

IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT KITWE
(Civil Jurisdiction)

2021/HK/EP/003



IN THE MATTER OF: ARTICLE 73(1) OF THE CONSTITUTION OF THE REPUBLIC OF
ZAMBIA (AMENDMENT) ACT NO.2 OF 2016

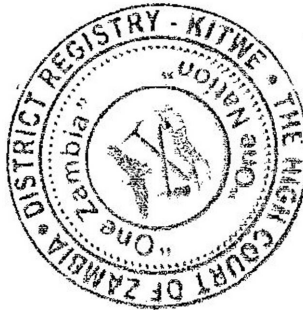
IN THE MATTER OF: SECTION 29,38,53,58,65,68,70,71,72,76,81,83,96,97,98(C)
99(A),100(2)(A),106(1)(B),108(1) AND 108(4) OF THE
ELECTORAL PROCESS ACT NO.35 OF 2016

AND

IN THE MATTER OF: THE PARLIAMENTARY ELECTION FOR WUSAKILE
CONSTITUENCY OF THE KITWE DISTRICT HELD ON THE 12TH
DAY OF AUGUST 2021

BETWEEN:

ROBERT ZIMBA



PETITIONER

AND

PAVYUMA KALOBO

1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2ND RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE MRS PENJANI LAMBA IN OPEN COURT THIS
26TH DAY OF NOVEMBER 2021.

FOR THE PETITIONER: MRS T. K. MWEWA – MESSRS ILUNGA AND COMPANY.

FOR THE 1ST RESPONDENT: MR I. K. MULENGA – MESSRS IVEN MULENGA & COMPANY.

FOR THE 2ND RESPONDENT: MR J. SINKALA & MRS I. K. NGOBOLA – MESSRS FREDDIE & CO.

JUDGMENT

Cases referred to:

1. Josephat Mlewa v. Eric Wightman (1995-1997) ZR 171.
2. Kapata v. The people SCZ No.9 of 1984.
3. Simasiku Namakando v. Eileen Imbwae 2006/HP/EP/002.
4. Magombe Vincent v. The Electoral Commission & Ors EP No. 0017/2016
5. Mulondwe Muzungu v. Elliot Kamondo 2010 EP/001.
6. Brelsford James Gondwe v. Catherine Namugala SC Appeal No. 129 of 2012.
7. Michael Mabenga v. Sikota Wina & Ors.
8. Anderson Mazoka & Ors v. Levy Mwanawasa & Ors (2005) ZR 138.
9. Akashambatwa Mbikusita Lewanika & Ors v. FTJ Chiluba (1998) ZR 79.
10. Nkandu Luo & Anr v. Doreen Sefuke Mwamba & Anr Selected Judgment No. 51 of 2018.
11. Mubika Mubika V Poniso Njeulu SCZ Appeal No. 114 of 2007.
12. Mubita Mwangala v. Inonge Mutukwa Wina SCZ Appeal No. 80 of 2007.
13. Abiud Kawangu v. Elijah Muchima Appeal No. 08 of 2017.
14. Margaret Mwanakatwe v. Charlotte Scott Selected Judgement No. 50 of 2018.
15. Steven Masumba v. Eliot Kamondo.
16. Richwell Siamunene v. Sialubala Gift.
17. Muhali George Imbuwa v. Enoch Kaywala CCZ Appeal No.7 of 2017.
18. Wadada Rogers v. Sasaga Isaiah Jonny and Electoral Commission No. 31 of 2011 (Ugandan Court of Appeal).
19. Chrispin Siingwa v. Stanely Kakubo CCZ Appeal No. 7 of 2017.
20. Mbololwa Subulwa v. Kaliye Mandandi Selected Judgment No. 25 of 2018.
21. Sikota Wina & Ors v. Michael Mabenga SCZ No. 15 of 2003.
22. Khalid Mohamed v. The Attorney General (1982) ZR 49.
23. Mwiya Mutapwe v Shomeno Dominic CCA Appeal No. 19 of 2017.
24. Davies Chisopa v. Sidney Chisenga Appeal No. 179 of 2012 (SC).
25. Jonathan Kapaipi v Newton Samakayi, CCZ Appeal No. 13/2017.

Legislation referred to:

1. **Constitution Amendment Act No. 02 of 2016.**
2. **Electoral Process Act No. 35 of 2016.**
3. **Electoral Act Chapter 13 of the laws of Zambia (repealed).**

Other works referred to:

Hodge M. Malek, Phipson on Evidence, 17th ed. (London, Thomson Reuters (Legal) Limited, 2008)

This judgment relates to the petition taken out by the Petitioner herein on 27th August 2021 filed along with an affidavit verifying the petition to which he deposed. The petition was later amended with the amended process being filed on 27th September 2021 together with the affidavit in support of even date. The Petitioner's list of documents was also filed on the same date. The petition is presented pursuant to **Article 73(1) of the Constitution Amendment Act No. 02 of 2016** and to various sections of the **Electoral Process Act No. 35 of 2016** (to also be referred to herein as the Act) as the title of the petition indicates. The petitioner's claims are:

- i. **That it be determined and declared that the said Pavyuma Kalobo was not duly returned or elected as Member of Parliament for Wusakile Constituency.**
- ii. **That it be determined and declared that the 1st Respondent's election and return was null and void.**
- iii. **That it be declared and ordered that the said Pavyuma Kalobo's seat is vacant; and**
- iv. **That it be directed and ordered that costs of and incidental to these proceedings be borne by the Respondents.**

The 1st Respondent filed into court his amended answer of 06th October 2021. He had filed his answer to the petition (unamended) on 09th September 2021

and the affidavit in support of the answer on 14th September 2021. The 2nd Respondent filed into court its answer on 06th October 2021.

SUMMARY OF THE WITNESSES' EVIDENCE

Evidence for the Petitioner was given by six witnesses who include himself. The 1st Respondent did not testify but called one witness. The 2nd Respondent did not call any.

PW1 Rachael Mulofwa of Luangwa Township Kitwe a 28 year old Marketeer testified that she was home on a Sunday on a date she could not remember, when her friend the mother to Memory informed her that the 1st Respondent would hold a meeting at her house at 14:00 hours. Rachael went there and the 1st Respondent arrived and distributed two bags of mealie meal, 11 chickens, tomatoes and cooking oil and K220.00 for charcoal. He was in the company of a Mr Simunyola and a Ward Counsellor, Mr Mulenga. The 1st Respondent is said to have appealed for the votes of the people gathered at the meeting for himself and his party president, Dr Edgar Chagwa Lungu, the Mayor and Counsellor under the Patriotic Front Party (PF). He then removed money which he gave to the father to Memory. After he left, the money was shared with each person getting K40. The K220.00 that was given for charcoal was shared among the people cooking.

Rachael also testified that on 12th August, 2021 she left at about 04:00 hours to go and vote. On the way to the polling station she found a stationary white vehicle which flashed its headlight at her. She was asked where she was going by one of the persons in the vehicle. She responded and she was told to vote wisely by one Simi and Counsellor Mulenga whom she recognised. They were in the vehicle with two ladies she did not know. Rachael said she was given money

in her hand, which she later saw to be a K100.00 note, and urged to vote for the Patriotic Front candidates being Edgar Chagwa Lungu, Mr Mulenga Mulenga, Mwaya Mpasu and the 1st Respondent. It is her evidence that when she went into the voting booth she voted as advised.

She was cross examined and admitted to living in Malembeka area since 2010. She stated that this was her first voting experience. She admitted knowing that the 1st Respondent was the Member of Parliament for the area from 2016 to 2021 although she just knew him by name and only came to see him on the very day she was called to cook by her friend. When referred to paragraph 8 of the Petitioner's petition regarding the food distributed to would be voters by the 1st Respondent showing a disparity on the said listed items and her testimony, including that the 1st Respondent himself gave the items and not his agents, she responded that she noted this variation and that her version should be believed as she testified to what she saw.

As regards events she narrated on 12th August, 2021 she conceded that the 1st Respondent was not the one who gave her the money, further that she did not mention specifically who she voted for as Member of Parliament. She also admitted that the petition shows the distribution of goods was at a bar and in Luangwa and not at the mother to Memory's house in Malembeka. She also accepted that she did not give an exact date of when the events happened or if they related to the 2016 or 2021 elections. In re-examination she clarified that she did not participate in voting in 2016.

PW2 was 27 year old business lady, **Ireen Chisala** of Luangwa Township Kitwe. She said she was informed of food being given out at Mr Mulenga's house provided by the 1st Respondent. She responded that she was a United Party for National Development (UPND) member but still went there. She was in the

company of other UPND members. They were not given the food being given out because of being UPND members but were told to join a Cooperative. She stated that mealie meal, chickens, cooking oil, cabbage and charcoal was being distributed at Mr Mulenga's residence.

Later she heard that the 1st Respondent would be at Stone Villa Lodge in Luangwa Township. When she went there, she found a lot of people from Luto, Zamtan, Mulenga and other areas of the constituency. She, with others, was allowed to enter the place even if they were not part of any Cooperative. The 1st Respondent arrived in the company of Mr Mulenga and the aspiring Mayor, Grace Mwaya Mpasu. They beseeched the people gathered for their votes and demonstrated how that should be done using a paper bearing the then Republican President's face. She said various Cooperative leaders went round greeting the 1st Respondent and his team and receiving Chitenge materials. Ireen got into a group of fifty persons and they were given K3,000.00 to share amongst themselves. The people gathered had been told by the 1st Respondent that though he would not stay long with them, he would leave them 'something for water'. She said he told them that he has a good memory and they were to vote wisely. She testified that she was in fear because even when she went to vote she voted for him out of fear of being beaten for the money she was given.

In cross examination she agreed that she is a UPND member from 2016 and she is a Vice Chair Lady. She confirmed that she wanted the UPND to win. Further that as a devoted member she would do anything to see the UPND win though she clarified in re-examination that this desire had a limit.

PW3 was Pethias Mulenga a general worker aged 23 years old. He stated that he was a member of UPND. He testified that on 15th July, 2021 he was part of a team conducting door to door campaigns as it was the party's turn to conduct

campaigns in Luto Ward according to a schedule drawn for political parties and candidates with regard to that. Contrary to the schedule, the 1st Respondent's people as he called them, also went out campaigning. He said they held a meeting at one Cecilia Kabuswe's farm.

The witness attended this PF meeting where a grey Land Cruiser with PF stickers of Mr Edgar Chagwa Lungu and the 1st Respondent arrived. Inside was a number of young masculine men, dressed in combat attire branded PF. They disembarked together with a person he later learnt was the Counsellor standing for Luto Ward and called Rodgers Banda who informed the gathering that the young men he was with were a very difficult lot and didn't joke about and had been sent by the 1st Respondent to have a meeting with them. Further that these young men would hack them to death and destroy their groundnut fields if they did not vote for the PF. He later found out the person talking was Rodgers Banda a Councillor from Luto Ward. He said people started saying that in order to protect themselves, they would vote for the 1st Respondent.

He went on to testify that on 23rd July, 2021 UPND had door to door campaigns in Wusakile as per the timetable. He was with other party members that were handing out fliers to members on the ground doing the door to door work. They were in a Toyota Noah vehicle. Pethias and his other team members went to Market road at Green Village Bar where they waited for another member to collect fliers. The grey Landcruiser with PF stickers went where they were, parked next to them and persons therein started throwing PF branded regalia on them, disrupting their programme. Pethias and his colleagues left the place.

However the same group accosted them when they met later that day around 17:00 hours and this time they attacked them by kicking and banging their vehicle. Pethias and his colleagues failed to come out as they were

outnumbered. The windscreen got cracked and the vehicle had dents around it. Pethias and his colleagues were too afraid to report the matter to police just that day but did so the following day at Wusakile Police Station where they met another member of their party, George Kalumba, who appeared badly beaten and was reporting an assault on him by alleged PF cadres.

On 12th August, 2021 Pethias was going round polling stations as a mobile polling agent to see what was happening. He went to Kalela Primary School in Wusakile at around 09:00 hours, he saw the young brother to the 1st Respondent called Simi in a white Landcruiser. Simi gave out money to some three women one of whom he heard being called as Nico's mother. These women went and stood in strategic places where they were giving money, one hundred kwachas to those going to the polling station to vote in the pretext of giving out masks. He said these women were also pointing to posters on the wall of the previous Republican President and the 1st Respondent, directing would be voters who to vote for. The women left the place when more people were going to them and it was apparent that they had been found out.

Bernard Chanda, PW4 is a self-employed 60 year old person. He testified that he is a member of UPND who was selected as an election monitor for the party in the 2021 general elections and tasked with going round polling stations in the Wusakile constituency for that. On poll day, he received the first complaint from the Women's Centre from a Pastor Sichone who was also an election monitor for UPND. It was said that alleged PF cadres went and joined a queue for voters ahead of people that had gone there earlier and demanded to vote first. Mr Chanda got there and found that voting had been halted and people were complaining of the same. He said he spoke with the police present but that they

confessed inadequacy of man power to handle the situation. However, with the arrival of soldiers, the situation normalised.

At the same polling station, monitors stationed there for UPND complained of being removed from where the counting of votes was being done and that Gen 20 form given to them had discrepancies. An inquiry over this from the Presiding Officer confirmed the same. The Presiding Officer said that they were removed at one point as there wasn't enough space. The Presiding Officer also told him that recounting of votes could only be done at the totalling centre because the ballot boxes had already been sealed. The polling agents were allowed inside after talking to the Presiding Officer at length.

Another complaint was made to the witness from Luangwa Clinic where polling agents had been removed from the polling station because the Presiding Officer along with the assistants wanted to have supper. There was an exchange of words between Mr Chanda and the Presiding Officer on the rules of the polling stations and agents, but the Presiding Officer stated that she was the one with the authority at that polling station to make decisions. The issue was resolved by having the polling agents allowed back in. He also entered and found that the tables were already set and the counting was done in their presence. When the counting was finished in the morning, political agents for different parties demanded for Gen 20 forms. They were informed they would not be given as the said forms were unavailable at that time. Mr Chanda stated that this surprised him as he knew that every polling station placed Gen 20 forms as a priority and a polling station could not open if all documents were not in place. He asked for a Gen 16 complaint form to complain against the Presiding Officer but was denied this. Gen 20 forms were only obtained from another polling

station within the same premises after Mr Chanda threatened to report the matter at the Civic Centre.

Yet another complaint was made to Mr Chanda and the people he was with from Kalela Ward by one Benjamin, a polling agent for UPND. They were told that PF cadres had jumped the queue or joined the queue of those voting ahead of people who had gone there earlier and that there were some women giving out money to would be voters outside the polling station. When Mr Chanda got there with his colleagues, they were shown people giving out money. When they approached these three women said to be giving out money, they told them that it was lunch money they were giving out and they moved away. The witness and others he was with approached a police officer for help but he refused saying he was afraid to escort them.

The witness continued to state that on 27th August, 2021, he and others were called to the Civic Centre where they found ballot boxes that were open. Out of concern they called police officers and their superiors from the District offices. They were surprised that the ballot boxes which were supposed to be kept safe were left outside and were open. A complaint was made to the Town Clerk and the UPND party superiors took pictures and videos of this. It should be mentioned that showing video footage of this in court was objected to on the basis of not having being included in the list of documents filed into court by the Petitioner. The objection was sustained.

In cross examination he confirmed that he was a UPND supporter and wished to see the party win. He agreed that the happenings he was talking about relating to the Civic Centre were two weeks after elections and results had already been announced. He maintained that although the UPND presidential candidate won at Luangwa Clinic, the Member of Parliament results were not alright although

it was the same election officials involved for both presidential and parliamentary elections. His reason for this is because figures were not matching when one considered the Gen 20 forms. He admitted that although there was intimidation at Luangwa Clinic, the UPND presidential candidate won. He conceded that the difference in the margin on the parliamentary vote was huge and so was the presidential margin. He insisted that the UPND president won because there was no alteration on the results as opposed to the parliamentary ones.

He maintained that even at Luangwa Clinic the Gen 20 forms were altered because after the voting he had sight of all the Gen 20 forms which were remaining with the polling agents and he could see the discrepancies then.

As regards Kalela polling station, the witness said there was also a difference on the Gen 20 forms as the words and figures were not correlating. When referred to page 35 of the Petitioner's bundle of documents showing the declaration of the results; 16118 and 7552 for the 1st Respondent and the Petitioner respectively, he agreed it represented about half a difference margin. He then said he was complaining about the Women's Centre Polling station although he did not refer the court to any document.

The witness was referred to page 33 relating to Luangwa Clinic 1 where the 1st Respondent had 184 votes while the Petitioner had 123, and Ackson Simwizye had 211 and was the winner at that polling station. At Kalela 1 the Petitioner came out third after the 1st Respondent and Ackson Simwizye (referring to page 32 of the Petitioner's bundle of documents). He was asked if he still thought the elections were not free and fair in view of the foregoing, but he insisted that the overall votes might look fine but the Gen 20 forms were tempered with and hence the complaint.

In relation to the open ballot boxes found at Civic Centre on 27th August, 2021, he stated that they were for Kitwe district although he did not confirm which constituencies they were from exactly.

In re-examination he explained that he found it difficult to admit that the elections were free and fair because the results on the record of proceedings come from the Gen 20 forms, which he says have variances.

PW5 was **Peter Mubanga** a resident of Wusakile aged 23 years old and unemployed. He testified that he was a local independent observer for an organisation whose full name he could not recall, but mentioned Community Project Development which he said comprised members from the ECZ and members of the public not belonging to any political party to assist in election monitoring. He said members were taken for training to learn how to check Gen 20 forms and conduct of general elections. He was appointed a local observer for the entire constituency along with others designated to other polling stations.

Peter Mubanga said on poll day he went to Kalela Polling station on receiving a call from a colleague from the same organisation as him manning the said station, informing him of a problem there. He went there and found that the Gen 20 form given to the monitor was not clear. Page 1 of the Petitioner's bundle of documents refers. It also had a variance in the number of votes in words and figures in relation to Gloria Daka Shonga; in figures it was 25 in words it was 23. He went to all the other streams (which are now designated as polling stations) at Kalela polling station and found that everything was fine. However, as he was leaving the polling station, he saw boys outside giving out money in the company of Simi, a PF cadre, dressed in a white T-shirt with black shoes and jumper and the mother to Nico. This was being done to induce people to vote

for the 1st Respondent. The money was being concealed in face masks. This witness moved closer to see what was happening and he confirmed the distribution of money.

When he left this place, he went to Wusakile Secondary School where similarly he found women outside the polling station giving money and encouraging voters to vote for the 1st Respondent. When he entered the polling station he was also approached and encouraged to vote the same way as he was taken to be a voter. He approached a police officer manning the polling station over this, but he wasn't given any attention as the officer just walked away.

He then went to Women's Centre where the polling agents had been sent out. He asked the Presiding Officer over this and the response he got was that he had no right to ask that. It was when the witness produced his identity card that the Presiding Officer allowed one polling agent from each political party and an independent observer back inside. Mr Mubanga asked his colleague from the same organisation who was at this polling station how long they had been outside and he was told for about thirty to forty minutes. The police officer there also just ignored him when he approached him over this.

He proceeded to Chamboli Primary School in the evening. There, the Gen 20 form was not signed and the witness learnt that the Presiding Officer had refused the polling agents from signing on the forms insisting they were not supposed to sign on them. They were equally denied a Gen 16 form to put their complaint over this refusal in writing prompting the polling agents to issue threats that they would walk out and leave the Presiding Officer to count alone. Querying the police officer who was present over this, Peter Mubanga was told that the agents would be given Gen 20 forms to sign later as there was still time.

He left and went to Luangwa Secondary School, where he found that everything was in order. He then went back to Wusakile Secondary School where counting of votes had started. He said observers were not being allowed inside but could stand by the windows to observe.

Mr Peter Mubanga received a call from a local observer based at the Women's Centre who was complaining that they had been told to go outside the classroom where counting was to be conducted. He rushed there and found this to be the case. He knocked on the door to the classroom and talked to a police officer who opened the door and informed him that counting had not yet started and that they would let people in when they started counting. He was told polling agents and observers would be called one at a time because the classroom was small and could not accommodate everyone.

On 13th August, 2021, the witness went to Chamboli Secondary School which was a totalling centre where ballot boxes were to be taken. He started going through the Gen 20 forms from which he observed some errors such as the numbers in figures and words being different, totals of votes not tallying or being incorrect, erasures or alterations and some documents not being signed. He ran the court through the Petitioner's bundle of documents over these assertions; dealing with the documents from the Petitioner's bundle of documents, he referred to page 1 and pointed out that it is recorded for the Petitioner in figures as 141 and in words it read 101. This is for Kalela Polling Station. Page 2 for Wusakile 01 Polling Station there was an erasure on Ackson Simwizye and that this is not allowed.

Further, that on page 3, the document was not signed and the totals were not included. On page 13 from Wusakile Secondary School, he noticed the figure of 406 was incorrect in that if one calculated the total of the votes in figures it gives

319. On page 16, also for Kalela Primary School 01 Polling Station, he observed that the figures for the 1st Respondent and words are different showing 303 and 363 respectively. For the Petitioner, in figures it shows 110 and 116 in words. On page 17 for Bupe Primary School 02, the words and figures were different for the Petitioner showing 190 in figures and 198 in words. On page 18 for Luangwa Secondary School, he said the total does not add up when one adds the votes. That similarly on page 30 at Wusakile Community Centre there was a disparity on the total because the votes when added give a different figure.

He also stated that only thirty Gen 20 forms were taken to the totalling centre out of the 69 polling stations leaving him wondering where the others went.

In cross examination he responded among other things that on 12th August 2021, he was called by someone at Kalela Polling Station but could not remember the time although it was in the evening. He said it was also evening the time he went to Wusakile Polling Station adding that the sun was still out though. He maintained that at Wusakile he saw people on the queue who were being given money and this was after he had been to Kalela Polling station.

The witness conceded that the Gen 20 form he said was not signed (referring to page 13 of the Petitioner's bundle of documents) is the same as that on page 03 of the same bundle as it relates to the same poll and it is signed.

Again, the concern of the figures of total votes cast on the Gen 20 forms not tallying, the witness conceded when it was shown in cross examination that he wasn't taking into account the rejected votes in calculating the totals. This was when he was referred to pages 30 and 13 of the same bundle.

The witness admitted that the Gen 20 form on page 5 in the said bundle was a carbon copy of the original and does not have alterations but that Gen 20 form

on page 16 of the bundle is a photocopy and has alterations. He admitted not reporting the observations he had made of persons giving money to voters in queues on the polling day.

The witness further stated in cross examination that he could not remember the name of the organisation he was operating under but that he had an ID with him. Also he said that he did not bring any proof to show that the organisation he was from is a registered organisation or that it had a certificate of accreditation to be involved with the polls from Electoral Commission of Zambia (ECZ).

The Petitioner was the last person to testify for his case as **PW6**. The 47 year old miner is a resident of Luangwa Township in Kitwe. He stated that he was adopted and sponsored by the UPND to stand as a Member of Parliament in Wusakile constituency for the August 2021 elections. He testified that sometime in May 2021, ECZ organised a stakeholders meeting at which it trained participants, who included the Petitioner, on the code of conduct and other relevant and basic rules relating to elections. He informed the court that on 3rd June 2021 the 2nd Respondent through its Chief Electoral Officer issued a clear statement on the suspension of campaigns, rallies and meetings owing to the escalation of Covid-19 cases in the country.

That contrary to this, the 1st Respondent and other officials from the PF party held a massive rally on 27th July 2021 at Bupe Basic School in Chamboli Township of Kitwe and a video clip was shown to support this. He said the same thing happened on 30th July 2021 at Nasilele Shopping Centre. Yet another huge rally was held on a date between 03rd July 2021 and 10th August 2021 at Chamboli Secondary School which he said was a government facility. Video footage to support this evidence for both occasions was shown to the court. The Petitioner

said a huge meeting was held at Carewell Private School in Luangwa by the 1st Respondent who with his agent Davies Simunyola, announced that a big bus would be bought for the people of Wusakile constituency. The court was shown video footage to support this.

The Petitioner testified that yet another huge rally was held on 08th August 2021 at Nkana Stadium in Kitwe. He said GBM, as Mr Godefrey Bwalya Mwamba is popularly referred to, and Mr Chishimba Kambwili were in attendance. He said he personally witnessed the rally as he was on his way from church on that Sunday. He stated that with such rallies, it was easy to influence peoples' mind sets that the 1st Respondent was the more popular candidate. He said these rallies attracted a lot of people enabling the 1st Respondent to disseminate his messages to many voters which opportunity he did not have.

On viewing the respective video clips, the Petitioner pointed out a person in the first one shown in court and said it was the 1st Respondent wearing green overalls written Edgar Lungu 2021 which he said proved that it was a PF rally during the Covid-19 period when the suspension was in place. For the video clip showing the rally at Nasilele Shopping Centre, the witness said that the shopping centre belonged to a UPND member who called him to inform him of the rally being held at his shopping centre, adding that it was purely for business. On the video relating to the rally conducted at Chamboli Secondary School, he identified the 1st respondent as putting on a red tie, suit and mask. He emphasised that this event was a PF sponsored one as could be seen by the regalia of the people present there.

With regard to the video where the 1st Respondent is said to have promised a bus, the Petitioner identifies him and the other person in a white T-shirt as Davies Simunyola, and as the 1st Respondent's agent and says that the 1st

Respondent thereafter gave party regalia to the would be voters as shown in a video.

The Petitioner stated that on 02nd July 2021, the 1st Respondent and his agents and party officials met members of Pastors Fellowship at Land of Mercy Church in Malembeka in Kitwe and gave them K15,000.00.

He continued to state that on the 09th of July 2021, he was visiting a party member, Catherine Chanda, who lives near the aforementioned Church in Malembeka. He said the 1st Respondent was at that church where he could be heard over microphone promising people one hundred thousand kwachas for each Cooperative if he was voted for. He said he heard people being told to queue up for them to be given forty kwachas. They were also given drinks. Some people from the meeting went to where he was at Catherine Chanda's place and had with them the drinks given to them at the meeting. They were mocking Catherine saying she had missed out.

On 10th and 13th July 2021, the 1st Respondent, his agents and PF party officials were at Stone Villa Lodge where they are said to have given out food hampers and drinks according to the report he received from Ireen, PW2 herein. That on 27th July 2021, the 1st Respondent and his agents and party officials visited Limapela School in Limaposa Ward in the constituency in issue and met the residents some of whom reported this to the Petitioner. They even gave him copies of Annexure C forms from the City Council which they said were issued to the recipients at the meeting and that the 1st Respondent was using this to induce people to vote for him. Pages 40, 49, 58, 63, 72 and 76 refer to the said Annexure C forms in Petitioner's bundle of documents.

The Petitioner made reference to the incident of the attacking of some party member's vehicle where the windscreen was cracked as testified by Pethias (PW3) and the one of George Kalumba, a UPND member said to have been assaulted by PF cadres. Over the former incident he said he raised the issue with the District Conflict Management Manager who only told him that the point was taken. On the latter issue he said he went round police stations and posts in the constituency to find out where that case had been reported only to discover that it was reported at Kitwe Central Police Station which according to him was a surprise and that it perplexed the Criminal Investigations Officer at Wusakile Police Station. He also said that it turned out that the victim was the one charged with an offence. The medical report in respect of the said George Kalumba is exhibited on page 84 of the Petitioner's bundle of documents.

Furthermore, the Petitioner's evidence is that Mr Simfukwe, a party member informed him of how he with others in Luto Ward were threatened with hacking and destruction of their groundnut fields if they did not vote for the 1st Respondent and the other PF aspirants and how that made him decide to vote for the PF. The Petitioner said the intimidation made it difficult for them to campaign freely. He said they could not even wear their party regalia as that was putting them in danger.

It was also testified that the 1st Respondent continued using the National Assembly as a platform for his campaigning even after its dissolution because he continued with the CDF projects such as construction of schools, bridges and roads during the campaign period. The court was referred to a video clip of the 1st Respondent's interview in relation to that. The Petitioner said some of the 1st Respondent's vehicles would be found at the National Assembly offices in the constituency.

Continuing with his evidence, the Petitioner testified that aspiring Members of Parliament for the constituency were invited for an induction service of some reverend at the United Church of Zambia in Luangwa. The candidates were asked to make a donation at the service towards the induction without disclosing how much they were giving. That, however, the 1st Respondent stood up and announced to the congregation that he was going to dig a bore hole at that church and immediately made a down payment of K6,000.00.

With regard to the discrepancies on the documents produced in court, the Petitioner pointed out that pages 01 and 05 of his bundle of documents relates to the same polling station but that the names of the Presiding Officers are different; one being Lizzy Kalumba and the other Fridah Chileshe. Page 17, 18 and 19 have discrepancies in terms of the words and figures of the votes indicated on them. He also referred to a record of proceedings which he said was given to him and his team and they knew exactly the votes they got, but that they misplaced this document. That when his campaign manager Mr Edwin Mutale went back to the Civic Centre to see the Returning Officer Mr Kanyense to get a replacement, the figures on the record of proceedings they were given did not match what they had got earlier. They queried the Town Clerk over this issue but that he did not give a tangible response. They reported the matter to police and a docket of case was opened. The document they had misplaced was later found and was left with the police for their investigations.

He pointed out that the time they were following this issue up at the Civic Centre is when they found open ballot boxes and documents scattered all over.

According to the Petitioner, he said that since the figures and results are not credible, it would be pointless to seek a recount of votes hence his seeking to have the election nullified altogether.

In cross examination, he was referred to his bundle of documents and he said that Gen 20 form on page 19 had a discrepancy in figures and words which was confusing as it made him not to know which one was correct and was used for the record of proceedings. On page 30 regarding a cancellation, he agreed that reversing the alteration would still leave him as the unsuccessful candidate. On page 5 and 16, he responded that page 5 is not an original document and page 16 was altered but it was not done by him even if he was the one in custody of the document before he gave his lawyer. He agreed though that the totals on page 16 and 5 are the same. When referred to page 01, he confirmed that even if the words and figures were corrected to his advantage, he would still not be victorious. He conceded that even if he was given all the votes that he was short changed as it were on all the Gen 20 forms in issue, he would still not win and would still come out third after the 1st Respondent and Ackson Simwizye.

He was referred to the video clip where the 1st Respondent pledged a bus. He maintains that that is vote buying. When challenged if he didn't make any promises during campaign and if that is then vote buying, he admitted making promises but denied that that was vote buying.

The witness admitted having polling agents in all the polling stations. He also admitted that he did not tell the court that the variances in the record of proceedings he got from the Civic Centre with the original one which they misplaced but later found. He also admitted that he did not produce this record in his evidence including the one from the Civic Centre. He also conceded that of the sixty nine polling stations in the constituency, only four had issues and that the votes are a true reflection of what happened.

He was cross examined extensively on the dates of the videos; how they were dated and for him to show their authenticity to the court. He agreed that the 1st

Respondent would sometimes campaign even way back before the campaign period, further that he would provide funeral assistance to bereaved households in the constituency.

The Petitioner, maintained that he could tell the 1st respondent from the videos even if the lighting was bad as he knew him and could not mistake him for someone else. He agreed that some of the clips seemed to jump but denied it meant that they were edited. On the issue of the money given at the UCZ church he agreed that all the invited guests gave money and there was use of the PA system to allow people hear clearly as it was a big church and there was nothing wrong with that. In relation to Land of Mercy Church where he said that the 1st Respondent gave a K15 000.00, he agreed he was not present at this place.

Further during cross examination, the Petitioner stated that Catherine's house to Land of Mercy is approximately 50-100 metres apart and that he could hear the announcements of asking people to queue up in order to receive K40s although he could not identify who was announcing.

When asked on the assertion that the 1st Respondent damaged the vehicle used by a party member for campaigns, he admitted that he was not present and that the people who were attacked did not say that it was the 1st Respondent who did it. He agreed that one of his boys was detained in police custody and that this witness signed police bond for his release but could not clearly remember the offence and neither had he brought the bond document himself.

In response to the evidence over Annexure C forms being distributed by the 1st Respondent, the Petitioner said he did not know that these documents are only issued by Ministry of Lands through the City Council as they are government forms. He agreed though that land is only allocated through the government via

Ministry of Lands or Chiefs. He also agreed that these documents show that they were not issued by the 1st Respondent.

When cross examined by the 2nd Respondent he agreed that he was invited to a training and that disputes were to go to the conflict management centre but he could not remember the use of Gen 16 forms. He admitted that Drug Enforcement Commission, Zambia Police and ECZ were present at the training and participants were encouraged to make complaints to any of these institutions. He admitted that he had not availed any document to show that he had gone to any of these institutions to lodge his complaints nor had he produced a Gen 16 form. The Petitioner also admitted that although he had polling agents in all the 69 polling stations, he had not brought anyone of them to confirm the variances on any of the Gen 20 forms and neither did he tell the court when or who made the said alterations.

Apart from the foregoing, the Petitioner accepted not making any complaint to the 2nd Respondent relating to the continued campaigning of some candidates.

In re-examination he clarified that the dispute procedure relating to Gen 16 form by the 2nd Respondent and conflict management committee was informed to him by the campaign manager for Democratic Party.

Jackson Kabaso, a 42 year old Pastor of Land of Mercy Church in Luangwa Township was **RW1** for the 1st Respondent. He testified that in May, 2021 he was called by the Pastors Fellowship consisting of different Pastors from different Churches in Luangwa. They were asking for permission to use his church premises to hold a fundraising venture. He accepted and they showed him a letter written on 27th May, 2021 for a meeting to be held on 12th June, 2021 on a Saturday. When shown page 1 of the 1st Respondent's bundle of

documents, he stated he could only recognise the top part of the letter up to the reference as similar to the aforesaid letter.

He continued to state that on the scheduled day, the function took place and the 1st Respondent arrived. It was announced that the guest was invited for the purpose of assistance to build a school for learner Pastors. They wanted the guest to assist them identify and find them a place where this school could be built. Collection of money was done with the 1st Respondent putting his donation in an envelope. He estimated about eight to nine Pastors as being in attendance and that there were other people as well.

Pastor Kabaso denied that this fundraising activity took place on the 02nd July 2021 stating that he was at his farm on that day. He added that if there is anything that happens at the church, he must be made aware as the Pastor.

In cross examination he stated, among other things, the 1st Respondent was the only invited guest at the fundraising venture. He said he does not know how much was raised because he was not a member of the executive of the Pastors Fellowship. He said that this event took about thirty minutes with just the introductions done. He said the 1st Respondent was given an opportunity to speak were he only asked for prayers so that if he was elected as Member of Parliament, he could fulfil his pledge of finding a place to build the school.

Pastor Kabaso expressed ignorance on the events of 9th August, 2021, stating that there wasn't any meeting at his church or any other day except 12th June 2021 referred to above. He replied that the church is registered at PACRA though he had not availed documents to this end. He denied the assertion that the 1st Respondent promised to find them a school if they voted for him but instead that he asked for prayers and if God willed it and he won, he would assist in

finding land for the school. On the issue of knowing what activities take place at the church, he said no other activities take place there during the week except for choir practice. He also said that no one on the church board has authority to permit a function to take place without his knowledge.

SUMMARY OF THE PARTIES' SUBMISSIONS

The Petitioner filed submissions on the 5th of November 2021. The 1st and 2nd Respondents filed theirs on 09th November 2021.

It was stated in the Petitioner's submissions that the parliamentary elections for the Wusakile constituency were not free and fair. The reasons given for this position are firstly that the 2nd Respondent violated several provisions of the **Electoral Process Act**. It was stated that the aspiring candidates did not have an equal playing field during the three months campaign period before elections as provided for by the regulations of the electoral process. The Petitioner submitted that the votes garnered by the winning candidates were to be based on merit and not due to unfair advantage as was the case with the elections for the parliamentary seat in Wusakile constituency. Reference was made to **section 29** of the **Electoral Process Act** mentioned above which provides that:

"29 (1) A public officer and public entity shall give equal treatment to candidates.

(2) A candidate and political party has the right to have the content of the candidate's or political party's campaign message reported in the public media in a fair and balanced manner.

(3) A candidate or political party may, during an electoral campaign, publish or distribute campaign materials of such a nature and in such manner as may be prescribed by the Commission.

(4) For the purposes of this section “campaign messages” means an activity, statement or any other form of expression aimed at promoting particular political ideas, policies and strategies for purposes of obtaining votes for a candidate or political party contesting an election.”

Following from the foregoing, it was argued for the petitioner that the 2nd Respondent had a mandate to ensure that equal treatment was given to all candidates during the campaign in view of its having issued a regulation banning campaign rallies on account of the rise in Covid – 19 cases and death toll. Reference was made to page 82 of the Petitioner’s bundle of documents to show the regulation issued. It was said that, however, the 1st Respondent disregarded this regulation and blatantly held the rallies referred to in the evidence for the Petitioner.

It was stated that the Petitioner positively identified the 1st Respondent in the videos of the rallies as attending them and thus being fully aware of them. That this was illegal conduct and a malpractice on the part of the 1st Respondent warranting nullification of his election as Member of Parliament. The court was referred to **section 97 (2)** of the said **Electoral Process Act** to support this position.

It was further said that it was sufficient for the Petitioner to prove just one form of misconduct to justify a nullification and the court was referred to the case of **Josephat Mlewa v. Eric Wightman (1995-1997) ZR 171**. Arguing further on this issue, it was said that the effect of **section 97** cited above is the same as that of **section 18** of the repealed **Electoral Act Chapter 13** of the laws of Zambia on which the **Mlewa** case propounded saying:

“On a consideration of the whole section we are satisfied that the respondent missed the point of difference between the two distinct and separate situations as at paragraphs (a)

and (c). The question of personal knowledge is quite irrelevant and inapplicable under paragraph (a) where it does not matter who the wrong doer is and the scheme of the law appears designed to protect the electorate and the system itself by providing for nullification whenever there is wrong doing which the court feels satisfied, perhaps because of the scale or type of wrong doing, has adversely affected and probably affected the election. In other words the conduct complained of has to affect the election."

It was argued that the video evidence submitted during trial was credible and relevant in the determination of this matter. It was said that even if the issue of dates was challenged by counsel for the 1st Respondent suggesting that the videos could have been taken in the 2016 general elections, this court was asked to take judicial notice of the notorious fact that the 1st Respondent stood as an independent candidate in the 2016 general elections. The court was also referred to the case of **Kapata v. The people SCZ No.9 of 1984** in support of this position.

Further to the foregoing argument, it was submitted that the 2nd Respondent was mandated to ensure that it enforced the regulations it passed following section 4 (1) and (2) said **Electoral Process Act**. The same provide that:

"4. (1) This Act shall be administered and enforced by the Commission and the Commission shall not be subject to the direction or control of any person or authority in the exercise of its functions under the Constitution and this Act.

(2) The Commission shall, in order to ensure compliance with the provisions of this Act, appoint such number of officers as it may consider necessary for purposes of this Act"

That in view of the cited section, the 2nd Respondent did not discharge its duty by its failure to take any action against the rallies held by the 1st Respondent which were in the public domain and as such cannot claim ignorance of the

same, particularly that it has authority to appoint officers who should ensure compliance to regulations passed.

Referring to **section 38** of the **Electoral Process Act**, Counsel for the Petitioner submitted that the 2nd Respondent had a duty and mandate to supervise and coordinate the polling stations at all levels at the general elections in issue to ensure that they were free and fair. It was submitted that the 2nd Respondent failed to discharge this duty when, firstly, it did not prevent vote buying at polling stations as testified to by Bernard Chanda (PW4) and Peter Mubanga (PW5) when they stated that the 1st Respondent's agents were found at Kalela, Wusakile and Luangwa polling stations distributing money to registered voters and encouraging them to vote for the 1st Respondent. It was argued that this evidence was not rebutted by both counsel on the other side and further that their questions as to why these witnesses did not report this issue is contrary to **section 38** cited above which places the responsibility of ensuring elections are conducted in a free and fair manner on the 2nd Respondent. The court's attention was drawn to **Section 89 (1) (e)** of the same **Act** which outlines the infraction complained of. It was also submitted that the 2nd Respondent through its Presiding Officers could have directed the police to forcibly remove the 1st Respondent's agents since they were conducting themselves in broad day light and in open and public places. Reference for this was made to **subsection 6** of the same **section 38**.

Secondly, it is submitted that the 2nd Respondent also failed to prevent the exclusion of polling agents from the rooms elections were being conducted, which evidence was adduced by Peter Mubanga, PW5, an independent observer. This was said to be contrary to **section 38 (4), (5) and (6)** of the **Electoral Process Act**. It was argued that this witness was credible as he was non

– partisan and the court was referred to the case of **Simasiku Namakando v. Eileen Imbwae 2006/HP/EP/002**. In addition, it was stated that in view of the responsibility that the 2nd Respondent has in the conduct of elections as mentioned above, it was imperative for it to secure the polling stations and that this failure severely disadvantaged the Petitioner as can be seen from the evidence of Rachael Mulofwa, PW1, who said receipt of the monies that were being given out influenced her to vote for the 1st Respondent.

Counsel for the Petitioner also advanced an argument that in neglecting or refusing to release Gen 20 forms to the polling agents at the Women's Centre Polling Station was a gross violation of **section 58 (1) of the Act** in view of the evidence adduced by Bernard Chanda and Peter Mubanga over this.

It was further submitted that according to the testimonies of Bernard Chanda and Peter Mubanga, the Gen 20 forms in the Petitioner's bundle of documents on pages 1, 2, 13, 16, 17, 18, 19, 21 and 30, the 2nd Respondent had shown wilful disregard of **section 68(1) (d) of the Act** providing that announcement of figures and words must be done in a prescribed manner and form, which prescribed manner and form is given by section 71 of the same Act. It was argued that the 2nd Respondent failed in its duties when it didn't ensure that all the documents that were presented reflected factual and accurate results. Apart from this, it was argued that even if the Petitioner would not win the elections if given the miscounted votes, the alterations caused the playing field not to be even resulting in elections that were not free and fair. The court was referred to a Kenyan case of **Magombe Vincent v. The Electoral Commission & Ors EP No. 0017/2016** where the court is said to have held that a petitioner does not have to prove that the declared winner would have lost and that it is sufficient to

prove that the winning margin would have been reduced had there been compliance with the electoral rules.

Counsel for the Petitioner went into detail on the discrepancies as appearing on the Gen 20 forms on the pages stated above. That the said discrepancies and alterations indicate that the 1st Respondent had unfair advantage over the Petitioner and that the 2nd Respondent did not discharge its duties of providing equal opportunities for free and fair elections for all the aspiring candidates.

It was argued that when objections were raised over some of the discrepancies mentioned, the proper procedure was for the Presiding Officer to put that in writing in accordance with **section 70** of the **Act**. It was stated that it was a gross misconduct on the part of the 2nd Respondent in not keeping a record of each objection.

I should point out here that in fact, counsel delved into speculation when it was submitted that the alterations and discrepancies indicate that there were objections to the results announced and that such changes indicate that there was a recount done. It is not proper to presume that in the absence of any evidence to substantiate it.

Counsel for the Petitioner continued to submit that the Returning Officer, Mr Kanyanse issue the record of proceedings, (ECZ19), to the Petitioner's campaign Manager Mr Edwin Mutale but that this document had discrepancies with the one issued at the totalling centre. It was submitted that this severely disadvantaged the Petitioner and counsel added that no written record of the objection raised over this was availed to the court. It was further stated over the same issue that the 2nd Respondent should have rectified the mistakes as a way of facilitating free and fair elections pursuant to the authority given under

section 76 of the **Act**. This court was referred to **section 81 (1)** of the Act argued that the evidence of Rachael Mulofwa (PW1) was challenged in cross examination as relating to the 2016 general elections. Again, the court was urged to take judicial notice of the fact that the 1st Respondent was standing as an independent candidate then. This stems from the evidence of the said witness that the 1st Respondent and his agents had demonstrated to the people gathered on how to vote saying that they should vote by marking the row with the symbol of the boat. It was also said that at the meeting at Land of Mercy Church of 09th August 2021, a Bishop Mwansa and Nicco Kalobo, a brother to the 1st Respondent were giving out food hampers and K40.00s to those in attendance, were also promising K100,000.00s to the cooperatives on 16th August 2021 if the 1st Respondent and the PF were voted for.

I must point out here that no such evidence of marking where there was a symbol of the boat was adduced by Rachael. The record does not reflect this. The submission is merely beefing up on the evidence which was not adduced. Similarly, submissions on evidence of the events at Land of Mercy Church of people being given food hampers and K40.00s and promised K100,000.00 for their Cooperatives, have evidence of a Bishop Mwansa and Nicco Kalobo a brother to the 1st Respondent as being the ones giving the people attending the meeting the K40.00s and promising them the k100,000.00s for their Cooperatives on 16th August 2021 if they voted for the 1st Respondent and the PF added. The record has no such evidence. In fact it contradicts the Petitioner's evidence that he heard the 1st Respondent over microphone making the announcement.

Another argument was advanced for the Petitioner relating to the evidence of the 1st Respondent donating a big bus to Wusakile constituency and the

distribution of Annexure C forms. It was said that the intention was to procure the votes of the recipients of these gifts. That the 1st Respondent acted in defiance of **section 81 (2)** of the **Act** by widely bribing would be voters with various gifts across three of the six Wards in Wusakile Constituency, being Luangwa, Malembeka and Luto Wards.

Apart from the foregoing, Counsel to the Petitioner cited **section 83** of the **Act** as well as paragraph 15 of the Code of Conduct to the Schedule of the **Act** and argues that the violence and threats of violence as testified to by Pethias Mulenga, PW3, show that the elections were not free and unfair and the court was referred to the case of **Mulondwe Muzungu v. Elliot Kamondo 2010 EP/001**.

Further reference was made to the afore mentioned Code of Conduct with regard to the averments that the 1st Respondent abused State resources by using the National Assembly office in the constituency to his benefit. It was argued that the other side did not challenge this and thus confirming the 1st Respondent's failure to abide by the said Code of Conduct.

Submissions for the 1st Respondent stated that the burden of proof in election petitions lies on the party petitioning and the standard of proof is to a fairly high degree of convincing clarity, which standard is higher than that required in ordinary civil matters. The case cited relating to the foregoing is that of **Brelsford James Gondwe v. Catherine Namugala SC Appeal No. 129 of 2012**.

On the need for pleadings in election petitions, like in any other civil matter, the court was referred to the case of **Michael Mabenga v. Sikota Wina & Ors.** cited as **(2005) ZR 138 SCZ Judgment** but which is not correct but which I believe is supposed to be **(2003) ZR 110**.

The court was also referred to the case of **Anderson Mazoka & Ors v. Levy Mwanawasa & Ors (2005) ZR 138** underscoring the importance of pleadings.

It was pointed out that **section 97 (2)** of the **Act** spells out the grounds on which petitions are to be brought before the court. As regards commission of corrupt or illegal practise or other misconduct by a candidate or an election or polling agent, it was argued that the nullification of the election of a candidate as Member of Parliament can only be allowed if the person challenging the election of the candidate proves to the satisfaction of the court that the candidate in question personally, or by the candidate's election or polling agent with the candidate's knowledge, consent and approval, committed a corrupt practise or illegal act or other misconduct. Counsel referred to **section 2** of the **Act** in defining an election agent.

The cases of **Akashambatwa Mbikusita Lewanika & Ors v. FTJ Chiluba (1998) ZR 79** and **Nkandu Luo & Anr v. Doreen Sefuke Mwamba & Anr Selected Judgment No. 51 of 2018** were cited to clarify when a candidate may be held responsible for the actions of others. The 1st Respondent argued that it was not enough to simply say the acts complained of were by members of the respondent's political party or his supporters but that those other persons should qualify as agents according the definition by the **Act**.

It was further stated that, apart from a petitioner showing the above, it must be shown to the satisfaction of the court that these acts prevented the majority of the electorate from voting for a candidate of their choice. The cases of **Mubika Mubika V Poniso Njeulu SCZ Appeal No. 114 of 2007** and **Mubita Mwangala v. Inonge Mutukwa Wina SCZ Appeal No. 80 of 2007** as well as **Abiud Kawangu v. Elijah Muchima Appeal No. 08 of 2017** and **Margaret Mwanakatwe v. Charlotte Scott Selected Judgement No. 50 of 2018** were cited to support this position.

Counsel also cited the above mentioned case of **Mlewa** on the issue of showing prevalence of the acts or omissions complained of to affect the majority of voters from voting for the candidate of their choice. The same case was also cited to emphasise the need for credible and cogent evidence to be adduced in establishing the prevalence and effect thereof on the electorate of the electoral malpractice or misconduct.

Further on this point it was argued that the duty to adduce evidence is not a mere one but requires that evidence to be credible and cogent in order for a court to rely on it in proving to the required standard allegations raised. Reference was made to the cases of **Steven Masumba v. Eliot Kamondo**, **Richwell Siamunene v. Sialubala Gift** (whose full citations were not given and which cases are omitted from the list of authorities) and **Muhali George Imbuwa v. Enoch Kaywala CCZ Appeal No.7 of 2017**.

Following from the above, and with particular reference to the **Muhali George Imbuwa** case, it was argued that evidence of partisan witnesses should be treated with caution and should be corroborated before a court can admit such evidence. That politically aligned witnesses may be suspect witnesses rendering their evidence to be attached with little weight.

It was the 1st Respondent's contention that the evidence regarding bribery, corruption, violence, intimidation and general illegal practices and misconduct was led by the Petitioner's witnesses three of whom confirmed to be UPND members making their evidence not safe for this court to rely on. These are Ireen Chisala, Pethias Mulenga and the Petitioner himself.

It was stated that the evidence of Rachael Mulofwa (PW1) had contradictions to the pleadings she was testifying on regarding the types and quantities of items

given out and who gave them out with this witness saying it was the 1st Respondent himself who gave them out while the pleadings say it is his agents. Further, that the pleadings state these events to have happened in Luangwa Township at some bars while the witness stated that it was in Malembeka at Memory's mother's house.

With regard to evidence of Ireen Chisala, the case of **Muhali George Imbuwa** was again cited which case referred to a Ugandan case of **Wadada Rogers v. Sasaga Isaiah Jonny and Electoral Commission No. 31 of 2011 (Ugandan Court of Appeal)** on the need for corroboration of evidence of partisan witnesses. It was argued that there wasn't any independent evidence to corroborate this witness' testimony.

Evidence of Pethias Mulenga was challenged with counsel arguing that he is a suspect witness being a UPND member. Apart from this it was stated that the evidence of this witness does not connect the 1st Respondent to the infractions alleged as the persons mentioned were not his election or polling agents and the **Akashambatwa Mbikusita Lewanika** case was cited in aid of this position.

Evidence of Peter Mubanga was said not to be credible because he failed to mention the name of the organisation he was working for nor did he avail any proof of being an observer by way of an identity card. Neither did he furnish any certificate of registration of the organisation or certificate of accreditation from ECZ. Apart from this, his evidence that he was called to Kalela Polling Station where he found an irregularity with the Gen 20 form and when he was leaving the place found Simi and other boys giving out money was illogical because Gen 20 forms only come into play after votes have been counted at the polling station. It was submitted that the witness was being untruthful as he could not have been called to check an irregularity when voting was still on going.

I must hasten to state here that much as I agree that the Gen 20 forms only come into play after the counting of votes is done, I find that a logical explanation for this could be that counting may have been concluded at the particular stream he went to. In this election, what were previously streams are now polling stations and so a place like Kalela Primary School would have more than one polling station, which explains the designation of the Gen 20 forms with numbers such as Kalela Primary School 01 or Bupe Primary School room 2. This can be deciphered from the witness testimony in his answer to the question after what is quoted which his that "So, you attended to this complaint before they concluded the voting process, isn't it?" and his response was that "In the stream where I was called that there was a complaint."

With regard to the evidence of the Petitioner, it was stated that he is a UPND member and hence a suspect witness requiring corroboration of his evidence. Also, that his evidence is mainly hearsay. It was also said that the video evidence adduced is unreliable as no foundational requirements as to reliability were satisfactorily given.

It was also argued for the 1st Respondent that evidence of violence given by Pethias Mulenga and the Petitioner fail to show that the 1st Respondent or any of his agents were involved in the same. It was stated again that no evidence was led to show that the persons said to have committed the acts complained of were agents as defined by **section 2 of the Act**. The case of **Chrispin Siingwa v. Stanely Kakubo CCZ Appeal No. 7 of 2017** was cited to buttress the position over who an election agent is. The court was referred to a number of cases that dealt with scenarios where illegal actions are alleged to have been committed by persons other than the candidates themselves; **Nkandu Luo & Anr v. Doreen**

Sefuke Mwamba & Anr, Margaret Mwanakatwe v. Charlotte Scott and Mbololwa Subulwa v. Kaliye Mandandi Selected Judgment No. 25 of 2018.

Counsel for the 1st Respondent also argued that the witnesses that testified on the holding of rallies, conduct of elections, and other vices are similarly not credible. It was stated that the Petitioner testified on rallies at which he was not present or which he did not personally witness. It was also stated that the Petitioner never produced any circular or directive over prohibition of holding of rallies and public gatherings but merely produced a social media print out of a purported news report of the said directive. It was argued that it is settled law that news reports constitute hearsay evidence which cannot be relied on to prove a fact before court.

Over the video evidence produced in court again it was stated that they are not credible for failure to meet the required standards of credibility in relation to such evidence. Counsel added that it was clear that the videos were edited as regards the dates and titles inserted to suit them for these proceedings.

That over the issue of using public resources during campaigns, no evidence was led to support these allegations.

It was stated that the Petitioner had failed to meet the standard of proof required in election petitions. It was submitted that the conduct of the elections conformed to the electoral process law and hence being free, fair and credible and that this court should dismiss the petition and uphold the declaration of the 1st Respondent as duly elected Member of Parliament for Wusakile constituency and that costs be for the 1st Respondent.

Arguments for the 2nd Respondent are that the burden of proof lies on the Petitioner to prove his claims to the standard required which is higher than is

required for ordinary civil matters and reference was made to the case of **Sikota Wina & Ors v. Michael Mabenga SCZ No. 15 of 2003**. It was stated that there was no violation of the provisions of the **Electoral Process Act** as none of the witnesses followed the procedure prescribed by **section 70** of the said **Act** as conceded to by the said witnesses during cross examination. It was stated that were there are allegations of inaccuracies whether in the counting of votes or announcement of results, a candidate's polling agent is required to make an objection with the Presiding Officer in the prescribed form. If that polling agent is not satisfied with the decision of the Presiding Officer, he / she appeals to the Returning Officer in the prescribed form. In the same vein, it was submitted that allegations of vote buying were never brought to the attention of the 2nd Respondent, that no formal complaint was submitted to it.

In addition to the above, it was argued that in fact the witnesses that raised these allegations in evidence are witnesses with their own interest to serve, being members of UPND and that they did state that they would do anything to ensure that their party wins.

Further, it was submitted that the rallies said to have been conducted by the 1st Respondent were not brought to the attention of the 2nd Respondent nor was any report of any unfair playing field made to it as confirmed by the Petitioner himself and some of his witnesses.

Relating to the same videos, similar arguments to those of the 1st Respondent, were advanced. It was said that the video clips cannot be relied on by this court as they appear edited with captions inserted. It was said that cross examination did expose the Petitioner's attempts to parade evidence that the phone that was used to capture the footage is what inserted the captions.

Counsel submitted that that it was alleged that the 2nd Respondent failed to prevent the exclusion of polling agents from the polling stations and also that some Gen 20 forms had alterations and discrepancies. It was argued that no polling agents were brought to testify on claims that they were chased from polling stations and could not monitor the counting. That this is despite the fact that the Petitioner confirmed that he had polling agents in all the polling stations in the constituency. It was added that none of these allegations were brought to the attention of the 2nd Respondent. In the same vein, that the evidence that polling agents were not allowed in polling stations is allayed by the testimony of Bernard Chanda who said that he was allowed into a polling station and witnessed counting of votes on presentation of his identity card.

This court was encouraged to disregard the evidence of Peter Mubanga. Counsel for the 2nd Respondent expressed similar concerns with counsel for the 1st Respondent as to how genuine it was that he was an independent observer or as to the existence of the institution he was representing. Counsel added that none of the Gen 20 forms reflect the organisation the witness referred to.

It was also argued that on the allegation of open ballot boxes, this court should take cognisance of the date that the Petitioner is alleging that these boxes were opened because it was post elections and that no evidence was availed to support that they were from Wusakile constituency.

Lastly, over the evidence that the record of proceedings the Petitioner was given at the Civic Centre had entries that did not match the ones the Petitioner had from the totalling centre, counsel argued that the Petitioner did not avail before court the one alleged to be different. It was also argued that the Petitioner indicated that he had no problem with the results on the record of proceedings

exhibited in his bundle of documents which confirms that he had accepted that they reflected that he had lost the elections to the 1st Respondent.

LAW & ANALYSIS

I have closely looked at the evidence before me and taken into account the submissions from the parties herein. I am mindful of where the burden lies in civil matters and what the standard of proof is in matters like the one before me. The learned authors of **Phipson on Evidence**, in paragraph 6-06 at page 151 state the following regarding the burden of proof in civil cases:

“So far as that persuasive burden is concerned, the burden of proof lies upon the party who substantially asserts that affirmative of the issues. If, when all the evidence is adduced by all parties, the party who has this burden has not discharged it, the decision must be against him. It is an ancient rule founded on considerations of good sense should not be departed from without strong reasons.”

The above principle has also been well articulated in a plethora of authorities including the case of **Khalid Mohamed v. The Attorney General (1982) ZR 49** cited by the parties.

This has been reiterated in many other cases and the courts have gone further to outline the standard of proof required in an election petition. In the case of **Mwiya Mutapwe v Shomeno Dominic CCA Appeal No. 19 of 2017**, the Constitutional Court of Zambia held as follows:

“The petitioner in an election petition, just as with any other civil matter, bears the burden to prove the electoral offences complained of. However, the standard of proof in an election petition is higher than that required in an ordinary civil action. The evidence adduced in support of allegations must prove the issues raised to a fairly high degree of convincing clarity.”

The Constitutional Court has maintained the above position as can be seen from the holdings in a plethora of cases such as the case of **Chama Mutambalilo v. Attorney General 2019/ CCZ/008** in which it was stated that:

"In order to succeed in his or her claim in any civil matter, a party must prove his or her allegations to the required standard"

Further, **Anderson Kambela Mazoka, Lt General Christon Sifapi Tembo, Godfrey Kenneth Miyanda v. Levy Patrick Mwanawasa, The Electoral Commission of Zambia, The Attorney General (2005) Z.R. 138 (S.C.)**, it was held that:

"As regards the burden of proof, the evidence adduced must establish the issues raised to a fairly high degree of convincing clarity."

This fairly high degree of convincing clarity is explained in the case of **Richwell Siamunene v. Sialubalo Gift Selected Judgement No. 58 of 2017**, when it was stated that:

"He who alleges must prove any allegations to the standard of proof required by law; in election petitions this standard is higher. The standard of proof applicable is higher than the standard in civil matters of a "balance of probabilities" but lower than the standard in criminal matters of "beyond reasonable doubt". The petitioner must prove his allegation to a fairly high degree of convincing clarity".

It is therefore the duty of the Petitioner to present evidence in this matter which is highly clear and convincing. To achieve this is not dependant on the number of witnesses called but by the quality of the evidence. In **Davies Chisopa v. Sidney Chisenga Appeal No. 179 of 2012 (SC)** it was stated at page J21 that:

"it is not the number of witnesses that prove an allegation but the substance of the witnesses."

It is thus, incumbent on the Petitioner to prove to this court's satisfaction that the evidence adduced in support of the allegations in this election petition prove the issues raised to a fairly high degree of convincing clarity to warrant the granting of any of the reliefs being sought.

It is imperative on my part to set out the requirements needed to be proved in this instance in order to propel the petitioner closer to the reliefs he seeks. The grounds upon which the election of a candidate as a Member of Parliament may be nullified by the High Court are set out in section 97 (2) paragraphs (a), (b) and (c) of the Electoral Process Act No. 35 of 2016. Section 97 (2) provides as follows:

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

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

(i) by a candidate; or

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

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

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

The above section is supported in the case of **Mubika Mubika v Poniso Njeulu, SCZ Appeal No. 114 of 2007** which the Constitutional Court cited with approval in **Jonathan Kapaipi v Newton Samakayi, CCZ Appeal No. 13/2017**, when the Supreme Court stated that:

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

The evidence brought by the Petitioner’s witnesses was that of unfair campaign rallies after a suspension of rallies and public gatherings by the 2nd Respondent and voter buying. Further was the issue of discrepancies on the Gen 20 forms from some polling stations. I have looked at page one as referred to by Peter Mubanga (PW5) and the Petitioner. It is clear that there is a discrepancy on page 1. The figures on Gloria Daka show 25 and 23 in words. This however does not relate to any of the parties privy to this petition and I will not comment on it. On the same page for the Petitioner, in figures it was 141 and in words it read 101.

Page 2 for Wusakile there was an erasure on Ackson Simwizye and again this refers to a party not privy to these proceedings and will not be commented on.

As testified to by the Petitioner’s witnesses, on page 3, the document appears not to be signed and the totals were not included. Having looked at this page and comparing it with page 13, these documents have the same information in

terms of the presiding officer Chilufya Chisanga for polling station SOS-01 and the order of the candidates. The one on page 13 is also completely filled out and signed. No perspective was given on the two documents by any of the Petitioner's witnesses even if it appears in the Petitioner's bundle of documents. The fact that Gen 20 on page is complete, I would be more inclined to take it into account as opposed to the Gen 20 on page 3 which is incomplete and unsigned.

As regards page 16 also for Kalela Primary School, Peter Mubanga observed that on the 1st Respondent the figures and words are different showing 303 and 363. For the Petitioner, in figures it shows 110 and 116 in words. Here also I notice that this document and that on page 5 are similar with the same Presiding officer Chileshe Fridah, Kalela Primary School 01 as the polling station and so are the figures that the candidates got. I see no discrepancy between the words and figures relating to the 1st Respondent, there is a difference on the Petitioner's numbers on page 16 but not on page 5. Page 5 is a carbon copy while page 16 is a photo photocopy and it is the one with alterations making the carbon copy preferable for consideration. The differences in what is clearly the same document were again left unexplained by the Petitioner. Page 17 showing Bupe Primary School on the Petitioner shows in figures 190 and 198 in words. The 190 in figures looks altered on the 0. Without the original document it is difficult to state when or where this alteration occurred. It is however signed by the presiding officer and witnesses. Page 18 for Luangwa Secondary School, and page 30 at Wusakile community centre what Peter Mubanga thought was a disparity on the totals turns out to be because he was not taking into account the rejected votes.

Looking the irregularities referred to in some of the Gen 20 forms exhibited in the Petitioner's bundle of documents, no explanation was given by any of the Petitioner's witnesses or the Petitioner himself although these were his documents. None of the people who were authoring or filling in any of these Gen 20 forms were called to testify on what exactly they had filled in, how they were different from what was presented before this court and who the alterations could be attributed to.

Besides, even if the discrepancies are accepted, they are very minor and inconsequential in terms of making any difference to the vote margin for the Petitioner. It cannot be said that this goes to the root of the election.

I agree with the 2nd Respondent that the petitioner failed to bring evidence as is guided by **section 70** of the **Electoral Process Act** which provides:

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

(2) An objection under subsection (1) shall be made to a presiding officer, in the prescribed form, at any stage before the presiding officer has announced the result.

(3) A presiding officer shall determine the objection and decide whether to order a recount.

(4) A presiding officer shall notify the objector and any other party involved in the objection, of the decision made under subsection (3).

(5) If a presiding officer orders a recount, the presiding officer shall announce the result afresh.

(6) An appeal against the decision of a presiding officer may be made to the returning officer in the prescribed form.

(7) A presiding officer shall keep a written record, in the prescribed form, of each objection under subsection (1) and each decision under this section."

The evidence of the Petitioner's witnesses shows that no formal complaint was made against all the allegations claimed. There was testimony that in some

situations the Presiding Officers refused to issue Gen 16 forms being the complaint forms but no effort was made to appeal these decisions of refusal to the Returning Officer as required by the above section if at all the same was the case.

Further, there was nothing stopping the Petitioner from having any of the Presiding Officers summoned to come and testify as to the accusations pointed to them at trial looking at the high degree of proof required in election petitions during the time the parties had liberty to make applications. Without this evidence, it is only the witnesses' uncorroborated evidence left to support the corruption, bribery, violence and general election misconduct referred to.

Reference was made to the evidence of Bernard Chanda on the anomalies he was pointing out and how they required that the presiding officers proceeded as prescribed under the Act, but it is clear that he never raised objections or ensured that he followed the procedure through by possibly escalating his complaints to the relevant authorities. This is also the case with Peter Mubanga. Without having done so, the argument that the 2nd Respondent grossly misconducted itself in my view is baseless.

Moreover, out of the 69 polling stations, the Petitioner conceded that he only had complaints on 4 polling stations. In fact, I fail to appreciate the complaint over the discrepancies because to begin with, these discrepancies according to the evidence for the Petitioner were noted on the poll day or the day after, but basically after counting of votes was concluded. There isn't any evidence that the Petitioner raised issue with the Returning Officer when he declared the winners of elections. Further, the incident of going to the Civic Centre to be issued with a replacement of the record of proceedings was on the 27th August 2021 which is two weeks after the elections and announcement of the results as

was observed by counsel to the 1st Respondent. Even by then, this issue was not raised or any complaints lodged with relevant authorities.

The scenario does not fall in the category as envisioned by the Supreme Court in the **Njeulu** case above as 4 polling stations out of 69 cannot in my view have an effect of on the majority of voters in Wusakile constituency preventing voters from electing a candidate of their choice. In the earlier case of **Josephat Mlewa v. Eric Wightman (1995/1997) Z.R. 106** the Supreme Court held that:

"The Court must be satisfied about the scale or type of wrong doing. By scale, it is meant widespread as to influence the majority of voters in the constituency not to vote for their preferred candidate."

I am not satisfied that the irregularities alleged concerning the 4 out of 69 polling stations complained of by the petitioner would be deemed as non-compliance to the law relating to the conduct of elections on the part of the electoral officials. I am further comforted with the fact that in some polling stations the Petitioner was not even second but third on the results, and his party president for the UPND was still getting good votes and emerging winner in most constituencies as confirmed by the Petitioner himself.

Being dissatisfied with the evidence led over this, I cannot accept or even point to either the 1st or 2nd Respondent as being responsible for the disparities or alterations on the Gen 20 forms. No proper foundation was laid to confirm the chain of custody and it is possible that the changes could have been made at any point which does not rule out the argument by the defence that some of them could have been altered to suit these proceedings in the Petitioner's favour. The argument therefore that the discrepancies in the documents caused an unfair advantage to the 1st Respondent doesn't hold much water.

I now come to the Annexure C forms exhibited by the petitioner in his bundle. These forms are from Ministry of Lands and a careful perusal does not implicate the Respondents in any way and neither do they show any way in which they could have affected the outcome of the August 12, 2021 elections. There is no indication that the land was given by the 1st Respondent or his agents to induce votes. There is no evidence brought to show that there was any fraud or impropriety connected to these forms perpetrated by the 1st Respondent or his agents and that such fraud resulted in a widespread influence on the community that affected the election results.

The same can be said about the evidence of the violence testified to by Pethias Mulenga (PW3) and the money he said he saw Simi a PF cadre distributing at the polling stations. Added to this is the food hampers that were being distributed by the PF as alluded to by Rachael Mulofwa PW1 and Ireen Chisala PW2. While evidence was led in regard to this, it was never shown that the 1st Respondent and/or his agents were involved in all this. I find no tangible proof implicating him in any of the activities complained of by the Petitioner and his witnesses. The Superior courts gave guidance in this situation in the case of **Nkandu Luo and the Electoral Commission of Zambia v. Doreen Sefuke Mwamba and the Attorney General, Selected Judgment No. 51 of 2018**, when the Constitutional Court stated that:

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

Section 2 of the EPA defines an election agent as *“a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate’s nomination paper.”*

And a polling agent, *“means an agent appointed by a candidate in respect of a polling station.”*

I am further guided by the holding in the case of **Chrispin Siingwa v Stanley Kakubo CCZ Appeal No. 7 of 2017** regarding election agents in the Electoral General Process (General) Regulations which is clear in its provision that:

“Regulation 55(1) is succinct. An election agent must be specifically named in the candidate’s nomination paper.”

In this matter, there was no evidence of who appeared on the 1st Respondent’s nomination papers. This piece of evidence was critical to the petition as it would have placed any named agents of the 1st Respondent at the centre of the allegations brought by the Petitioner. Without this said evidence on who the 1st Respondent’s agents were as defined by the Act and the cases cited, it is impossible to assume whether the persons seen by the Petitioner or his witnesses fall into this category and to be held as such.

The Petitioner and his witnesses kept referring to certain names in their evidence as agents of the 1st Respondent, such as Davies Simunyola, Rodgers Banda, Counsellor Mulenga or Mwaya Mpasa. However, what I have stated above clearly shows that there was need to avail concrete evidence that these people were appearing on the 1st Respondent’s nomination papers.

Concerning the challenge by the Respondents that evidence of the petition witnesses was contradictory and not in line with what was pleaded, I tend to

agree. For instance, the evidence of Rachael Mulofwa (PW1) at trial shows differences from what was stated in the Petitioner's pleadings. There was a general discrepancy in the types and quantities of food hampers offered, on the fact the 1st Respondent himself gave out the hampers and not his agents as per the pleadings, that these events happened in Luangwa Township at a bar while the witness stated it was Malembeka at her friend's house, the mother to Memory. I find the fact that there can be a contradiction on whether the 1st Respondent himself or his agents handed out the hampers as casting a doubt on it. This is an important fact that goes to the root of proving part of the Petitioner's allegations and should be clear and consistent in the witness's mind.

I have considered the video clips that were actually admitted by this court. These were not very clear and it cannot be said for a fact that the person pointed out by the Petitioner was without a doubt the 1st Respondent. The foundation relating to these recordings was also not properly set at trial. There was no information on how they were taken, who took them, what equipment was used and the chain of custody. This is important because it goes to establishing the authenticity of the footage. One of the clips shows a skip, which suggests that the footage was edited. The Petitioner was not able to give an explanation for this.

There is also no assistance as to a fixed date on any of the clips that can lead to a steady conclusion on when exactly the said videos were taken. This is critical in this case as the dates are of importance in the allegations by the Petitioner. I am not satisfied of when the events in the clips were occurring, whether it was before or after the said suspension by the 2nd Respondent. The only form of dates on them were those inserted by a person not named in this court. As this is the only evidence brought to show proof of the rallies allegedly held by the 1st

Respondent, and the same video clips are not reliable, there is nothing left to show that the rallies were actually held at the time adduced in the Petitioner's evidence. It should be remembered that it was not disputed that the 1st Respondent's campaigning started before the campaign period which includes the time before any suspension on rallies and public gatherings may have been in place.

Looking at the evidence provided by the petitioner, I do not find it convincing or having attained a higher degree of clarity as required. I find it lacking and uncorroborated in many instances with unexplained discrepancies and contradictions that this court cannot be expected to fill in. As it was pointed out, most of the witnesses were UPND members making them suspect witnesses requiring their evidence to be corroborated. Peter Mubanga who could have furnished corroborative evidence had his evidence for the most part discredited through cross examination. He was not able to confirm the organisation he was from so that its existence is doubtful. For instance, it was interesting to note the observation by one of the defence counsels that of all the Gen 20 forms produced in court, none of them had the name of the organisation he attempted to mention. This is in view of evidence by this witness that there were colleagues of his from the organisations based at the various polling stations.

There is nothing to show that any misconduct or inappropriateness if any occurring at the hands of the 1st Respondent or his agents who as the record stands remain unknown, influenced the electorate in terms of the preferred choice of candidate for Member of Parliament. The incidents adduced in evidence, even if they were to be accepted, are isolated and are not as would have a wide effect on the electorate. As alluded to earlier, the pattern of voting where the presidential candidate for the UPND got more votes than that of the

PF is very telling with regards to the issue of the will of the majority of the voters on who they wanted to see elected.

Bearing in mind the standard of proof applicable in this matter being higher than the standard in civil matters of a balance of probabilities but lower than the standard in criminal matters of beyond reasonable doubt, I am not satisfied that the Petitioner has discharged his burden to the required standard. Looking at the totality of the evidence before me, I find that the Petitioner has failed to prove the case to a fairly high degree of convincing clarity and his claim therefore fails in its totality. I declare the 1st Respondent as having been duly elected as Member of Parliament for the Wusakile Constituency. The petition is accordingly dismissed for lack of merit. However, I make not order as to costs.

Leave to appeal is granted.

DELIVERED AT KITWE THIS 26TH DAY OF NOVEMBER 2021.


.....
HIGH COURT JUDGE.