petitioner or the Respondent; These may have their own interest to serve as they are partisan;
- ii. Witnesses who are supporters of the respective candidates, but give evidence which is not supportive of the candidate; if they are truthful their testimony could be more cogent; and
- iii. Witnesses who are independent, who are non-partisan; such as those appearing under *subpoena*.

9.13. The Court takes note that the witnesses who appeared are largely supporters of the Petitioner or 1<sup>st</sup> Respondent and are members of the UPND or PF parties. I have to consider the credibility of the said witnesses as the same will speak to the ultimate decision I shall make in this Petition.

9.14.I take note of her Ladyship R. Kaoma. J's words in the case of **Christopher Kalenga v. Annie Munshya and Others (6)** when she quoted the Ugandan case of **Nabukeera Hussein Hanifa v. Kibule Ronald and Another (7)**, on the nature of evidence presented in election petitions;

**"In an election petition just like in an election itself each party is set out to win. Therefore, the court must cautiously and carefully evaluate all the evidence adduced by the parties. To this effect evidence of partisans must be viewed with great care and caution, scrutiny and circumspection. It would be difficult indeed for a court to believe that supporters of one candidate behave in a saintly manner, while those of the other candidate were all servants of the devil. In an election contest of this nature, witnesses most of them are motivated by the desire to serve victory against their opponents will deliberately resort to peddling falsehoods. What was a hill will be magnified into a mountain?"**

#### **10.0. ALLEGATIONS OUTLINED IN THE PETITION:**



**Electoral Malpractice/Removal of Campaign Material by the 1<sup>st</sup> Respondent**

10.1. Under Paragraph 5 (i), the Petitioner alleges that the 1<sup>st</sup> Respondent and his election campaign team engaged in acts of removing the Petitioner and UPND party's campaign material within the entire Nakonde Constituency.

10.2. Evidence to support this allegation was led by PW1, PW2 and PW10. The allegation specifically alleges that the 1<sup>st</sup> Respondent and his campaign team engaged in the acts of removal of these materials in the entire Constituency. It is an established or undisputed fact that the official or duly appointed election agents under the Act for the 1<sup>st</sup> Respondent were one Peter Sikalumba and Alex Simbeya as per the document at Page 6 of the 1<sup>st</sup> Respondents bundle and the undisputed testimony of the 1<sup>st</sup> Respondent on the stand.

10.3. In the evidence led by PW1 and in relation to the occasion when he says he witnessed such incident, PW1 stated that, in the month of August, on an unknown date, after having put up the Petitioner's and UPND's campaign material in the form of flags and posters within the Nakonde town center, members of the

PF known by the names of Kapilipili and Slim tore down the said campaign materials. Following this, the Witness stated that he proceeded to the Police, he did not report the said incident but asked for a meeting with PF leaders. He also testified that he did not see the 1<sup>st</sup> Respondent with the perpetrators of the act but did draw a conclusion that the 1<sup>st</sup> Respondent was aware when he heard the 1<sup>st</sup> Respondent on radio saying that only PF campaign material were allowed within Nakonde Ward. PW1 testified that he saw the 1<sup>st</sup> Respondent sitting inside white Fortuna car parked outside the Police Station.

- 10.4. PW2 in leading evidence regarding the allegation at 5 (i) of the Petition told the Court, that he identified Gabriel Phiri, Kennedy Sikaonga AKA Tao and Isaac Sinkala AKA Haggai, among the people who were taking down UPND campaign material. He told the Court that the said individuals were dressed in UPND regalia. He led the Court to Page 13 of the Petitioner's Bundle of Documents which contains a picture of an individual holding an iron bar whom he identified as the said Kennedy Sikaonga. PW2 further stated that he did go to the Police but did not report the said incident as he was, in an unexpected turn of events, accused of having committed a crime and detained.

10.5. In leading evidence regarding the allegation at 5 (i) of the Petition, PW10 stated that on two occasions he noticed a 'mob' of people from the PF command center tearing down UPND campaign material. On the first occasion he stated that this happened in the Nakonde town center and on the second occasion he witnessed it happen at a place near his residence called Malawi station. He stated the said 'mob' or people from the command center were on the second occasion in the company of Kapilipili and Zondi and in that instance began to assault people in the area, following the tearing down of the UPND campaign materials. PW10 testified that the victims of the alleged assault did proceed to the Police and obtained medical report forms for their injuries though no Police statements were produced before the Court in relation to the alleged incidents apart from those at Pages 42, 43 and 44 in his Bundle. The Witness neither specified the dates of the alleged incidents nor how he came about the knowledge that the 'mob' was from the PF command center. Further, in relation to the video evidence tendered in support of the said allegation the Witness confirmed that the 1<sup>st</sup> Respondent was not present within the video or picture before Court.

10.6. The 1<sup>st</sup> Respondent in his Answer, Affidavit verifying answer and his testimony at trial denied this allegation.

10.7. In the case of **Nkandu Luo and another v. Doreen Sefuke Mwamba and another (3)**, [p. J78] the Constitutional Court cited, with approval, the case of **Lewanika v. Chiluba (8)** wherein the Supreme Court of Zambia held 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 since... an election agent has to be specifically so appointed.”**

10.8. **Section 2** of the **Electoral Process Act No 35 of 2016 (1)** provides the following definition of election agent when it states:

**“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.”**

10.9. Whereas the evidence led by the Petitioner is that a number of persons who appeared to be PF members or supporters carried out various acts against the UPND campaign materials and regalia, I find that the Petitioner has not led evidence to show

that the actions of tearing down campaign materials by the people referred to as Kapilili, Slim, Zondi, Gabriel Phiri, Kennedy Sikaonga and Isaac Sinkala AKA Haggai were the 1<sup>st</sup> Respondents' official electoral agents or representatives. I note that PW1 did in his testimony place the Respondent at the scene of one of the incidents which happened outside Nakonde Police when he stated that he saw the 1<sup>st</sup> Respondent sitting in a white Fortuner. The 1<sup>st</sup> Respondent chose not to bring any of his election agents to testify in their own behalf in rebuttal of the allegation.

10.10. I wish to reiterate the position of the **Electoral Process Act** under **Section 97 (2) (a)** aforecited that outlines that the threshold to be satisfied in order for the Court to declare an election petition a nullity is that a corrupt or illegal practice or other misconduct must be committed by the candidate or by his election agent(s) with his knowledge and consent or approval.

10.11. In relation to the instance of the alleged tearing down of UPND campaign material by a 'mob' of the PF including named individuals and captured on pictures by PW2, it has not been proven that the 1<sup>st</sup> Respondent had knowledge of the incidents apart from One (1) incident where PW1 testified that he saw him in a car outside Nakonde Police. This evidence of

PW1 seems to relate to a sequence of events of violence that followed the removal of the posters and not the removal itself which did not happen at the Police Station.

10.12. PW1 and PW10's testimony that they heard the 1<sup>st</sup> Respondent on Radio Chete saying UPND posters or campaign materials should not be put up within Nakonde Ward, for which the Court was not given the date of the interview or copy thereof, though the Witnesses both agree it was held after the incident does not in my opinion constitute an act of removal of campaign material or instruction to do so or consent thereto.

10.13. I therefore find that the incidents which clearly happened, all appear to have been committed by PF supporters in circumstances which the Petitioner has not led sufficient evidence establishing the fact that the said acts were committed with the knowledge and consent or approval of the 1<sup>st</sup> Respondent or of that of his election or polling agent, other than the inferences drawn by the Petitioner, PW1 and PW2; or that they were wide spread encompassing the entire Nakonde Constituency as alleged or pleaded in the Petition at paragraph 5 (i). The word "entire" is defined by the **Oxford Languages Dictionary, 2021, Oxford University Press**, as "with no part left out: whole."

10.14. The 1<sup>st</sup> Respondent cannot therefore be held “answerable” for the allegations set forth under paragraph 5 (i) of the Petition which allegations have not been sufficiently proven before me to the required standard or with a high degree of convincing clarity.

10.15. It is perhaps necessary to further note that it is quite unusual that no one among PW1, PW2 and the three assault victims at Pages 42, 43 and 44 obtained Police Reports connected to the said allegation of removal of UPND campaign material within the Nakonde Constituency and pursued their cases further since dockets were opened for the assault. These in my opinion, are the people that could be deemed most likely to have reported such incidents as they were before the Police immediately after the occurrence. The same can also be expected of PW10 as any person that positively identifies individuals committing such destructive acts as alleged could easily report the same to the Police and/or 2<sup>nd</sup> Respondent by laying a formal complaint to the Conflict Resolution Management Committee for further action or investigation in line with the electoral regulations.

10.16. For the foregoing reasons I dismiss the allegation of electoral malpractice/removal of campaign material as set out under Paragraph 5 (i) of the Petition.

### **Bribery and Corruption (Vote Buying)**

10.17. Under Paragraph 5 (iv, vi, viii, ix, x, xi, xii, xiv) the Petitioner alleges that the 1<sup>st</sup> Respondent and his election campaign team engaged in acts of bribery and corruption or vote buying.

10.18. The allegation under paragraph 5 (iv) alleges that “... *the 1<sup>st</sup> Respondent together with his campaign team were found distributing bicycles and mattresses to the voters and telling the voters that come voting day they should all vote for him, because according to the 1<sup>st</sup> Respondent your petitioner belonged to the UPND party which is a party for the Tonga people only.*”

10.19. No evidence was led to prove this allegation, it was seemingly abandoned and I therefore dismiss it.

10.20. The allegation under paragraph 5 (vi, viii, ix, xii and xiv) collectively provide that during the campaign period, and up to the polling day, the 1<sup>st</sup> Respondent distributed money, food stuff and face masks to voters in various wards.



10.21. Evidence to support this allegation was led by the Petitioner's witnesses PW4, PW5, PW6, PW7, PW8, PW9 and PW10.

10.22. PW4 testified that on the 11<sup>th</sup> of August 2021 he witnessed 1<sup>st</sup> Respondent give one Willard of Willard Simutowe shop within the Kokomozi ward of Chilonga ZMW300.00 to buy Mojo drinks for a group of people whilst instructing them to vote for PF. He also stated that he witnessed the 1<sup>st</sup> Respondent by alcohol worth ZMW300.00 for would-be voters shortly thereafter. No further evidence in corroboration of the said testimony was led or tendered. PW4 also stated that; on the polling day being 12<sup>th</sup> August, whilst standing outside Waitwika Polling Station, he witnessed some boys being given ZMW300.00 and being instructed to vote for the PF by occupants of a vehicle he himself had not seen or identified. PW7 similarly testified that on the 11<sup>th</sup> of August, 2021 while at some shops in a place called Tenga he witnessed the 1<sup>st</sup> Respondent give a waitress in a bottle store ZMW300.00 after addressing a small group of people whom he was telling to vote for him. PW7 stated that the 1<sup>st</sup> Respondent further instructed the people whom he was addressing that after voting in his favour on the 12<sup>th</sup> of August they were all to proceed to one Dorica Lumpa's house to eat nshima and beef.

10.23. PW5 and PW6 gave evidence of food stuffs (beef, mealie meal, cooking oil) being distributed in their wards or localities with instructions that they were to be consumed by those who would vote for the 1<sup>st</sup> Respondent. PW5 only heard that the 1<sup>st</sup> Respondent provided the money to buy the animals and supplied food stuff whereas PW6 did not state in which ward the events he witnessed happened.

10.24. PW5 and PW6 led no evidence in relation to having seen the 1<sup>st</sup> Respondent or his election agents on the 12<sup>th</sup> of August, 2021 or having witnessed any alleged malpractices to which the 1<sup>st</sup> Respondent consented to or had knowledge of and I therefore find that the testimony adduced to this effect does not prove the allegation of bribery and corruption to the standard required under the law.

10.25. It was PW4 and PW7's testimony concerning the distribution of monies by the 1<sup>st</sup> Respondent that they saw the 1<sup>st</sup> Respondent buy drinks, beer and give out money to induce voters to vote for him. They have not brought evidence to corroborate their testimony. I take due notice that the incidents stated by these Witnesses was not widespread and prevalent in the Constituency so as to influence the majority of voters to vote in a particular way. I find that the allegation of alleged corruption and bribery or vote buying has not by

these testimonies been proven to the requisite standard. I reiterate the sentiments expressed in the case of **Brelsford James Gondwe v. Catherine Namugala (8)** wherein the Supreme Court held:

**“The burden of establishing any one of 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 ground(s) must be established to the required standard in election petitions namely a high degree of convincing clarity.”**

10.26. Because these two events were alleged to have occurred in two separate places but on the same date and involving the same person the lack of clarity as to whether they happened concurrently or in places far apart or close together with the lack of specific description concerning time and personal detail such as the vehicle or people with whom the 1<sup>st</sup> Respondent was does not meet threshold of providing a high degree of convincing clarity.

10.27. I am not convinced, by the evidence of PW4 and PW7 and on the face of the given testimonies which I find extremely insufficient that the 1<sup>st</sup> Respondent was on the 11<sup>th</sup> of August,

2021 at the said locations and distributing money to numbers of people for the purposes of vote buying as stated or that it was widespread and done over a large number of the wards.

10.28. PW5 testified that he on the 12<sup>th</sup> of August 2021 saw 5 bags of mealie meal, a bucket of cooking oil and heaps of beef in his wife Mirriam Nambela's home. According to this witness he was told by her that the MP had instructed her to distribute the said foodstuff to members of the PF party.

10.29. While the said 'MP' aforementioned remained unnamed by the Witness, he neither testified of seeing nor hearing these words coming directly from the 1<sup>st</sup> Respondent or his election agents. Despite the alleged acts of misconduct having been indicated within the Petition, the said words cannot be connected to or proven to have been said by the 1<sup>st</sup> Respondent or any of his election agents, taking them into consideration would otherwise be deemed as admitting into evidence statements considered as hearsay or reading into testimony what was not actually said by the witness. It is a fact that the 1<sup>st</sup> Respondent was not an MP until after he was declared so after the election.

10.30. I therefore find the testimony of PW5 lacking sufficient clarity in proving the allegations of bribery, corruption or vote buying as indicated in the Petition.

10.31. PW6 in his testimony stated that on 9<sup>th</sup> August, 2021, he found one Edison Sinkala, Nachimata and Mathews Siame distributing mealie meal and cooking oil to people. He testified also that on 10<sup>th</sup> August, 2021, the 1<sup>st</sup> Respondent through a Mr. Enock Sikaonga purchased cows which were slaughtered on the 11<sup>th</sup> of August 2021. The Witness stated that he had heard from persons he did not name, that the beef from the slaughtered animals would be distributed to people who would vote for the 1<sup>st</sup> Respondent the following day. He concluded his testimony by stating that he was on the 12<sup>th</sup> August 2021 offered beef in exchange for voting for the PF and was told that each person was monitored via a camera placed in the polling booths. PW6 stated that having seen that several other people had collected beef, he did the same and proceeded to vote.

10.32. I find that the testimony of PW6 does, for the most part, not directly connect the 1<sup>st</sup> Respondent. I note that the alleged purchase of cows was done by Enock Sikaonga and the distribution of the foodstuff was made by Edison Sinkala,

Nachimata, Mathews Siame and other persons unnamed who are neither the 1<sup>st</sup> Respondent nor his election agents.

10.33. I, on the foregoing premises find that the testimony of PW6 does not establish the allegations against the 1<sup>st</sup> Respondent with a high degree of convincing clarity.

10.34. I once again, find that the allegation of alleged corruption and bribery or vote buying has not, by the testimony of PW6, been proven to the requisite standard.

10.35. PW8 told this Court in his testimony and in support of the allegation of bribery that he witnessed the 1<sup>st</sup> Respondent handing out masks to voters in a queue at Chilolwa Polling Station in Nakonde on the 12<sup>th</sup> of August 2021. PW8 stated that he informed the Police whom he accompanied when they cautioned the 1<sup>st</sup> Respondent. According to the Witness the 1<sup>st</sup> Respondent then called him aside and personally gave him a ZMW50.00 and later a mask in which he had placed a ZMW20.00 note and left. PW8 stated that he did not bring any written report before Court.

10.36. Concerning the alleged malpractice by the 1<sup>st</sup> Respondent at Chilolwa Polling Station, I find that such arena or location containing official polling staff of the 2<sup>nd</sup> Respondent, guarding the interests of each party, voters supporting different parties; authorities of different ranks; and the Police the easiest place to report malpractice and immediately have the same penalized the same. I find it odd that neither of the people aforementioned inclusive of the Witness and his ward councilor, even after having raised alarm managed to either capture or officially report the alleged malpractice.

10.37. I therefore find that this Witness by his own actions on the two (2) amounts he says he received is conflicted and has an thinterest to serve and his testimony not reliable. The allegation of alleged corruption and bribery or vote buying has not by the testimony of PW8, been proven to the requisite standard as it does not establish the allegations against the 1<sup>st</sup> Respondent with a high degree of convincing clarity.

10.38. PW10 testified that prior to the date of elections, a member of the Patriotic Front who is former Minister of Home Affairs, one Mr. Joe Malanji visited Nakonde Constituency and held political rallies with the 1<sup>st</sup> Respondent. According to the Witness the said parties distributed money at Zesco Market and Chiyanga Village in Ikumbi Ward. The Witness testified

that the 1<sup>st</sup> Respondent on an occasion separate from the aforementioned also distributed money to marketeers at Nakonde Main Market and it was recorded by a local radio station which recording was produced to Court as evidence. PW10 stated that it was common practice by the 1<sup>st</sup> Respondent to distribute money to would be voters. The Witness admitted that though there was no party regalia seen in the video but they insisted that the 1<sup>st</sup> Respondent made this donation of money to induce voters and as a campaign strategy and further stated that the words "*you will know what to do with this money*" were a campaign message. PW10, though admitting that he wasn't present during the said occasions, still maintained that he was reliably informed and that such trend of distribution of money to voters by the 1<sup>st</sup> Respondent continued even up to the date of elections.

10.39. In the video the 1<sup>st</sup> Respondent is heard, that he was leaving ZMW16,000.00 and no one person was to lay claim on the money as theirs, but instead cause the money to rotate among themselves to accumulate profit for them. He then stated specifically that they would know what to do with the money and ended his address. The 1<sup>st</sup> Respondent who was RW1 testified on stand that he owned a company called Looknet that was involved in, among many activities, charity works and the company did carry out several charity works prior to



his adoption as a candidate for the position of Member of Parliament for the Nakonde Constituency within the PF party.

10.40. The act attested to by the Witness over the donation captured on video was admitted by the 1<sup>st</sup> Respondent as part of his Company's corporate social responsibility programme and the words spoken by the 1<sup>st</sup> Respondent at the donation of ZMW16,000 which the Petitioner alleges were a campaign message are in my opinion open to different interpretations. Taking such testimony into consideration would otherwise be deemed as admitting into evidence statements considered as hearsay. I therefore find the testimony of PW10 insufficient in proving the allegations of bribery, corruption or vote buying in that aspect.

10.41. I take note that from the 1<sup>st</sup> Respondents bundle of documents before me (page 1), that by an online post of Radio *Chete* FM, as well as the admission of PW10 that the video produced before me was posted by the radio station on the 19<sup>th</sup> of March 2021. I take further note of the said radio stations posts of 3<sup>rd</sup> and 16<sup>th</sup> February 2021 wherein the 1<sup>st</sup> Defendant's company also donated desks to Nakonde Primary School within the Nakonde District (Page 2 and 4). It is not in dispute that the 1<sup>st</sup> Respondent filed his Nomination on the 17<sup>th</sup> of May 2021 as also evidenced by his nomination paper exhibited at page

6 of the 1<sup>st</sup> Respondent's bundle. This therefore does not satisfy the allegations within the Petition to the effect that during the campaign period and on the date of elections, the 1<sup>st</sup> Respondent engaged in various acts of bribery and corruption or vote buying.

10.42. In paragraph 5 (x), the Petitioner posits that *"the 1<sup>st</sup> Respondent and his fellow PF facilitated the registration of foreigners from Tanzania and Malawi to acquire national registration card (NRCs) and voters' cards. In addition, the said foreigners were ferried on the voting date and taken to the polling stations in Musandano village of Mukulika Ward and Mukalizi village of Mulalo ward among others."*

PW10, being the Petitioner himself, led evidence in support of the said allegation. He stated that the 1<sup>st</sup> Respondent had prior to the election period had his vehicles branded "voter registration facilitated by Looknet Company". The Witness stated that the said branded vehicles which he stated were a Toyota Hiace driven by the Petitioner's brother a Mr. Aggrey Simumba, another Hiace driven by one Samuel Kasonde AKA Zondi and a Land Cruiser driven by Danny Silavwe ferried people to polling stations to register as voters. The Witness referred me to Pages 18 – 41 of the Petitioners Bundles of Documents wherein persons being: Clement

Mlagha, Friday Sing'ambi, Clever Simpamba, Trinity Siame, Gisper Nawakwi and Mary Nyondo's voters' cards, Zambian National Registration Cards and Malawian National Registration Cards appear. PW10 did state on the stand that he was aware that the institution responsible for the registration of nationals was a Government Ministry and the 1<sup>st</sup> Respondent was not an official in the said Ministry. PW10 also stated that the people aforementioned who's identification cards were produced in his Bundle of Documents all had NRCs ending with stroke one (/1) which ending numbers are reserved for Zambians. That NRC numbers ending in stroke two (/2) are reserved for foreigners.

10.43. PW9 stated that he on the 12<sup>th</sup> of August 2021 was threatened by the driver of a Land Cruiser wherein one Suwi and Wila Simutenda were passengers for stopping Tanzanians from voting. PW9 also stated that later around midday to one o'clock on the same day he saw a Fuso with several Tanzanians on board.

10.44. The 2<sup>nd</sup> Respondent in its submissions of 15<sup>th</sup> October, 2021 disputed the notion that it allowed foreigners to vote in the election. The 2<sup>nd</sup> Respondent submitted that the holding of an NRC was undisputed proof that a person is a Zambian and qualifies to obtain a voter's card. The 2<sup>nd</sup> Respondent referred

me to **Section 60** of the **Electoral Process Act** as well as **Section 39** of the **Constitution of Zambia** and averred that the only documents a person is required to produce to vote in an election is a **Zambian National Registration Card** and a **Voter's Card**.

10.45. Firstly, I take Judicial Notice that the issuance of National Registration Card's (NRCs) in Zambia is an act over which the Government of the Republic of Zambia has the exclusive powers under the laws of Zambia. Having established that, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents carry no registration mandate, capacity or power to do the same.

10.46. It is worth noting that the **National Registration Act, Chapter 126 of the Laws of Zambia** and Regulation's issued thereunder **National Registration Regulations, Statutory Instrument No. 257 of 1963; Regulation 3** differentiates NRCs issued to Zambians and Non - Zambians by way of colour; wherein it provides that green NRCs are issued to Zambians while pink NRCs are issued to non - Zambians. Further, the qualification for registration as a voter as set out in the **Electoral Process Act** at **Section 8** provides that:

**“(1) A person qualifies for registration as a voter if that person—**

**(a) is a citizen of Zambia;**

**(b) has attained the age of eighteen years; and**

**(c) is in possession of a national registration card.**

**(2) The Commission shall register a person as a voter as prescribed.**

**(3) A person who has been registered in the Register of Voters shall be issued with a voter’s card.**

**(4) A person shall not register as a voter in more than one constituency.”**

10.47. By reason of the aforestated, I find that the 2<sup>nd</sup> Respondent is mandated by law to register as a voter, any person that is: (i.) a citizen of Zambia; (ii.) has attained the age of eighteen; and (iii.) is in possession of a National Registration Card. The possession of green national registration cards as is the case with the persons aforementioned is *prima facie* evidence that the holder is of Zambian Nationality. Therefore, if the said persons are registered as Zambian nationals by the Zambian Government and having so proved were registered by the 2<sup>nd</sup> Respondent as voters and issued voters cards – the same was done within the confines of the law. In addition, **Section 60** of the **Electoral Process Act** provides:

**"60. (1) Subject to section forty-eight, a voter shall only vote at the polling station in the polling district for which that voter is registered.**

**(2) A voter is entitled to vote at a polling station—**

**(a) on production of that voter's national registration card and voter's card to the presiding officer or election officer at the polling station; and**

**(b) if that voter's details are in the certified segment of the Register of Voters for the polling district concerned.**

**(3) When a voter produces a national registration card to the presiding officer or election officer as required by subsection (2), the presiding officer or election officer shall examine the identity document and determine whether—"**

10.48. Therefore, wherever these said individuals were registered to vote at their particular polling stations and produced the approved documentation, namely, National Registration Card's and voters' cards, the 2<sup>nd</sup> Respondent was mandated by law to allow them to vote. The Petitioner has not adduced evidence that there is a law or regulation banning anyone from providing transport to anyone to facilitate that person's attendance to register as a voter.

10.49. I also take note in *obiter dicta*, that the **Constitution of Zambia** under **Section 39** provides that:

**“39. (1) A citizen shall not lose citizenship by acquiring the citizenship of another country.”**

10.50. The Constitution by this section allows for Zambian Nationals to be citizens of another country without suffering loss of their Zambian citizenship. Upon production of the identification documents within the Petitioners bundle, which documents are of Zambian Nationals who also possess Malawian identification cards, I am led to the conclusion that the said Zambian Nationals in possession of the said cards can be said to have exercised their legal right as per the Zambian Constitution to obtain the same.

10.51. Upon taking due consideration of the law and the testimony adduced to prove the allegation under paragraph 5 (x), I find that the same has not sufficiently been proven to the requisite standard. The testimonies of PW9 and 10 fall short of establishing illegal acts or malpractices and further fall short of connecting the said acts to the 1<sup>st</sup> Respondent and his official agents or the 2<sup>nd</sup> Respondent.

10.52. In the premises and in view of the aforementioned I hereby dismiss, the allegations of bribery and corruption and vote buying as set out under paragraph's 5 (iv, vi, viii, ix, x, xi, xii and xiv) of the Petition of 25<sup>th</sup> August 2021.

### **Undue Influence, Intimidation and Acts of Violence**

10.53. PW1, PW2 and PW10 led evidence in aid of proving the undue influence, intimidation and the acts of violence referred to under Paragraphs 5 (ii, iii, v, vii, xi and xiii) of the Petition.

10.54. Paragraph 5 (v) of the Petition contains the allegation that while in the company of one Dr. Chishimba Kambwili, the 1<sup>st</sup> Respondent issued tribal remarks against the Petitioner at a rally held at Ntindi Primary School and the same was covered by Radio Chete and Nakonde Radios. The said tribal remarks were, according to the Petition, to the effect that the Petitioner was tribalist and belonged to a party that only had as its members Tonga's from the Southern Province of Zambia. PW10 in his testimony clarified that the correct position was that Dr. Chishimba Kambwili whilst in the company of the 1<sup>st</sup> Respondent's team made the tribal remarks against the Petitioner. PW10 stated that videos of the said evidence were



on Radio Chete and Nakonde's Facebook pages. The Petitioner did not tender the said videos as evidence before Court.

10.55. In line with the principle outlined in the **Nkandu Luo case (3)** as well as the established Zambian jurisprudence on election petitions, it was established that Dr. Chishimba Kambwili though being a Patriotic Front functionary, was not the duly appointed election agent of the 1<sup>st</sup> Respondent. Further, the Petitioner led no evidence to establish that the 1<sup>st</sup> Respondent or his duly elected agents had knowledge of or approved or consented to the making of the said tribal remarks. The Petitioner did admit, in cross examination, that the said tribal words were uttered by Kambwili and not the 1<sup>st</sup> Respondent or his election agents. The 1<sup>st</sup> Respondent denies that Dr. Kambwili was his agent. He is therefore, not answerable for the acts or statements of the said Dr. Chishimba Kambwili. By reason of the foregoing, I find that the Petitioner has not proved this allegation to the requisite standard and the same is dismissed.

10.56. PW10 led evidence in support of the allegation of paragraph 5 (xi) of the Petition, wherein the Petitioner asserts that the 1<sup>st</sup> Respondent was favoured by the Nakonde Police and allowed to hold rallies using a public address (PA) system while the said Police treated him differently, did not allow him to hold

gatherings. PW10 testified he was only allowed by the Police to campaign with just one vehicle and no PA system. He further told the Court that he could not organize any gathering of groups of people freely without harsh treatment from the Police whom he 'knew' were under the influence of the 1<sup>st</sup> Respondent because the Police used the 1<sup>st</sup> Respondent's personal private vehicles to carry out Police patrols. The Witness testified that the Police applied COVID – 19 guidelines harshly against him every time he attempted to hold public addresses and he could not hold such gatherings whereas the same were not applied to the PF.

10.57. In his answer and in his oral testimony, the 1<sup>st</sup> Respondent denied such allegations and argued that the same could be best brought against the Police.

10.58. I, on this aspect, could not agree more with the 1<sup>st</sup> Respondent. Where individual members of the Police Service acted in contravention to their given mandate or authority, the same should have been best addressed as a complaint to the Police Service hierarchy against the said members or at the least should have been documented in some formal complaint or report to both the Police and 2<sup>nd</sup> Respondent. While the Petitioner stated that the Police in Nakonde where, in his personal opinion, acting under the 1<sup>st</sup> Respondents

influence, he did not lead evidence to a fairly high degree of convincing clarity or at all to establish the veracity of this allegation. I am aware that the respectable institution of the Zambia Police Service is led by its own duly appointed officials who are neither 1<sup>st</sup> nor 2<sup>nd</sup> Respondent in this action. I find that the said Respondents cannot be said to have been connected to or have had knowledge and or given consent or approval of the said alleged acts of the Police unless otherwise proven with cogent evidence. On this premise, I dismiss the said Ground under paragraph 5 (xi) of the Petition.

10.59. Paragraph 5 (xiii) of the Petition alleges that; *“the Respondent was heard at every political rally he held, telling the voters that he will make sure that those that were not going to vote for him on the voting day will stop receiving the Social Cash Transfer funds meant for the aged in the district and he will make them suffer.”* Despite the 1<sup>st</sup> Respondent having denied the allegation through his reply and *viva voce* evidence, no further evidence was led by the Petitioner concerning the said allegation to prove it to the required standard. The same was seemingly abandoned and I therefore dismiss it.

10.60. PW1, PW2, PW3 and PW10 all led evidence in support of the alleged acts of intimidation and violence espoused under Paragraph 5 (ii, iii and vii) of the Petition. **PW10** testified that

he did on one occasion witness an incident where people from the PF camp or command center in the company of one Zondi demolish makeshift stalls or small businesses and beating up UPND supporters. He stated that the alleged victims reported the same to the police and exhibited medical reports before Court at Pages 42, 43 and 44 of his Bundle. PW10 did state in testimony that he had not tendered before Court any picture or video evidence showing the 1<sup>st</sup> Respondent committing the alleged acts.

10.61. PW10 also testified that on 5<sup>th</sup> August, 2021, as he headed to Wulongo Check-point to meet the President of UPND, he noticed members of the PF namely, Paul Bwembya and Samuel Kasonde dressed in protective clothing. He further stated that on his way to the check-point his vehicle was hit by a stone from an unidentified source which he did not manage to investigate and proceeded to the check-point. Following this, the Witness stated that the Police at Wulongo Check-point blocked the way denying the UPND President's motorcade passage past the Check-point and later fired teargas cannisters at the motorcade and fled the scene leaving the Witness and other members of his party injured.

10.62. The evidence of the stoning at Wulongo check-point has not been attributed to the 1<sup>st</sup> Respondent as all witnesses who

testified to this said they did not see who was throwing the stones. I find that this allegation has not been proved to the required standard to prove violence by the 1<sup>st</sup> Respondent. Further no evidence has been led establishing that the 1<sup>st</sup> Respondent instructed the Police to fire teargas at the Petitioner and his motorcade.

10.63. PW1 testified earlier on the witness stand, that on the 7<sup>th</sup> of June, 2021, PF supporters including Pungwa and Zondi got hold of one Misheck Kabwe right outside Nakonde Police station and assaulted him in full view of the 1<sup>st</sup> Respondent who was inside a car. He said the reason they did this was because Mr. Kabwe was a member of the UPND. The Witness also stated that he did not have any picture or video evidence to show that the said assault was carried out in the presence of the 1<sup>st</sup> Respondent.

10.64. PW2 led evidence to the effect that he is the one who took the pictures at Pages 11 and 12 of the Petitioners Bundle of Documents, which pages show pictures of an injured male who he named as Misheck Kabwe. He stated that on the 7<sup>th</sup> of June, 2021 he encountered an injured Mr. Kabwe at Nakonde Police station and gave him First Aid before they were separated and he remained in detention.

10.65. The 1<sup>st</sup> Respondent, in his reply and *viva voce* evidence denied knowledge of or participation in all allegations of intimidation and violence.

10.66. It is not in dispute that acts of violence were committed on 1<sup>st</sup> and 7<sup>th</sup> June, 2021 as testified to by the Petitioner, PW1 and PW2. It was attested to by the Petitioner that this is what led to the Police Commissioner for Muchinga Province to call a reconciliatory meeting as attested to by the Petitioner which evidence was not disputed by the 1<sup>st</sup> Respondent. PW10 the Petitioner, testified that these incidents (violent acts) caught the attention of the 2<sup>nd</sup> Respondent who banned PF and UPND campaigns within Nakonde Constituency for 14 days. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not dispute this evidence. **Section 97 (2) (a) (i)** of the **Electoral Process Act** requires for the Petitioner to prove with convincing clarity that the candidate whose election is disputed engaged in some kind of misconduct in connection with the election. **Section 97 (2) (a) (ii)** further requires the Petitioner to prove, in any event, that the alleged misconduct occurred with the knowledge and consent or approval of the candidate whose election is disputed or that of his election agent(s).

10.67. I find it hard to believe the 1<sup>st</sup> Respondent's mere denial that he was not a participant, present or that the said acts were

done, perpetrated or committed without his knowledge, consent and or approval or that of his electoral agents or polling agents. I take note that his agents did not testify in the Petition. In the incident which occurred in Old Fife Ward along Malawi road set out in Paragraph 5 (ii) of the Petition, the 1<sup>st</sup> Respondent claims in his Answer, that he was away in Lusaka at Paragraph 8 of the Answer but did not lead any evidence to prove or substantiate this.

10.68. PW1's evidence places the 1<sup>st</sup> Respondent at the scene of the incidence of violence outside Nakonde Police Station sitting in a white Fortuner at which place Misheck Kabwe was wounded. Further, the 1<sup>st</sup> Respondent did not lead any evidence regarding this incident in which his driver Sikaonga appears as a very active participant carrying a weapon in the picture at Page 13 of the Plaintiff's bundle. The date of this incident was given as 7<sup>th</sup> June, 2021, by PW1, PW2 and PW10. The pictures at Pages 4, 10, 11 and 12 of one Mr. Misheck Kabwe show gruesome wounds inflicted on the said person. This incident happened within days of the incident at Old Fife ward. Though a date has not been given of when the Muchinga Province Police Commissioner's meeting which was attended by the Petitioner and other UPND functionaries as well as the 1<sup>st</sup> Respondent and other PF functionaries, the testimony was that this was after the events of 7<sup>th</sup> June, 2021. Testimony of 2 witnesses is that the 1<sup>st</sup> Respondent was heard

on Radio after the incident of 7<sup>th</sup> June, 2021 saying UPND campaign material should be put up in wards far away from Nakonde CBD leaving PW1 and PW10 to conclude that he was aware of or supported the actions against UPND.

10.69. The Petitioner testified that after visiting the late Mr. Khondowe, he made the effort of calling the 1<sup>st</sup> Respondent to try and have them resolve the issue of violence, which overture he said, the 1<sup>st</sup> Respondent spurned. This evidence about the olive branch was not challenged or denied by the 1<sup>st</sup> Respondent.

10.70. The 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent did not dispute or deny PW10 and PW1's testimony that the Electoral Commission of Zambia suspended UPND and PF campaigns in Nakonde Constituency for Fourteen (14) days because of the violence. The 1<sup>st</sup> Respondent did not dispute PW10 and PW1's testimony that the Muchinga Province Police Commissioner travelled to Nakonde and called a meeting attended by both the Petitioner and 1<sup>st</sup> Respondent and their respective party's officials after the violence, though no date was given for this meeting. It was not denied or challenged that the PF did not respond to a proposal by the Muchinga Police Commissioner that the two (2) candidates go to a local radio station to denounce violence and assure the people of



Nakonde, which the Petitioner said he readily agreed to but the 1<sup>st</sup> Respondent through his district chairperson said his party needed to consult and never reverted thereon and as a result violence continued.

10.71. All the above evidence leads me to reach the conclusion that the 1<sup>st</sup> Respondent knew or was aware of the violence being perpetrated and consented or approved to the same being done to further his campaign as I do not believe that Sikaonga or any of the other people carrying out these acts were doing it for themselves as they had no interest in the election apart from securing a win for their candidate the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent has not led any evidence to show that he took any action to stop or stem further acts of violence or even to condemn it and cannot therefore claim ignorance or dissociate himself from the repeated incidents especially in the face of evidence of the invitation by the Provincial Police Commissioner and the ECZ suspension of campaigns against only UPND and PF. The fact that the said violence has been proved to have been perpetrated in the three (3) wards that carry almost half of the registered voting population in an election that was close fought looking at the difference in votes which the 1<sup>st</sup> Respondent himself said he won by just over 6,000 votes, does satisfy me that the said acts of violence were widespread.

10.72. The Oxford English Dictionary 8<sup>th</sup> Edition, edited by Charlotte Brown Oxford University Press, defines the word “widespread” as;

**“Spread among a large number or over a large area”**

The Oxford Languages Dictionary, 2021, Oxford University Press has the following definition;

**“Found or distributed over a large area or number of people.”**

10.73. In so far as the definition of widespread includes a large number of people and is not limited to geographical coverage, I am of the belief that the proof of violence perpetrated in the three (3) wards that account for close to 50% of the registered voting population of Nakonde Constituency does satisfy the test set down in **Section 97 of the Electoral Process Act (1)**. I take note that proof was not adduced for all 15 wards apart from the three (3) mentioned above. The law states in part:

97. (1) An election of a candidate as a Member of Parliament, mayor, council chairperson or councilor shall not be questioned except by an election petition presented under this Part.

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

(a) a corrupt practice, illegal practice or other misconduct has been committed in connection with the election—

(i) by a candidate; or

(ii) with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred;

10.74. In the case of **Nkandu Luo v. Doreen Sefuke Mwamba (3)** the Constitutional Court also said that;

**“In addition to proving the electoral malpractice or misconduct alleged, the Petitioner has the further task of adducing cogent evidence that the electoral malpractices or misconduct was so wide spread that it swayed or may have swayed the majority electorate from electing the candidate of their choice.”**

10.75. The Supreme Court, in the case of **Michael Mabenga v Sikota Wina, Mafo Wallace Mafiyo and George Samulela (5)**, held that;

***“2. Satisfactory proof of any one corrupt or illegal or misconduct in an election petition is sufficient to nullify an election.”***

10.76. It is important to note that through perusal of the Court’s record, one can sufficiently come to the informed conclusion that there were violent clashes involving party members or supporters during the 2021 campaign period within Nakonde Constituency. I wish to state that the Courts of justice detest and condemn all forms of electoral violence and

misconduct. For purposes of the case *in casu*, the aforementioned violent clashes have been shown and proved to my satisfaction that though they were not carried out by the 1<sup>st</sup> Respondent in person or any of his election or polling agents, the fact of knowledge, consent or approval by the 1<sup>st</sup> Respondent has been proved and that the majority of voters in the three(3) Wards Ikumbi, Nakonde and Old Fife were or may have been prevented from electing the Candidate, in those wards whom they preferred thereby affecting the outcome of the election result in the 12<sup>th</sup> August, 2021 Nakonde Constituency Parliamentary Election. I therefore find that the allegations of undue influence intimidation and violence as contained within Paragraph 5 (ii) and (vii) of the Petition have been proved to the requisite standard of proof required under the law. On the basis Supreme Court holding in **Mabenga v. Sikota Wina** cited above, this is sufficient to nullify the election. Paragraphs 5 (v, xi and xiii) have not been proved to the required standard.

## **11.0. CONCLUSION**

11.1. Based on the foregoing I find that though the Petitioner has failed to prove some of the allegations against the Respondents as set out within the Petition to the required standard of proof, he has proved two (2) allegations on undue influence,

intimidation and acts of violence in Nakonde Constituency to the required standard of proof i.e., a high degree of convincing clarity. The proved allegations being 5(ii) and (vii), merit this Court to nullify the election results for Nakonde Constituency. I decline to declare the Petitioner the duly elected candidate as prayed by the Petitioner.

## **12.0. DECISION**

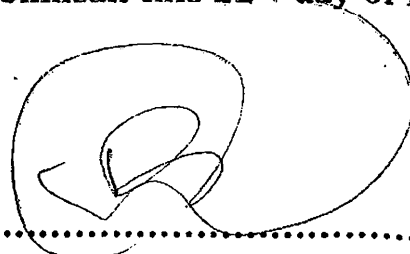
12.1. Having found that the Petitioner has proved Two (2) of the grounds in his Petition as the 1<sup>st</sup> Respondent hereby committed multiple and widespread electoral breaches, I am satisfied that the Petitioner herein, Mr. Simon Patson Simumba in this Petition before me has proved his case to a high degree of clarity as set down by the law that applies to election petitions the **Electoral Process Act No. 35 of 2016**.

12.2. I, in the premises declare that the 1<sup>st</sup> Respondent herein, Mr. Luka Simumba, was not duly elected as Member of Parliament for Nakonde Constituency; in the Parliamentary Election for Nakonde Constituency held on the 11<sup>th</sup> day of August, 2021 and consequently declare his election as

member of Parliament for Nakonde Constituency null and void *ab initio*.

12.3. Leave to appeal is hereby granted.

Delivered in open Court at Chinsali this 22<sup>nd</sup> day of November, 2021.

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a cursive 'C' and 'M', enclosed within a large, loopy oval shape.

.....  
**Bonaventure C. Mbewe**  
**HIGH COURT JUDGE**