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IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT CHIPATA
(Constitutional Jurisdiction)

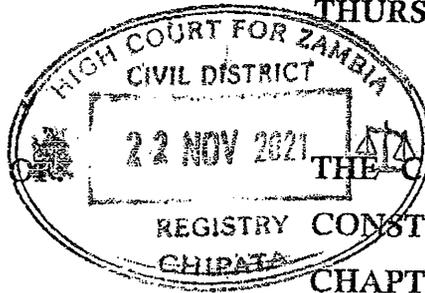
2021/HP/EP/0047 & 0025

IN THE MATTER OF:

A PARLIAMENTARY ELECTION
PETITION FOR LUMEZI CONSTITUENCY
NO. 46 OF DISTRICT NO. 013 LUMEZI
SITUATE IN THE LUMEZI DISTRICT OF
THE EASTERN PROVINCE OF THE
REPUBLIC OF ZAMBIA HELD ON
THURSDAY, THE 12TH OF AUGUST 2021

AND

IN THE MATTER OF



THE CONSTITUTION OF ZAMBIA, THE
REGISTRY CONSTITUTION OF ZAMBIA ACT,
CHAPTER 1 VOLUME 1 OF THE LAWS OF
ZAMBIA

AND

IN THE MATTER OF:

ARTICLES 1, 2, 5, 8, 9, 45, 46, 47, 48, 49, 50,
54, 70, 71, 72, AND 73 OF THE
CONSTITUTION OF ZAMBIA, THE
CONSTITUTION OF ZAMBIA ACT,
CHAPTER 1 VOLUME 1 OF THE LAWS OF
ZAMBIA

AND

IN THE MATTER OF:

SECTIONS 29, 37, 38, 51, 52, 55, 58, 59, 60,
66, 68, 69, 70, 71, 72, 75, 76, 77, 81, 82, 83, 86,
87, 89, 96, 97, 98, 99, 100, 106, 107 AND 108
OF THE ELECTORAL PROCESS ACT NO.
35 OF 2016

AND

IN THE MATTER OF:

THE SCHEDULE TO THE ELECTORAL
PROCESS ACT NO. 35 OF 2016

AND

IN THE MATTER OF:

THE ELECTORAL (CODE OF CONDUCT)
2016

AND

IN THE MATTER OF:

THE ELECTORAL (CODE OF CONDUCT)
REGULATIONS 2011 STATUTORY
INSTRUMENT NO. 52 OF 2011

AND

IN THE MATTER OF:

THE ELECTORAL COMMISSION OF
ZAMBIA ACT NO. 25 OF 2016

BETWEEN

MWANZA PILILA GETRUDE JERE

1st PETITIONER

MACDONALD PHIRI

2nd PETITIONER

ZELIPA CHITSULO

3rd PETITIONER

AND

MUNIR ZULU

1st RESPONDENT

THE ELECTORAL COMMISSION OF ZAMBIA

2nd RESPONDENT

Before the Honorable Lady Justice C. LombePhiri in Open Court

For the 1st Petitioner: *Mr. E Khosa - Messrs. BCM Legal Practitioners*

For the 2nd and 3rd Petitioner: *Mr. M Cheelo - Messrs. MAK Partners for Mr. K. Mweemba - Messrs Keith Mweemba Advocates*

For the 1st Respondent: *Mr J. Ilunga and Mr M. Zaza - Messrs. Ilunga and Company*

For the 2nd Respondent: *Mrs. N. Mbao and Mr. A Salubeni - Messrs Nkusuwila Nachalwe Advocates*

JUDGMENT

CASES REFERRED TO:

1. **AbuidKawangu v Elijah Muchima (2016/CC/A039)**
2. **NkanduLuo and the Electoral Commission of Zambia v. Doreen SefukeMwamba and the Attorney General (CCZ Selected Judgment No.51/2018)**
3. **Austin Liato v SitwalaSitwala (CCZ Selected Judgment No.23/2018)**
4. **AkashambatwaMbikusitaLewanika, HicuungaEvaristoKambaila, Dean NamulyaMungiombe, Sebastian Saizi Zulu, Jennifer Mwaba v. Frederick Jacob Titus Chiluba - (1998) ZR 79**
5. **Brelsford James Gondwe v Catherine Namugala (SCZ Appeal No. 175/2012)**
6. **MubikaMubika v InongeMutukwaWina – SCZ Appeal No. 13 of 2017**
7. **Jonathan Kapaipi v Newton Samakayi – Appeal No. 13 of 2017**

8. **MubitaMwangala vInongeMutukwaWina – SCZ Appeal No. 80 of 2007**
9. **JosephatMlewa v Wightman -(1995-97) Z.R 171**
10. **Margaret Mwanakatwe v Charlotte Scott and another (CCZ Selected Judgment No.50/2018)**
11. **Steven Masumba v Elliot Kamondo – Selected Judgment No. 53 of 2017**
12. **SitaliSitali v NamuchanaSepiso -2016/CC/A011**
13. **Bizwayo Newton Nkunika v Lawrence Nyirenda and Electoral Commision of Zambia -2019/CCZ/005**
14. **James MwananyandaWamunyima v WalusaMulaiki – 2021/HP/0623**
15. **Krige and Aother v Christian Council of Zambia – (1975) ZR 152 of 2018**
16. **MbololwaSubulwa v KaliyeMandandi (CCZ Selected Judgment No. 25/2018)**
17. **Khalid Mohamed v The Attorney General (1982) ZR 49**
18. **ChristopherKalenga v Annie Mushy and 2 others (2011/HK/EP/03)**

Other authorities referred to:

- 1.The Constitution of Zambia (Amendment) Act No.2 of 2016**
- 2. The Electoral Process Act No. 35 of 2016**

3. **The Electoral (General) Regulations, 2016**

4. **The Halsbury's Laws of England, 4th Edition, Volume 1**

1 **INTRODUCTION**

1.1 This is a consolidated Petition by **Pilila Gertrude MwanzaJere, Macdonald Phiri and Zelipa Chitsulo** the 1st, 2nd and 3rd **Petitioners**, respectively, against **Munir Zulu** and the **Electoral Commission of Zambia**, the 1st and 2nd Respondents respectively. The Petitions which were filed on 27th August, 2021 were on 3rd September 2021, by an order made pursuant to Section 101(2) of the Electoral Process Act No. 35 of 2016, consolidated as they both related to the same parliamentary elections for the Lumezi Constituency in Eastern Province.

1.2 On 14th September 2021, the 1st Respondent filed an Answer and an affidavit in response. The 2nd Respondent equally filed an affidavit in opposition, out of time.

2 **PETITIONERS' PETITIONS**

2.1 **1st Petitioner's Petition**

2.1.1 In her Petition, the 1st Petitioner stated that she was a candidate in the Lumezi Parliamentary Elections in Lumezi District of the Eastern Province of the Republic of Zambia. She stated that she successfully filed her nomination under the Patriotic Front Party on 17th May, 2021. She also stated that the seat was contested by

seven other candidates namely: Macdonald Phiri of the United Party for National Development, Gibson Nyirenda of the Democratic Party, Janet Zimba of the Socialist Party, Mary Mbewe of United National Independence Party and three Independent candidates being Munir Zulu, Wiseman Mvula and Zelipa Chitsulo.

2.1.2 She further went on to provide the physical description and demographics of the Constituency by stating that Lumezi Constituency consists of eleven (11) wards being: Chibande Ward, Lukusuzi Ward, Lumimba Ward, Kazembe Ward, Kapangala Ward, Kaikumbe Ward, Wachitangachi Ward, Chamtowa Ward, Kachama Ward, Kamimba Ward and Diwa Ward. She further stated that Lumezi Constituency has a total of 53,451 registered voters. Also that Lumezi is one constituency in one district.

2.1.3 The alleged malpractices as stated in the Petition consisted of allegations relating to various electoral malpractices including distribution of Patriotic Front campaign material by the 1st Respondent, campaigning for the Patriotic Front Presidential Candidate, bribery, threats of and actual violence by the 1st Respondent and his agents. It was pleaded that the said threats or actual

violence resulted in several people being apprehensive during the campaigns.

- 2.1.4 It was pleaded that the rampant bribery resulted in the electorate voting for the 1st Respondent. It was alleged that the bribery occurred in Kaikumbe Ward, Wachitangachi Ward, Chamtowa Ward, Kachema Ward, Kamimba Ward and Diwa Ward.
- 2.1.5 It was specified in the Petition that the 1st Respondent and his campaign manager donated a motor vehicle, namely a Toyota Dina Registration No. ALM 4371, through the now elected independent Councillor Mr Felix Zulu, of Lumimba Ward, in Chitungulu Community, three weeks before the 12th August 2021.
- 2.1.6 It is further stated that the bribery of voters by the 1st Respondent through the distribution of money, cement, iron sheets, various materials and a motor vehicle was widespread and affected the majority of the electorate of the 11 wards in Lumezi Constituency.
- 2.1.7 It is also stated in the Petition that on 3rd July 2021, the conflict resolution management committee sat to discuss a complaint regarding “donations” made by the 1st Respondent to the electorate during the campaign period in several wards.

- 2.1.8 It is further stated in the Petition that throughout the campaign period, right up to 11th August 2021, the 1st Respondent and his campaign manager, Mr Patson Chipeta, continued using two vehicles namely Mitsubishi Pajeros branded with the number plate ECL 2021. It was also stated that the 1st Respondent distributed Patriotic Front branded t-shirts, chitenge materials, jumpers and other regalia in almost all the nine (9) wards of the Lumezi Constituency.
- 2.1.9 It also stated that the allegations in the Petition could be proved by video and photographic evidence.
- 2.1.10 It is further stated that in wards where the 1st Respondent never campaigned or made monetary donations he did not do well as the electorate were not influenced by his monetary and material donations to their respective wards. These wards were mostly in the valley area of the Lumezi Constituency being Lukusuzi, Chibande, Kapangala and Kazembe Wards. It was stated that the 1st Respondent concentrated his efforts in the plateau areas of the Constituency.
- 2.1.11 It is further contended that there was widespread non-compliance of the Electoral Act and the Electoral Code

of Conduct as the 1st Respondent and his campaign team engaged in the defacing of the 1st Petitioners campaign material.

2.1.12 The 1st Petitioner stated that the scale of threats and intimidation by the 1st Respondent before the nomination, during the campaign period and on the voting day, were unbearable and in unbelievable proportions that it resulted in the prevention of the majority of voters from voting for a candidate whom they preferred.

2.1.13 The 1st Petitioner contended that members of the Patriotic Front and the general public feared for their safety while others chose not to vote on the polling day as a result of the acts of vote-buying, bribery, distribution of assorted materials and monetary inducements to the electorate in various wards of the constituency in the elections by the 1st Respondents.

2.1.14 It was stated that on 14th August 2021 the Returning Officer for the Lumezi constituency, Mr Micheal Ngulube, declared the 1st Respondent duly elected as Member of Parliament for the Lumezi Constituency. It was stated that the respective candidates polled the following:

1. Zulu Munir	11,929 votes
2. Mwanza Pilila Gertrude	10,471 votes
3. Phiri Macdonald	4,386 votes
4. Mvula Wiseman	3,849 votes
5. Chitsulo Zelipa	1,081 votes
6. Nyirenda Gibson	519 votes
7. Zimba Janet	338 votes
8. Mbewe Mary	174 votes

2.1.15 It is contended that the elections were not free and fair owing to the numerous malpractices by the 1st Respondent contrary to the Rules, Regulations and Directives pertaining to participating and carrying on of peaceful and fair elections.

2.1.16 The 1st Petitioner, therefore, prayed for: -

- a. *A declaration that the election was null and void ab initio;*
- b. *Costs of and incidental to this petition; and*
- c. *Such declaration and Orders as the Court may deem fit.*

2.1.17 The 1st Petitioner filed an affidavit verifying the facts. The averments in the Affidavit were exactly the same as the statements made in the Petition therefore require no reproduction.

2.2 2nd and 3rd Petitioners Petition

2.2.1 It was stated in the joint Petition by the 2nd and 3rd Petitioner that the duo were candidates in the Lumezi Parliamentary Elections. They then proceeded to state the names of the other candidates and some demographics as in the 1st Petitioner's Petition. For the sake of brevity these will not be repeated, as they are not in dispute.

2.2.2 The main contention of the 2nd and 3rd Petitioner is that the 1st Respondent distributed cement, roofing sheets, blankets, mealie meal, second-hand clothes (salaula), bicycles, a heavy-duty solar battery and a Canter truck, registration number ALM 4371, during the campaign period. Further that the night before the elections being 11th August 2021 and on the actual voting day, 12th August 2021 from around 05:00 hours to 21:00 hours the 1st Respondent continued distributing the items and money.

2.2.3 It is contended that the registered voters who received the aforementioned items were told to guarantee votes and assigned electoral officers to vote for them. It was alleged that the 1st Respondent and his agents induced the voters

to vote for him by threatening to make them suffer if they did not vote for the 1st Respondent.

2.2.4 It is further contended that the 1st Respondent made large cash pay-outs to voters working hand in hand with the Patriotic Front that distributed social cash transfer fund throughout the Constituency.

2.2.5 It was stated that on the date for nominations, the Petitioners were delayed by two hours as the 1st Respondent did not have his grade 12 certificate rendering nomination papers inadmissible by Electoral Commission of Zambia. It was further stated that Electoral Commission of Zambia sought permission from State House to clear the 1st Respondent. The 2nd and 3rd Petitioners stated that Electoral Commission of Zambia did not verify the Grade 12 certificate independently as mandated but relied on State House for clearance.

2.2.6 It was further stated that in June 2021, the 1st Respondent was arrested on allegations of having successfully lodged his nomination papers without a Grade 12 certificate. That these events led to the 1st Respondent dragging former Lumezi MP, Pilila Mwanza, to Court on account that she equally did not have a valid grade 12 certificate.

2.2.7 It is further stated that on 10th August 2021 the 2nd Petitioner was indirectly threatened by the 1st Respondent

when he held a corked gun upto Mr Baldwin Chitsulo, a campaign team supervisor, together with 2 others whilst they were putting up posters which had been removed by the 1st Respondent. That at the time the 1st Respondent was using his vehicle with registration number ECL 2021 number plate.

2.2.8 In view of the above, the Petitioners pray for a declaration and determination that: -

1. *1st Respondent was not duly elected and therefore the election of the 1st Respondent as a Member of the National Assembly for the Lumezi Parliamentary Constituency is void;*
2. *the illegal practices committed by the 1st Respondent and or his agents materially and physically affected the election result so that the same ought to be nullified; and*
3. *costs occasioned by this Petition be borne by the Respondents.*

2.2.9 The 2nd and 3rd Petitioners filed an affidavit verifying the facts stated in their Petition. The facts deposed to in the affidavit mirrored what had been stated in their Petition therefore there is no need for repetition of the same.

3 RESPONDENTS' ANSWERS

3.1 1st Respondent's Answer

- 3.1.1 In answer to the 1st Petitioner, the 1st Respondent principally denied the allegations in the 1st Petitioner's Petition. He stated that he complied substantially with the provisions of the relevant pieces of legislation including the Constitution and the Electoral Process Act.
- 3.1.2 It was further revealed in the Answer that the 1st Petitioner and her sponsors, the Patriotic Front Party, engaged in massive voter buying, corruption, bribery and other electoral malpractices in breach of the Constitution of Zambia and the Electoral Process Act.
- 3.1.3 The 1st Respondent further responded that he never donated the motor vehicle namely Toyota Dina Registration number ALM 4371 to an independent councillor, Mr Felix Zulu. It is stated that the vehicle was driven by Mr Zulu as he was part of the campaign team. Also that the said Mr Felix Zulu was never elected as Councillor of Lumimba ward but that Mr Alick Banda of the Patriotic Front was the elected Councillor.
- 3.1.4 In further answer it is stated that the conflict resolution and management committee sat following a complaint by Mr Gibson Nyirenda of the Democratic Party. That after

the hearing of the complaint, the complainant apologized to the 1st Respondent for the false allegations against him concerning donations.

- 3.1.5 The 1st Respondent responded that prior to the adoptions for the 12th August 2021 General Elections, he was a member of the Patriotic Front and had applied to be adopted for the Lumezi Constituency. However, he resigned from the party after being denied sponsorship. That prior to his resignation he used the number plates ECL 2021 on his motor vehicle. He, however, denies using the plates ECL 2021 on any of his campaign vehicles nor distributing any Patriotic Front branded campaign materials during the campaign period.
- 3.1.6 He further responded that his campaign motor vehicles were branded differently from those of the Patriotic Front. Also that he distributed materials with unique features carrying a symbol of a mortar and pestle.
- 3.1.7 The 1st Respondent maintained that he complied substantially with the provisions of the relevant pieces of legislation including the Constitution, the Electoral Process Act and the media release by the Electoral Commission of Zambia on the guidance on Independent Candidates dated the 15th July 2021.

- 3.1.8 The 1st Respondent's Answer revealed that contrary to the 1st Petitioner's assertions that voter turnout was poor due to violence, the voter turnout was actually good translating to about 63.6% of the electorate having cast 34,003 votes out of 53,451 registered voters. He also stated that he conducted his campaigns in a peaceful manner and in accordance with the law.
- 3.1.9 The 1st Respondent responded that voters were swayed by the development agenda he promulgated throughout the campaign period.
- 3.1.10 He further answered that the Petitioners are indirectly challenging the declaration of his nomination as valid contrary to Regulation 18(7) of the Electoral Process (General) Regulations 2016, Statutory Instrument No.63 of 2016 as read with Article 52(4) of the Constitution of Zambia.
- 3.1.11 The 1st Respondent maintained that he peacefully conducted his campaign and that the Petitioners are not entitled to any of the reliefs sought.
- 3.1.12 The 1st Respondent filed an affidavit in response to the allegations.

3.2 2nd Respondent's Answer

3.2.1 The 2nd Respondent's filed a combined Answer in response to the consolidated Petition. It was stated in the Answer that the 2nd Respondent, on 12th August 2021, it conducted a General Election which comprised of Presidential, Parliamentary and Local Government elections. Furthermore that the results were tabulated as already stated, herein.

3.2.2 The 2nd Respondent contends that during the election period, it did not receive any alarming notices regarding electoral malpractice and therefore the said election was validly conducted.

3.2.3 It is prayed that the petition be dismissed with costs.

3.2.4 The 2nd Respondent filed an affidavit verifying facts deposed to by Kryticous Patrick Nshindano the Chief Electoral Officer at the Electoral Commission of Zambia.

4 HEARING

The hearing of the Petition took place at Chipata. The Petitioners called twenty (20) witnesses and the Respondents called two witnesses.

4.1

PETITIONERS' CASE

4.1.1 1st Petitioner's case

Pilila Gertrude Mwanza Jere, the 1st Petitioner, was the first witness (PW1) in her own regard. Her testimony was to itemize the numerous electoral malpractices committed by the 1st Respondent and his agents during the campaign period. She began by stating that she participated in the Lumezi Parliamentary Elections and was pitted against seven other candidates whom she named, as stated in her Petition. She testified that she noticed numerous electoral malpractices by the 1st Respondent during the campaign period from 17th May, 2021 to 11th August, 2021. and that regardless the guidance from the Electoral Commission of Zambia, on the conduct of elections, the 1st Respondent was non-compliant.

4.1.2 PW1 also testified that the 1st Respondent was declared the winner of the Lumezi Constituency, which results she did not personally agree with due to the electoral malpractices outlined in her Petition.

4.1.3 PW1 then explained the demographics of the Constituency as listed in the Petition. She also recited the distribution of voters from the Electoral Commission Register. She further explained the campaign team structure in the Patriotic

Front party. She stated that they had carried out door to door campaigns in compliance with the Electoral Commission of Zambia guidelines and the advice from Ministry of Health in order to minimize the spread of COVID-19. She further testified that a voters register was purchased from the Electoral Commission of Zambia in order to track voters. PW1 averred that her Campaign Manager was Mr. Andrew Gondwe from the Provincial Patriotic Front Executive Committee.

4.1.4 PW 1 testified that on 8th August 2021 she was travelling along the Lundazi -Chipata Road from the southern part of the Constituency when the 1st Respondent and his entourage, who were coming from the opposite direction, swerved onto the opposite lane causing her driver, Mr. Andrew Pilila, to leave the road in order to avoid a head-on collision. PW1 stated that this reminded her of what she had been told a few days prior to the incident that the 1st Respondent would cause a head-on collision should they meet on the road. PW1 further testified that threats of being beaten or something happening to them were made to one or two members of her team, thereby creating fear in her campaign team.

4.1.5 It was PW1's testimony that her campaign team noticed that the 1st Respondent went on a rampage donating

cement, iron sheets, blankets, batteries and other accessories to schools and health centers during the campaign period. PW1 testified that she became aware of these allegations from institutions where the materials were distributed. PW1 told the Court that a complaint was lodged before the Conflict Resolution and Management Committee for Lumezi Constituency. In addition she stated that letters of complaint were written listing the institutions and schools that benefitted from the 1st Respondent's donations.

4.1.6 PW1 narrated that she had witnesses to testify to the rampant bribery. She stated that at Kamusaro School her witness was Moffat Ngwira (PW3). She testified that at this school the 1st Respondent gave 40 iron sheets and 20 pockets of cement. She further stated that at Katope School her witness was the PTA vice chairperson, Mr. Elias Nkhata (PW5), where 32 iron sheets were donated. She further testified that at Soye School 40 iron sheets were given but she had no witness to testify to this. PW1 further narrated that at Kaikumbe school, the 1st Respondent donated 30 pockets of cement and this was witnessed by Mabvuto Banda (PW4). PW1, further stated that at Lwampamba school 20 pockets of cement were given as witnessed by Catherine Chirwa (PW10). She further averred that at Chawomba Polling Station, Lumwanda

Clinic, blankets, bed sheets and one heavy duty battery were donated to the rural health as witnessed by Isaac Gregory Miti (PW7). PW1 told the Court that at Kalumbandela School the 1st Respondent donated 20 pockets of cement, and her witness was Musa Nkhata (PW12). Further that at Chanyalugwe School, 1st Respondent donated 50 iron sheets and Henry Zulu (PW11) would testify to this. PW1 testified that in Kachama ward the 1st Respondent donated 30 pockets of cement to Masutwe Community to enable them construct a bridge and these pockets of cement were received by Headman Somo who happens to be the chairperson of the committee and Lengani Mukuna would testify.

4.1.7 PW1 testified that at Kangobe School, the 1st Respondent donated 30 pockets of cement and Justin Ngulube would testify to this. She further testified that at Kafinde school within the same ward the 1st Respondent gave out money to be shared between men and women and Joyce Banda would testify to this effect. That at Diwa ward, at Chapisi school, 20 pockets of cement and cash amounting to K1500 for bore hole maintenance were given by the 1st Respondent and Joseph Mbambo would testify. PW1 testified that at Kalindi School in Diwa ward, the 1st Respondent donated 20 pockets of cement and her witness, Yona the chairperson of the school, received the 20 pockets

of cement. Also that at Kabelu school in the Kabelu Community, the 1st Respondent donated 20 pockets of cement received by Mr Philip Banda, a committee treasurer, who would testify that it was for them to construct a bridge on the Lukuzi River. PW1, further testified that at Chauluma school, again within Diwa Ward, the 1st Respondent donated 20 iron sheets which were delivered on 11th August 2021 after 17:00 hours and received by Mr. Bernard Moyo, the deputy headmaster. Mr Moyo allegedly handed over these iron sheets to Benson Mukara, the PTA-Works Chairperson (PW16) who would testify to this.

4.1.8 PW1 testified that at Katunula School located in Mwasepangwe the 1st Respondent gave 10 bags of cement and 20 iron sheets and that Timothy Ngulube would testify. Further that at Kasasa, the 1st Respondent donated 30 iron sheets and Mr. Kambani, who is PTA chairperson, was present when the donation was being made and it was received by Timothy Zimba. She further testified that the 1st Respondent donated a Toyota motor vehicle, registration number ALN 4371, to a community in the Lumimba ward in Chief Chitungulu's area. She testified that Mr. Felix Zulu, the losing Independent candidate for area councilor was the one using the vehicle.

4.1.9 PW1 further testified that the other donations made were as follows:

4.1.10 Kavinana School - 40 pockets of cement; Mitondo School - 32 iron sheets; Wachitangati ward at Njeluke School - 30 pockets of cement; Chamutowa ward - packets of soya pieces and K5; Kamutolo School - 50 iron sheets. Kanu school - 27 iron sheets; Kamimba Ward at Ndaiwala school - 30 pockets of cement; Changulube Polling station at Chankomba Community School - 30 pockets of cement; Kankwezi School - a laptop; Lumamba School - a computer; Mpingo School - K 3,000 and 50 pockets of cement which were received by the Deputy Head; Mbuluzi School in Diwa ward - 30 iron sheets which were received by Mr. Suzyo a PTA Chairman; Nkanyu community - K4,000 to maintain a road that runs from Lundazi to Chipata; and Katale Community School - 50 iron sheets.

4.1.11 PW1 testified that the 1st Respondent's strategy was to hold meetings with the people in a community where he would undertake to deliver items requested in two days. That a day or two later the items would be delivered using two vehicles. PW1 further testified that one of the vehicles used to deliver the items was a white canter truck, registration number ALD 6176, belonging to Mr. Patson Chipeta, the Respondent's campaign manager. The said vehicle was being driven by Amos Mwenda and Moses Mtonga

popularly known as Katimo. The other vehicle was a greyish Fuso Mitsubishi, registration number ARB 3209ZM, belonging to Mr. Everisto Zulu from Kamimba ward, who drove it himself.

It was PW1's testimony that as regards the use of particular party's regalia, campaign materials and the use of a President's name of a particular political party, Independent candidates were directed to refrain from use as it could cause confusion. PW1 told the Court that despite the directive from the Electoral Commission of Zambia, the 1st Respondent still went ahead and used the initials of her party president, Edgar Chagwa Lungu, popularly known as ECL, which caused confusion amongst the voters because they found it difficult to distinguish which candidate was standing on the Patriotic Front ticket.

4.1.12 PW1 further told the Court that the 1st Respondent distributed campaign materials such as chitenges and t-shirts bearing the letters ECL. That as a result of these circumstances, the electoral officer made the declaration that the 1st Respondent had won.

4.1.13 PW1 testified that the 1st Respondent scored 11,929 while she scored 10,471. She further testified that Lumezi has 6 wards in the plateau area which are highly populated and 5 wards in the valley, with a smaller population. She stated

that in areas where the 1st Respondent did not give any donations, his performance was poor and that in wards where he made donations, he performed extremely well. By way of example PW1 referred to Chief Mwanya and Kazembe areas which are in the valley where the 1st Respondent never went and as a result he did not win at any polling station. Whereas in Lumimba ward, the 1st Respondent donated a blue vehicle and he managed to win in 3 to 4 polling stations.

PW1 testified that the election of the 1st Respondent was marred by numerous electoral malpractices and campaign strategies and prayed that the election be nullified.

4.1.14 In cross-examination by the 2nd and 3rd Petitioners' Counsel PW1 stated that the 1st Respondent and his team members were involved in malpractices. PW1 explained that the 1st Respondent was directly involved in these malpractices because he would go to institutions and hold meetings where he promised people materials then the materials would be delivered the next day.

4.1.15 PW1 also stated that the 1st Respondent had agents namely Mr. Chipeta, his campaign manager, Kenneth Musteka, John Nyirongo, Janet Kowani, Neo Mvula, Amos Mweenda, Moses Mtonga, John Banda and Paul Phiri.

PW1 stated that she personally saw the 1st Respondent distributing money. However, on further cross-examination PW1 stated that she did not see the 1st Respondent giving out money. PW1 stated further that she did not have any evidence in form of videos or pictures of the 1st Respondent giving out money. PW1 further confirmed that her team was able to reach the voters because they had a voters register. She also confirmed that she stood as a candidate on the Patriotic Front ticket.

4.1.16 PW1 also confirmed that she campaigned using the party structures which had 24 people for each Ward. She stated that the 1st Respondent did not have similar structures. PW1 told the Court that these 24 people in each Ward did not have any picture of the 1st Respondent distributing money or cement. When referred to the 1st Petitioner's bundle of documents she failed to identify the 1st Respondent in any of the pictures she was referred to.

4.1.17 PW1 confirmed that in the area where the 1st Respondent was engaged in malpractices he did well. When shown the election results per Ward, PW1 pointed out three polling stations where she alleged the 1st Respondent had made donations yet she scored higher votes.

4.1.18 PW1 confirmed having two drivers during the campaign period, one being Andrew Jere who drove her throughout

the campaign. She confirmed that this was her son. Upon being shown a video depicting Andrew Jere exhibiting huge amounts of money and lamenting about the day's work, she confirmed that this was the same person.

4.1.19 PW1 also confirmed that Felix Zulu did not win any election.

She further stated that she and the Patriotic Front had made a complaint to the Conflict Management and Resolution Committee. She stated that she attended the hearing but could not be heard as a quorum was not formed. She stated that she had no documentary evidence to support this evidence.

4.1.20 PW1 denied directly seeing the 1st Respondent distributing anything but maintained she did so in passing. She also testified that she was scared of the 1st Respondent during the campaigns because of his threats.

4.1.21 Further in cross-examination by the 2nd Respondent's Counsel, PW1 stated that the Electoral Commission of Zambia did everything to ensure that the atmosphere was conducive for all candidates therefore it was unnecessary to cite the 2nd Respondent in these proceedings.

In re-examination, **PW1** clarified that the Patriotic Front was not part of the conflict management meeting between the 1st Respondent and the United Party for National Development.

4.1.22 **Andrew Gondwe**, a farmer of Gutusa Village in Lumezi District, was the Petitioner's second witness (**PW2**). He stated that he is the Vice Provincial Publicity and Information Secretary for youths in the Eastern Province for the Patriotic Front. He further stated that he was **PW1**'s campaign manager.

4.1.23 **PW2**'s evidence confirmed the evidence of **PW1** in relation to the demographics of the Constituency and the campaign strategy adopted by **PW1** and her party.

4.1.24 **PW2** further testified that he received adverse reports from all the wards, especially from the 6 wards situated in the plateau area, regarding the 1st Respondent's manner of campaigning. He stated that what was reported was that the 1st Respondent was promising people items or goods in exchange for their votes. **PW2** testified that the election of the 1st Respondent was marred with corruption therefore it should be nullified as it was not free and fair.

4.1.25 In cross-examination by the 2nd and 3rd Petitioners' Counsel, **PW2** stated that he did not witness witnessing

any corruption or malpractice. He, however stated that after the elections, on the 23rd August 2021, he found the donated items in 3 places.

4.1.26 Further in cross-examination by the 1st Respondent's Counsel, PW2 confirmed being a party official in the Patriotic Front and being PW1's campaign manager. He stated that his major responsibility was to ensure that PW1 won the election. He stated that he was not happy that PW1 lost.

4.1.27 PW2 told the Court that he did not report any allegations of corruption against the 1st Respondent to the police or the Anti-Corruption Commission. PW2 further denied seeing the 1st Respondent distributing any money, roofing sheets and other items. He also stated that he did not bring to Court any written reports received from the ward chairpersons regarding malpractices.

There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.1.28 Moffat Ngwira, a farmer of Kamusalo School in the Lumezi District, was the Petitioner's third witness (PW3). He testified that he is Patriotic Front Youth Chairperson in Kaikumbe Ward. PW3 testified that between May and June 2021, the 1st Respondent had a rally attended by about

500 people at Kamusalo school. He testified that at the rally the 1st Respondent told people that before elections he would deliver iron sheets and cement. PW3 further testified that on 2nd July 2021 some unknown people, in a Fuso Fighter truck, delivered the pledged items. He stated that he did not know the registration number of the vehicle. PW3 further testified that while he was present when the items were delivered Akim Luhanga, the PTA chairperson, is the one who received them. PW3 also testified that he was a registered voter at Kamusalo polling station.

4.1.29 During cross-examination by the 2nd and 3rd Petitioners' Counsel, PW3 confirmed that the delivery of items influenced his voting on 12th August, 2021 as he did not vote for his preferred candidate.

4.1.30 In further cross-examination by the 1st Respondent's Counsel, PW3 confirmed that he voted from Kamusalo school where PW1 received the highest number of votes. He further confirmed that the 1st Respondent was present at the meeting held on the 21st July, 2021, but he did not have any proof of this. PW3 also confirmed that items delivered were received by the PTA chairperson but there was no proof of this before Court.

4.1.31 There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.1.32 **Mabvuto Banda** of Chimbelele village in the Lumezi District was the Petitioner's fourth witness (**PW4**). He testified that on 21st June, 2021, at a meeting at Kaikumbe School, the 1st Respondent informed them that he was standing as a Member of Parliament for the Lumezi Constituency. The 1st Respondent then asked what the community lacked. **PW4** testified that the 1st Respondent was informed of a need for a bridge in a swampy area which became impassable during the rainy season. **PW4** testified that after cement was delivered to the community they believed in the 1st Respondent's development agenda. He testified that on 12th August 2021 they voted for the 1st Respondent, as agreed. **PW4** testified that he was a registered voter at Kaikumbe Polling Station.

4.1.33 In cross-examination, by the 2nd and 3rd Petitioners' Counsel, **PW4** denied seeing the 1st Respondent or meeting him when the cement was delivered. He, however, maintained that the people who delivered the cement, whom he did not know, were sent by the 1st Respondent. He confirmed knowing the 1st Respondent's agents and campaign managers. He stated that they were not the ones that delivered the cement. **PW4** confirmed being present at the meeting held on 21st June 2021 which was addressed by the 1st Respondent. He stated that he could identify the 1st Respondent. **PW4** also stated that he voted for the

1st Respondent because of the donation of cement although his preferred candidate was PW1. He also testified that he did not have any proof before the Court regarding the delivery of cement.

4.1.34 There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.1.35 **Elias Nkhata**, a farmer, of Lottie Village in the Lumezi District was the Petitioner's fifth witness (PW5). He testified that he was the PTA vice chairperson at Katope School. He further testified that on 21st June, 2021 he received a message that there would be a meeting at Katope School. PW5 testified that he went to Katope School and the 1st Respondent arrived at 16:00 hours. He testified that at the meeting the 1st Respondent introduced himself as an aspiring Independent candidate for position of Member of Parliament for the constituency. PW5 testified that the 1st Respondent then asked what problems they had in the community. He stated that the 1st Respondent was informed of the need for iron sheets. PW5 testified that the 1st Respondent asked for their votes on 12th August 2021. Furthermore, that on 2nd July 2021, around 11:00 hours, a Fuso Fighter truck arrived with 30 iron sheets. He observed that some were marked for Soyo Primary School. PW5 stated that the individuals that delivered the iron sheets told them that the 1st Respondent sent the iron sheets. PW5

further testified that the PTA chairperson and other members, namely Cosmas Moyo and Chetamani Lungu, received the iron sheets.

4.1.36 In cross-examination, by the 2nd and 3rd Petitioners' Counsel, PW5 confirmed seeing the 30 iron sheets delivered by the people sent by the 1st Respondent. He stated that he voted for the 1st Respondent on 12th August 2021, as a preferred candidate, because of the iron sheets. He stated that had the 1st Respondent not brought the iron sheets, they were all not going to vote for him.

4.1.37 In cross-examination, by the 1st Respondent's Counsel, PW5 stated that he did not know the number of registered voters at Katope Primary School polling station but that a majority of them voted for the 1st Respondent. PW5 maintained that the iron sheets came from the 1st Respondent as he had promised them. Also that the people that delivered the iron sheets told them they had come from the 1st Respondent. PW5 confirmed voting for the 1st Respondent. He also confirmed that the 1st Respondent's campaign symbol was a mortar and a hoe. PW5 maintained that the receipt of the iron sheets influenced his vote as the 1st Respondent did a good thing. PW5 told the Court that his preferred candidate was PW1 but he did not feel bad when she lost as they were happy, having since

received iron sheets. PW5 told the Court that when he first met the 1st Respondent he was among about 180 people. PW5 testified that only 109 voted for the 1st Respondent. PW5 denied belonging to any political party. He confirmed that PW1 stood as an Independent candidate in 2016.

4.1.38 There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.1.39 **Edward Manda**, a farmer of Malepa Village in the Lumezi District, was the Petitioners sixth witness (PW6). He testified that he is the Ward Chairman for the Patriotic Front party in Wachitangachi. PW6 testified that at a meeting held on 5th August, 2021, the 1st Respondent introduced himself to them and asked for their vote. That he then asked what problems they had. PW6 testified that the 1st Respondent was informed of the need for blankets at the hospital. He further testified that on 8th August, 2021 blankets, bedsheets, jik and a battery were delivered. PW6 testified that the 1st Respondent's agents brought the items. He stated that he was present when the delivery was made but left shortly after. PW6 testified that when the items were delivered Emmanuel Mwanza, Alice Mhone and Gregory Isaac were informed. PW6 testified that he voted on 12th August, 2021.

4.1.40 In cross-examination, by the 2nd and 3rd Petitioners' Counsel, PW6 confirmed voting for the 1st Respondent on 12th August 2021 despite being a Patriotic Front member because the 1st Respondent delivered items to them. PW6 told the court that his preferred candidate was PW1.

4.1.41 During cross-examination, by the 1st Respondent's Counsel, PW6, told the Court that he had known PW1 for about five years. He confirmed that the relationship with her was by virtue of Patriotic Front membership. PW6 informed the Court that he felt bad when PW1 lost. PW6 confirmed being present when the blankets were delivered at Mwanda Polling Station, Mwanda Clinic, by the 1st Respondent's agents in a vehicle with registration number ECL 2021. PW6 told the Court that he never communicated with the 1st Respondent. He also testified that he told PW1 on 8th August 2021 that the 1st Respondent made donations. PW6 also stated that he exercised his free mind and choice when voting. PW6 denied that Patriotic Front Women's groups received any goats or pigs from the Ministry of Livestock.

4.1.42 There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.1.43 **Nelson Miti**, a bricklayer and blacksmith, of Zumwanda Village in the Lumezi District was the Petitioners seventh

witness (PW7). He testified that on 5th August 2021, the 1st Respondent had a meeting at Zumwanda Clinic at around 15:00 hours. PW7 testified that the 1st Respondent asked what challenges the community faced. He further introduced himself as the aspiring candidate for Member of Parliament in the Constituency. PW7 told the Court that the 1st Respondent was told of an impassable road, the lack of a dam for animals and the need for a borehole. PW7 further testified that the 1st Respondent acknowledged these problems. PW7 also stated that the 1st Respondent said that he would assist in resolving the problems. PW7 stated that some items were delivered on 7th August 2021 by the 1st Respondent's agents. He stated that and at the clinic he was met by Mr. Mwanza and a cleaner by the name of Nyamuhoni. He testified that he saw boxes with unknown contents, beddings and Jik.

4.1.44 When cross-examined, by the 2nd and 3rd Petitioners' Counsel, PW7 testified that he voted for the 1st Respondent because of the items the 1st Respondent donated.

4.1.45 During cross-examination by the 1st Respondent's Counsel, PW7 confirmed that he was a bricklayer but denied working for Zumwanda clinic. PW7 also denied communicating with the 1st Respondent. He also told the Court that he has no connection with the 1st Respondent. PW7 further stated that PW1 did a lot of things for the

Lumezi Constituency during her five-year term as Member of Parliament. He, however, denied having any relationship with PW1. PW7 testified that he exercised his right to vote freely.

4.1.46 There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.1.47 Edward Chirwa, a farmer of Muzenje Village in the Lumezi District, was the Petitioners eighth witness (PW8). He testified that on 8th August 2021 he was present at a meeting held by the 1st Respondent at Luamphamba. He testified that 1st Respondent asked for their vote. PW8 further testified that the 1st Respondent told them that he would give them cement if they voted for him.

4.1.48 PW8 testified that he was present when the cement was delivered by Patson Mpunda, his neighbour. He also stated that it was received by Sophia Banda and Mrs. Mwale, individuals in the 1st Respondent's committee. PW8 testified that he was registered at Lumezi and voted on 12th August, 2021.

4.1.49 There was no cross examination from the 2nd and 3rd Petitioners.

4.1.50 During cross-examination, by the 1st Respondent's Counsel, PW8 stated that the 1st Respondent was an

Independent candidate. PW8 stated that he could not confirm the number of people that attended the meeting. PW8 confirmed having seen 20 bags of cement at the school but had no proof of this before Court. He further confirmed that Luamphamba had two polling stations and that he voted at one. He also stated that he knew the number of people that voted in each of these polling stations. PW8, when referred to the schedule of results confirmed that in both streams a majority of people voted for the 1st Respondent. PW8 testified that he believed that the donation of twenty (20) bags of cement influenced the more than six hundred (600) people to vote for the 1st Respondent. He further confirmed that he had known PW1 for about five years. PW8 told the Court that PW1, in those five years, had donated 50 bags of cement and window frames to the community. He further stated that people were happy with PW1. PW8 further told the court that people were influenced because of what the 1st Respondent told them.

4.1.51 PW8 denied being a sympathizer of or belonging to any political party nor that he had a preferred candidate. PW8 testified that he voted on 12th August 2021. He also testified that he did not see the 1st Respondent on the day of voting.

4.1.52 **PW8** went on to tell that Court that Mr. Mpundu, is not his immediate neighbour but resides in the same neighbourhood by virtue of being in the same constituency.

4.1.53 There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.1.54 **Catherine Nyirongo**, a farmer of Timbasonje Village in the Lumezi District, was the Petitioners ninth witness (**PW9**). She testified that on 8th August 2021 the 1st Respondent held a meeting at Lupamba Primary School. That during that meeting the 1st Respondent undertook to donate 20 bags of cement in exchange for their vote. **PW9** stated that she was present at the said meeting. She testified that the pledged cement was delivered by unknown people in a white canter truck on 9th August 2021. She stated that the cement was received by the 1st Respondent's agents namely Sophia Banda, Agness Ndholvu, Ishmael Chipeta and Hilda Kamanga. **PW9** testified that she voted for the 1st Respondent on 12th August 2021. She also stated that she was a registered voter at Lupamba Primary School.

4.1.55 There was no cross examination from the 2nd and 3rd Petitioners.

4.1.56 When cross-examined by the 1st Respondent's Counsel, **PW9** denied that the people that brought the cement were

the 1st Respondent's agents. She further denied being communicated to by the 1st Respondent or being introduced to his agents. She however stated that she knew the agents as they were introduced at the meeting. She reiterated that they delivered the cement. PW9 told the Court that she had no evidence of the cement being delivered. She testified that she came from Mwakwachi ward. She further stated that she had known Patson Mphunda for about 10 years. PW9 further told the Court that Ishmael Chipeta, Sophia Banda, Agnes Nyirongo and Hilda Kamanga received the cement on 9th August 2021. She insisted that she did not know the names of the agents who delivered the cement nor was she in a position to identify them.

4.1.57 PW9 confirmed knowing Edward Chirwa (PW8). She however stated that it was not Patson Mphunda who delivered the cement. PW9 told the Court that Sophia Banda, Ishmael Chipeta, Agnes Ndhovu, and Hilda Kamanga are all farmers. She further testified that the cement was used to build a septic tank for a toilet. PW9 testified that the farmers, as agents, received the cement and handed it over to the school through a Madam Shawa. PW9 confirmed that she did not see the 1st Respondent delivering the cement. She testified that her preferred candidate was PW1 but she voted for the 1st Respondent. PW9 further told that Court that PW1 worked and assisted

them in the five years she was Member of Parliament. PW9 also stated that while she voted for PW1 in 2016 she was not her supporter. PW9 insisted that PW1 did not give them anything during the campaign period. She stated that had PW1 given them anything during the campaign she still would not have voted for her.

4.1.58 There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.1.59 Catherine Chirwa, a farmer of Musorora Village in the Lumezi District, was the Petitioners tenth witness (PW10). She testified that on 8th August 2021, she was present at a meeting held by the 1st Respondent at Lwampamba School. She testified that the 1st Respondent promised to donate 20 bags of cement to the community. PW10 testified that the cement was delivered the following day by a white canter and offloaded by Ishmael Chipeta, Helen Kamanga, Agnes Njovu and Sofia Banda who were the 1st Respondent's agents. PW10 further testified that the cement was kept at an office at Lwampamba Secondary School. She stated that she voted for the 1st Respondent on 12th August 2021.

4.1.60 In cross-examination, by the 2nd and 3rd Petitioners' Counsel PW10 confirmed that she voted for the 1st Respondent. She stated that she would not have voted for him if the cement was not delivered as she did not know

him. **PW10** told the Court that her preferred candidate was **PW1**.

4.1.61 When cross-examined, by the 1st Respondent's Counsel, **PW10** told the Court that she knew that the people who brought the cement the following day were agents of the 1st Respondent because of the promise made on 8th August 2021. **PW10** denied knowing the agents as they were new to her. She further denied knowing that agents for an aspiring candidate are registered with the Electoral Commission of Zambia. **PW10** told the Court that she had no evidence that the meeting held on the 8th August 2021 took place.

4.1.62 **PW10** further told the Court that she had known Mr. Patson Mpunda for about a year. She stated that Mr Mpunda resides near her home. She further confirmed that **PW8** was not present at the meeting but that **PW9** was present. **PW10** told the Court that she did not know who delivered the cement but could identify Patson Mpunda if he was among the people that delivered the cement. **PW10** confirmed that 20 pockets of cement were delivered and she counted them. She further confirmed that Ishmael Chipeta and Agnes Njovu are farmers. **PW10** further confirmed that the 1st Respondent's agents brought cement and gave it to other agents of the 1st Respondent. That these agents delivered the cement to the community. **PW10** testified that

10 pockets of cement were given to Lwampamba Secondary School and the other 10 were used at Lwampamba Primary for a toilet. PW10 denied being part of the PTA for the community. She testified that at her polling station, when voting, the 1st Respondent was not with her. She stated that she exercised her secret vote with a free mind. PW10 told the Court that PW1 she voted for PW1.

4.1.63 There was no cross-examination by the 2nd Respondent's Counsel.

4.1.64 In re-examination she clarified that she would have voted for PW1 but the 1st Respondent brought 20 pockets just before the elections.

4.1.65 Henry Zulu, a farmer of Maxwell Village in the Lumezi District, was the Petitioners eleventh witness (PW11). He testified that he is the deputy secretary for the youth in the Patriotic Front in Wachitangachi Ward. He testified that on 7th August, 2021 he was present when the 1st Respondent held a meeting at Chanyaluowe where he promised to deliver of iron sheets. He testified that on 9th August 2021 the iron sheets were delivered in a white canter at Chanyalugwe Day Secondary School. PW11 testified that the PTA Chairman, Davison Nyirenda or Davison Kasambala, called them to witness the delivery of the 35 iron sheets which the 1st Respondent donated. He further

testified that there were five people present when the iron sheets were delivered namely Kapenya Banda, Dokowe Mwale, Emmanuel Lungu, Henry Zulu, Margaret Banda and the PTA Chairman. That they were later joined by the headmaster of the school. It was PW11's testimony that the PTA chairperson wanted to call everybody in the community to witness the donation by the 1st Respondent. The community thanked the 1st Respondent. PW11 also testified that he went to vote for the 1st Respondent. He stated that he was registered as a voter at Chanyalugwe Polling Station.

4.1.66 In cross-examination by the 2nd and 3rd Petitioners' Counsel, PW11 told the Court that he did not have any evidence that the 1st Respondent delivered the iron sheets but confirmed that he voted for the 1st Respondent because of the iron sheets.

4.1.67 When cross-examined by the 1st Respondent's Counsel, he denied seeing the 1st Respondent delivering the iron sheets. He also denied knowing Mr. Patson Mphunda. PW11 told the Court that he was about 300 meters away from the canter truck that delivered the iron sheets and mentioned to the Court that he had been in the Patriotic Front for about a year and some months.

4.1.68 **PW11** stated that he felt happy when **PW1** lost because most people voted for the 1st Respondent. **PW11** told the Court that he was unaware that **PW1** was contesting against the election of the 1st Respondent by her Petition. **PW11** testified that he did not see the 1st Respondent bring the said iron sheets on 9th August 2021 as opposed to 8th August, 2021.

4.1.69 There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.1.70 **Musa Nkhata**, a farmer of Morombi Village in the Lumezi District was the Petitioners twelve witness (**PW12**). He testified that he is the Patriotic Front branch chairperson in Kalukabeba. He further testified that he first saw the 1st Respondent on 8th August 2021 at a meeting where the 1st Respondent told them that he was standing as a Member of Parliament. He stated that the 1st Respondent enquired about the problems they had. He further stated that the 1st Respondent was made aware of the need for teacher's houses. **PW12** further testified that the 1st Respondent said that, if they voted for him, he would bring 20 pockets of cement and that if he failed to bring the cement they should not vote for him. It was **PW12**'s testimony that the following day he was present, when the 1st Respondent sent people with 20 pockets of cement which were received by Edwin Sakala the PTA chairman and Binwell Zimba the

works chairperson. PW12 also testified on 12th August 2021 that he voted for the 1st Respondent.

4.1.71 In cross-examination by the 2nd and 3rd Petitioners' Counsel, PW12, confirmed voting for the 1st Respondent because of the cement that had been promised to the community. PW12 stated that had it not been for the cement he would have voted for PW1.

4.1.72 During cross-examination, by the 1st Respondent's Counsel, PW12 confirmed that he was a Patriotic Front chairperson for Kalukabeba ward and that during campaigns he was aligned with the Patriotic Front. PW12 further confirmed that the 1st Respondent was an Independent candidate. He also stated that he did not know the number of people that voted at Kalukabeba school polling station. However, when referred to the schedule of results he confirmed that there was a total number of 408 registered voters and only 233 voted for the 1st Respondent. PW12 confirmed that he did not see the 1st Respondent deliver the cement but maintained that the 1st Respondent's people, whom he did not know, delivered it. PW12 told Court that the cement was signed for but that he did not have proof of this before Court. He further stated that he felt happy when PW1 lost because he voted for the 1st Respondent. PW12 informed the Court that he

campaigned for PW1 and changed his mind because of the cement.

4.1.73 There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.1.74 **Yona Nyika**, a farmer of Kalindi Primary School in the Lumezi District was the Petitioner's thirteenth witness (PW13). He testified that on 30th July 2021 the 1st Respondent held a meeting at Kalindi Primary School. PW13 further testified that the Headmaster and Deputy Headmaster were not at the school and he stood in on their behalf. PW13 told the Court that the 1st Respondent asked what help they needed. It was PW13's testimony that the 1st Respondent said that he would give them 20 pockets of cement if they voted for him and that if the cement was not delivered they should not vote for him. PW13 told the Court that the cement was delivered on 7th August 2021 and received by Mr. Duncanimba, the Headmaster. When referred to a picture in the Petitioner's Bundle, PW13 confirmed that he was the one in the picture with some of the cement that was donated. PW13 testified that he had no political affiliations and that he went to vote on 12th August 2021.

4.1.75 In cross-examination by the 2nd and 3rd Petitioners' Counsel, PW13 confirmed being present when the cement

was delivered. He stated that the 1st Respondent delivered it together with his people, whom he did not know. PW13 further confirmed that the cement was pledged and was delivered during the campaign period. He further stated that he voted for the 1st Respondent because of the donation of cement.

4.1.76 During cross-examination by the 1st Respondent's Counsel, PW13 confirmed that the cement was received by Mr. Duncan Zimba on 7th August 2021 contrary to what was pleaded that the cement was received by Mr. Edward Mwale. When referred to the picture of the 20 bags of cement which was identified in examination in chief, PW13 stated that just by looking at the picture it could not be said where the picture was taken. PW13 stated that he had no motive in taking the picture. He also stated that it was taken by Mr. Davison Zulu, the Deputy Headmaster. It was PW13's testimony that he was not a member of the Patriotic Front. He stated that his preferred candidate was PW1.

4.1.77 There was no cross-examination by the 2nd Respondent's counsel

4.1.78 In re-examination PW13 stated that he knew the 1st Respondent's agents namely a Mr. Mphunda and Kalinganiko.

4.1.79 **Joseph Mbambo** , a farmer of Chafitsi Trading in the Lumezi District, was the Petitioners fourteenth witness (PW14). He testified that on 30th July 2021 the 1st Respondent held a rally where he asked what problems they had in Chafitsi. The 1st Respondent was told that there was no house for the teacher. PW14 testified that the 1st Respondent told them that he was standing as a Member of Parliament and needed their votes. He testified that the 1st Respondent undertook to give them 20 pockets of cement before 7th August, 2021. PW14 told the Court that the pockets of cement were delivered on 7th August 2021 in a white canter truck. That the cement was received by Mary Mazyopa, Zulu Morotoni and Poultry Phiri, all PTA members. PW14 testified that he voted on 12th August, 2021.

4.1.80 During cross-examination, by the 2nd and 3rd Petitioners' Counsel, PW14 stated that the donations of cement influenced his vote on 12th August 2021 and that he voted for the 1st Respondent.

4.1.81 During cross-examination, by the 1st Respondent's Counsel, PW14, confirmed that he voted from Chafitsi School. He also confirmed that PW1 attained more votes than the 1st Respondent at the school. PW14 denied seeing the 1st Respondent deliver cement. He confirmed knowing

the 1st Respondent's agent campaign manager, Mr. Mphunda. PW14 confirmed that only cement was brought through his campaign manager.

4.1.82 There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.1.83 **Timothy Zimba**, a farmer of Kasasa Community School in the Lumezi District was the Petitioners fifteenth witness (PW15). PW15 testified that on 30th July 2021, the 1st Respondent held a meeting at Kasasa Community School where introduced himself as an aspiring candidate for the Lumezi Constituency. PW15 testified that the 1st Respondent asked them what problems they had. That he was informed of that they needed iron sheets. PW15 testified that the 1st Respondent promised that he would give them iron sheets before the voting day and that if he did not they should not vote for him. PW15 further testified that 30 iron sheets were delivered from the 1st Respondent. He stated that he received the iron as he was in charge at Kasasa school. He further stated that they were delivered by people he did not know. PW15 testified that there were a lot of people at the meeting on 30th July 2021,. Also that they voted for the 1st Respondent because of the iron sheets that were promised to them.

4.1.84 In cross-examination, by the 2nd and 3rd Petitioners' Counsel **PW15** confirmed that the only reason he voted for the 1st Respondent was because of the 30 iron sheets that he promised to donate to the community. Further in cross-examination **PW15** confirmed that the iron sheets were delivered by people the 1st Respondent works with and not the 1st Respondent himself. **PW15** further confirmed that he personally received the iron sheets on 7th August 2021 in the presence of Isaac Ngulube, Chimozi Mwandila and Kazuba Mbewe. **PW15** denied that he was Kamani and told the Court that Kamani was a member of the community. He stated that Kamani did not receive the iron sheets. **PW15** also stated that the 1st Respondent never showed him his agents.

4.1.85 **PW15** denied having any political affiliations. He confirmed knowing **PW1** as she the area Member of Parliament. **PW15** stated that he did not vote in 2016 and that 2021 was his first time to vote.

4.1.86 There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.1.87 **Benson Mukala**, a farmer of Bwelengwe village in the Lumwezi District, was the Petitioners sixteenth witness (**PW16**). He testified that, on 4th August 2021 he was present when the 1st Respondent held a rally at Chavuma

polling center. He testified that the 1st Respondent introduced himself and asked for their vote in the 12th August 2021 elections. PW16 testified that the 1st Respondent was informed of the need for a roof and cement. He further testified that he undertook to deliver roofing sheets and cement before 12th August 2021. PW16 stated that the 1st Respondent said that if he did not bring the items they should not vote for him. PW16 stated that the items were delivered on 11th August, 2021 at about 17:30. He further stated that he was informed that the items were delivered to Silvester Ngwira at Mzaini Village at the PTA Chairman's house. PW16 stated that there were 20 iron sheets and 10 pockets of cement at the Chairperson's house. PW16 informed the Court that items were delivered to the school after the elections on 15th August 2021. PW16 testified that on the 12th August 2021 he voted for the 1st Respondent. He stated that he was a registered voter at Chauluma polling station.

4.1.88 In cross-examination, by the 2nd and 3rd Petitioners' Counsel, PW16 could not confirm if the 1st Respondent was present when the items were delivered as he was not there.

4.1.89 Further in cross-examination, by the 1st Respondents Counsel, PW16 confirmed that he voted at Chauluma Polling Station. He also stated, after being referred to the

schedule of results, that **PW1** attained the highest votes at Chauluma Polling Station. **PW16** confirmed that Mr. Silvester Ngwira received the 20 iron sheets and 10 pockets of cement at his home. He clarified that the items were only taken to the school on 15th August 2021. **PW16** further stated that the items were not received by Mr Bernard Mtonga, as stated by **PW1**. **PW16** informed the court that his preferred candidate was **PW1** whom he'd known for five years.

4.1.90 There was no cross-examination by the 2nd Respondent's counsel and no re-examination.

4.2 2nd and 3rd Petitioners case

4.2.1 **Macdonald Phiri, the 2nd Petitioner**, was the Petitioners seventeenth witness (**PW17**). He testified that he is a farmer and community volunteer. He further testified that he filed a Petition and supporting affidavit, bundles of documents. He sought to rely on the filed document in total.

4.2.2 In cross-examination, by the 1st Petitioner's Counsel, **PW17**, stated that he knew that the Social Cash Transfer is administered by the Ministry of Community Development and Social Welfare under the Social Welfare Department. **PW17**, also stated Social Cash Transfer is distributed by

civil servants. He further stated that the 1st Petitioner was an aspiring candidate in the Lumezi elections and was not an employee of the Government of the Republic of Zambia.

4.2.3 Further in cross-examination, by the 1st Respondent's Counsel, PW17 confirmed that the social cash transfer is a government program. He also stated that the 1st Respondent was not a government official at the time he contested the election. PW17 further told the Court that the 1st Respondent had nothing to do with the social cash transfer fund.

4.2.4 PW17 confirmed that the only institution charged to verify certificates is the Examination Council of Zambia and once it does so the same is final. PW17 confirmed that there was a letter of confirmation of the 1st Respondent's results from the Examination Council of Zambia as evidenced by the exhibit. PW17 clarified that the items he had tabulated in his affidavit as having been distributed by the 1st Respondent's agents was obtained from a list drawn up by members of his political party from a school register.

4.2.5 PW17 confirmed attending a Conflict Management and Resolution Committee meeting following a complaint he lodged. He also confirmed that he was represented by Emmanuel Mwanza. He further confirmed that according

to the exhibited letter an apology was rendered to the 1st Respondent for the allegations against him.

4.2.6 When referred to a picture of the 1st Respondent holding a gun, the 2nd Petitioner stated that it was a threatening picture. He further stated that the said picture had no evidentiary value to the matter before Court. PW17 maintained that the 1st Respondent, by his agents, distributed money together with the Patriotic Front party. However, he was not able to name or identify any of the agents.

4.2.7 PW17 stated that he did not know anything about the letters from the Examination Council of Zambia that were exhibited in the respective bundles of documents. PW17 testified that the 1st Respondent was arrested by the Police though he did not have a witness to this effect. PW17 confirmed that the voter turnout was good in the Lumezi constituency.

4.2.8 In cross-examination by the 2nd Respondent's Counsel PW17 confirmed that his results were verified by the Examination Council of Zambia. PW17 told the Court that although he filed his nomination successfully, the two-hour delay affected his supporters. PW17 confirmed that Electoral commission of Zambia did its job.

4.2.9 **Zelipa Chitsulo**, the third Petitioner, a Chief Executive Officer, was the Petitioner's eighteenth witness (**PW18**). She testified that she filed a Petition together with a supporting affidavit and bundles of documents. She sought to rely entirely on the filed documents.

4.2.10 In cross examination by the 1st Petitioner's Counsel **PW18** stated that she was aware that the social cash transfer is a program that is run by the Government of Republic Zambia under the Ministry of Community Development and Social Welfare. She further confirmed that civil servants employed by the government under the said Ministry are mandated to disburse the funds. **PW18** further confirmed that the 1st Petitioner was not a civil servant. She further stated that he did not have the right to administer the social cash transfer program.

4.2.11 During cross examination by the 1st Respondent's Counsel, **PW18** again confirmed that the social cash transfer was a program administered under the Ministry of Community Development. Also that the 1st Respondent was not an employee of the Ministry of Community Development. **PW18** confirmed that the 1st Respondent successfully filed his nomination. **PW18** also confirmed that the voter turnout was good. She, however, maintained that the environment was not conducive for people to vote freely. **PW18** denied that 1st Respondent prevented members of the

community or supporters from voting. She stated that she received 1,081 votes compared to the 1st Respondent's 11,929 votes.

4.2.12 When referred to the pictures in the Bundle of Documents, PW18 was not able to identify the 1st Respondent. She further clarified that she got the picture of the 1st Respondent holding a firearm from the 1st Respondent's Facebook page.

4.2.13 She stated that its relevance was to show that the 1st Respondent was a person who liked to have guns as he threatened members of her team.

4.2.14 PW18 confirmed that PW17 was a member of the United Party for National Development. PW18 told the Court that according to the Electoral Code of Conduct a candidate should have a full Grade 12 Certificate. She further stated that as far as she understood the documentation submitted by the 1st Respondent was not an actual full Grade 12 certificate certified by the Examination Council of Zambia. PW18 confirmed that she got the documentation which was filed into court from the 1st Respondent's Facebook page and from a WhatsApp Group, where the 1st Respondent had shared them. PW18 denied obtaining the document from the watchdog but confirmed that it was not obtained by her from the Examination Council of Zambia. PW18 told the

Court she was not prevented from challenging the 1st Respondent's nomination, within seven days of filing it. She denied seeing the 1st Respondent distributing items personally. PW18 further told the Court that the 1st Respondent's agent was Patson Chipeta whom she personally knew.

4.2.15 PW18 denied personally seeing the 1st Respondent or his agents telling the voters in Lumezi to guarantee votes or that electoral officers were assigned to vote for him.

4.2.16 PW18 confirmed that she did not bother to verify the allegations regarding the authenticity of the 1st Respondent's Grade 12 certificate as reported on *Zambian Watchdog*, a social media news platform. It was PW18's evidence that she was threatened through Baldwin Chisulo PW19 but that she was not personally threatened.

4.2.17 When cross examined by the 2nd Respondents Counsel, PW18 confirmed that her results were verified by the Examination Council of Zambia. She further confirmed in her pleadings ECZ referred to Examination Council of Zambia and not the Electoral Commission of Zambia. PW18 confirmed that the Electoral Commission of Zambia did their job.

4.2.18 **Baldwin Chitsulo**, a Heavy-Duty Mechanic of 32 Roan Road, Kabulonga in Lusakawas the Petitioners nineteenth witness (PW19). He stated that he was the 3rd Petitioner's brother. He testified that on 10th August, 2021, around 21:30 hours while in the company of Simon Mvula and Phiri Seth they were driving to Lundazi. That around the Musuzi bridge area PW19 noticed that posters for the 3rd Respondent, that he had put on a billboard two months earlier, were not there. PW19 testified that he instructed the driver to turn back to the billboard so that they could replace the posters. He further testified that as he was replacing the posters a white Pajero sped towards where they were. PW19 testified that two gentlemen came out of the vehicle with a registration number ECL-2021. He stated that he was able to identify one of the them as the 1st Respondent owing to the light from their vehicle and the headlights from the vehicle that had just pulled up. He testified that the 1st Respondent inquired from him why he was removing his posters. That upon responding that he was merely replacing posters for the 3rd Petitioner which had been removed the 1st Respondent pulled out a pistol and threatened to shoot him for removing his posters. PW19 testified that the other gentleman who was with the 1st Respondent restrained him. PW19 also testified that again the 1st Respondent went on pointing the gun at him and continued threatening to shoot him. PW19 testified that

he was shocked, shivering and traumatized by the whole incident. PW19 further testified that they drove to the Lumezi Police Station and found it closed. He stated that the incident was reported to the Police the following day. PW19 testified that as a result of the incident he did not vote.

4.2.19 PW20 was **LacksonManda**, a farmer of Mitezeka Village in Lumezi District. He testified that on 19th July, 2021, there was a meeting held at Masutwe school grounds around 15:00 hours where the 1st Respondent introduced himself and asked the attendees what issues they had.

4.2.20 In cross-examination by the 1st Petitioner's Counsel, PW20, confirmed that the 1st Respondent was at the meeting held and that he saw the 1st Respondent.

4.3 RESPONDENTS CASE

4.3.1 1st Respondent's case

4.3.2 **Munir Zulu**, the 1st Respondent herein, was the Respondents first witness (RW1). He stated that he is a businessman of Ndeke Meanwood in Lusaka. He stated that he filed an Answer and supporting affidavit and Bundles, which he wished to rely on as part of his evidence. He further testified that the allegations against him were

untrue and that he did not participate in any malpractices during the entire campaign period.

4.3.3 In cross-examination, by the 1st Petitioner's Counsel, RW1 told the Court that his campaign team consisted of 15 people namely, John Banda, Tumelo Mvula, Kenneth Museteka, Esther Nkhowani, Mathews Tembo, Simon Kapwepwe, David Ngulube, Webby Nkumuka, Richard Phiri, Sam Chibesa, Jeff Mbewe, Robert Mwale, Howard Phiri and Felix Zulu.

4.3.4 RW1, could not confirm when he resigned from being a member of the Patriotic Front but confirmed that some of the individuals mentioned as part of his campaign team were once members of the Patriotic Front. RW1 stated that he used seven vehicles during the campaign period. These were four Toyota Hilux double cabs, a Toyota Dyna Light Truck, and two Mistubishi Pajeros. The first four vehicles were branded in his campaign colours whilst the unbranded vehicles, being a Toyota Quantum bus and two Mistubishi Pajero, were white. RW1 confirmed that his campaign vehicles were as depicted in the picture of the Pajero exhibited by the 1st Petitioner. He, however, denied that the canter was a vehicle being used by his campaign team. RW1 confirmed that Mr Felix Zulu was a member of his campaign team.

4.3.5 RW1 confirmed that he won in a majority of the wards in Lumezi Constituency.

4.3.6 RW1 confirmed that he was holding meetings of about 100 people as opposed to rallies. RW1 further told the Court that during the campaign period his campaign team was involved in a road traffic accident on 8th August 2021 on the Chikomani-Suzi Road. RW1 stated that he could not give the actual date as he was not in the vehicle, when the accident happened. He stated that he only went to the scene of the accident as part of a rescue team. He further confirmed that the vehicle depicted in a photograph exhibited in the the 1st Petitioners bundle of documents was the vehicle that was involved in the accident. He further confirmed that the vehicle was part of the fleet used by his campaign team.

4.3.7 RW1 confirmed that “ECL 2021” denotes “Edgar Chagwa Lungu 2021”. He denied having an NGO within Lumezi Constituency. RW1 testified that he won comfortably in 6 wards. He further stated that the Conflict Management Committee sat and resolved a dispute between himself and United Party for National Development. He further stated that he had never received a complaint from the Patriotic Front.

4.3.8 RW1 told the Court that he spent part of life and childhood in Lumezi Constituency. He stated that he knew most of the challenges that the people in Lumezi faced. He further stated that this was partly the reason that inspired him to stand as a Member of Parliament in Lumezi. RW1 further confirmed that in his campaign messages it was only normal for him to share his vision as to what solutions he would bring once elected as Member of Parliament in Lumezi.

4.3.9 During cross examination by the 2nd and 3rd Petitioners Counsel, RW1 denied using the motor vehicle depicted at page 19 of the Petitioners Bundle of Documents during his campaigns. He, however, confirmed that the vehicle with the number plate "ECL 2021" was his. He also confirmed that Dr. Edgar Chagwa Lungu comfortably won in Lumezi. RW1 confirmed that he was an Independent candidate in Lumezi and that Mr. Edgar Chagwa Lungu campaigned in Lumezi as well. RW1 further confirmed that one of the motor vehicles was involved in a road traffic accident, that he was not in that motor vehicle when that accident happened.

4.3.10 RW1 confirmed that he was born in 1987. He further testified that he attended LICEF School where he completed Grade 12 in 2008.

4.3.11 **RW1** further when referred to page 18 of the 2nd and 3rd Petitioners' bundle of documents confirmed that that document had his name that he obtained the results in June 2009 and confirmed that the two documents were different yet appear to have come from Examination Council of Zambia. **RW1** confirmed that he obtained the document confirming that he had a Grade 12 Certificate from the Examination Council of Zambia. **RW1** stated that he produced the letter from Examination Council of Zambia, rather than his certificate before Court. He stated that the court could determine that he qualified to be nominated. **RW1** testified that the effect of the letter was to demonstrate that he had a certificate.

4.3.12 **RW1** denied working for the Examination Counsel of Zambia and confirmed having an opportunity to produce his certificate before Court when served with the documents.

4.3.13 There was no cross examination from the 2nd Respondent's Counsel.

4.3.14 In re-examination **RW1** restated that his confirmation letter from Examination Counsel of Zambia confirmed his 2009 and 2008 results.

4.4 2nd Respondent's case

4.4.1 **Michael Ngulube**, a District Agriculture Co-ordinator (DACO) of Plot 733 Tiuwa Compound, in the Lundazi District was the Respondents second witness (RW2). He testified that he was Returning officer for the Lumezi Constituency under the Electoral Commission of Zambia. He stated that his role included training elections staff, ensuring that there was a conducive environment for conduct of elections, deploying staff to their respective polling stations, opening the polling stations on time and ensuring delivery of election material and summation of results at the end of voting.

4.4.2 RW2 further stated that Electoral Commission of Zambia does not verify results as this is done by the Examinations Council of Zambia. RW2 testified that the Electoral Commission of Zambia merely receives a letter from the Examination Council of Zambia confirming that the candidate is qualified.

4.4.3 RW2 further stated that in the Lumezi Constituency the elections were conducted in a fair manner. Further that the Electoral Commission of Zambia did not receive any information pertaining to malpractices during the elections.

4.4.4 In cross examination by the 2nd and 3rd Petitioner's Counsel, RW2, confirmed that nominations for candidates are confirmed by 2nd Respondent. RW2 explained that in order to accept a nomination an NRC, a letter of authority from a Party or the confirmation letter of qualification of the candidate when independent an affidavit and record that results should be provided.

4.4.5 RW2, stated that he did not conduct the nominations personally therefore he was incompetent to speak to the conduct of the nominations were for the Lumezi Constituency.

4.4.6 In cross examination by the 1st Respondent's counsel RW2 confirmed the names of the validly nominated Members of Parliament.

4.4.7 Nothing of significance was clarified in re-examination.

5 SUBMISSIONS

5.1 1st Petitioner's submissions

5.1.1 The submissions began with a summary of the pleadings and evidence of the Petitioners and Respondents which require no repetition.

- 5.1.2 It was submitted that the burden of proof rests on the Petitioners. It was further submitted that the standard of proof is of a fairly high degree than in a normal civil cases. It was also stated that the threshold contained in the Electoral Process Act, No. 35 of 2016 for nullification of elections by the courts is clear and must be satisfied based on credible and cogent evidence which a petitioner must prove to a fairly high degree of convincing clarity as stated in the case of Abuid Kawangu vs. Elijah Muchima Appeal⁽¹⁾.
- 5.1.3 Reference was made to Section 97 of the Electoral Process Act, No. 35 of 2016 on the law relating to the presentation of an election petition and nullification thereof and the cases of Nkandu Luo & the Electoral Commission of Zambia vs. Doreen Sefuke Mwamba & Attorney General⁽²⁾ and Austin Liato vs Sitwala Sitwala⁽³⁾.
- 5.1.4 It was further submitted that "Election Agent is defined in Section 2 of the Electoral Process Act, No. 35 of 2016. In the case of Akashambatwa Mbikusita Lewanika & Others vs. Fredrick Jacob Titus Chiluba⁽⁴⁾ the Court stated the instances where a candidate could be held liable for the actions of their 'election agents'.

5.1.5 It was argued that the 1st Petitioner's Petition is anchored on the provisions of section 97 (2) (a), and (c) of the Electoral Process Act, No. 35 of 2016. Further that the 1st Respondent did not observe the provisions of the law when he breached the Directive of the Electoral Commission of Zambia dated 15th July 2021 by continuously campaigning for the Patriotic Front Presidential candidate which swayed the voters to think that he was standing on the Patriotic Front ticket.

5.1.6 It was submitted that even though the 1st Respondent did not personally deliver materials he did so through his agents, who were specifically named as Mr Patson Chipeta, the 1st Respondents' Campaign Manager, Mr Kenneth Mseteka, Mr John Nyirongo, Mr Moses Mtonga, Ms Janet Nkhowani, Mr John Banda, Mr Paul Phiri and a Mr Theo. This was not rebutted by the 1st Respondent.

5.1.7 It was further submitted that these individuals were involved in the malpractice, particularly in the distribution of building materials and other items promised to the electorate in the various communities of the Constituency. Furthermore that the evidence of witnesses regarding the attendance to the meetings in 11 wards in the Constituency was not challenged.

5.1.8 It was submitted that regarding the Grade Twelve (12) Certificate, the 1st Respondent failed to produce his Grade Twelve Certificate, despite the same being pleaded in the 2nd and 3rd Petitioners' Petition and Affidavit in Support of the Petition.

5.1.9 Lastly, it submitted that the 1st Petitioner had proved the allegations contained in the Petition to the required burden and standard of proof by showing the widespread malpractices during the campaign period and the effect on the electorate. It was stated that this was a proper case for the nullification of the 1st Respondent's seat for election as Member of Parliament for the Lumezi Constituency.

5.2 2nd and 3rd Petitioners Submissions

5.2.1 The 2nd and 3rd Petitioners did not file any submissions.

5.3 RESPONDENTS' ANSWERS

5.3.1 1st Respondent's submissions

5.3.2 The main of the 1st Respondent's submissions was to demonstrate that the Petitioners had not satisfied the threshold of proof required in Election Petition cases. A number of cases were cited to support this argument mainly the cases of Brelsford James Gondwe v

Catherine Namugala⁽⁵⁾ and Abuid Kawangu v Elijah Muchima.

5.3.3 It was submitted that the grounds upon which the election of a candidate as Member of Parliament may be nullified are set out in Section 97 (2) paragraphs (a), (b) and (c) of the Electoral Process Act No. 35 of 2016. Further that the Petitioners failed to prove any of the allegations of illegal practices but also could not connect the 1st Respondent and or his agents to the commission of the same.

5.3.4 It was submitted that the evidence before the Court did not show that the majority of the voters in the constituency were or may have been prevented from electing the candidate in that constituency whom they preferred. Reference was made to the cases of **MubikaMubika v Poniso Njeulu⁽⁶⁾** and **Jonathan Kapaipi v Newton Samakayi⁽⁷⁾**.

5.3.5 The cases of **Mubita Mwangala v Inonge Mutukwa Wina⁽⁸⁾**, **Josephat Mlewa v. Eric Wightman⁽⁹⁾**, **Nkandu Luo and the Electoral Commission of Zambia v. Doreen Sefuke Mwamba and the Attorney General, Margaret Mwanakatwe v Charlotte Scott⁽¹⁰⁾**, were cited to emphasise that corrupt or illegal act, electoral

malpractice or misconduct alleged, ought to be widespread.

5.3.6 It was also submitted that a candidate is only liable for acts he or she committed in person or those committed by his registered election or polling agents or those done with his or her knowledge, approval or consent. It was submitted that in the Nkandu Luo case, the Constitutional Court held that a candidate cannot be held liable for acts of members of the candidate's political party or other persons who are not the candidate's election or polling agents.

5.3.7 It was submitted that pursuant to regulation 55(1) of the Electoral Process (General) Regulations that an election agent must be specifically appointed and named in the candidate's nomination paper. That an analysis of the evidence of the Petitioner no cogent evidence was put forward to warrant this Court to arrive at a conclusion that the allegations against the 1st Respondent did occur and that the same affected the election results to the detriment of the Petitioners.

5.3.8 It was argued that the majority of witnesses who were called to testify in support of the Petitioners' case were supporters of the Petitioners and therefore partisan witnesses. The Court was urged to deal with the

evidence of these witnesses with caution as they are witnesses with an interest to serve. Reference was made to the cases of Steven Masumba v Elliot Kamondo⁽¹¹⁾ and Sitali Sitali v Namuchana Sepiso⁽¹²⁾. It was submitted that the evidence of such witnesses should be treated with caution and requires corroboration to eliminate the danger of exaggeration and falsehood.

5.3.9 Counsel maintained that the evidence by the Petitioners was unsatisfactory and did not meet the threshold set out in Section 97 of the Electoral Process Act No. 35 of 2016.

5.3.10 With regards to whether the 2nd and 3rd Petitioners can successfully challenge the validity of the nomination of the 1st Respondent the Court was referred to the case of Bizwayo Newton Nkunika v. Lawrence Nyirenda and Electoral Commission of Zambia⁽¹³⁾ and Article 52(4) of the Constitution of Zambia (Amendment) Act No. 2 of 2016 as well as Regulation 18(7) of the Electoral Process (General) Regulations 2016, Statutory Instrument No. 63 of 2016.

5.3.11 The Court's attention was also drawn to the unreported case of James Mwananyanda Wamunyima v Walusa Mulaiki⁽¹⁴⁾ wherein Mwikisa J, held as follows: -

*“In the instant case, what is under consideration is Article 52 (4) of the Constitution. The Article has not only made it mandatory that petitions be filed within seven (7) days of close of nomination, but has also placed a twenty-one days limitation period within which the court should hear the case after lodgement. Sub-article (5) of the Article 52 has gone further to place a mandatory limitation period to the effect that all processes that may arise in the pre-election period must be concluded within thirty days before a general election. From the foregoing, it is clear that the electoral rules and regulations were enacted for expediency. Election petitions are therefore, strictly time-bound. I am fortified by the decision in the case of *Hakainde Hichilema and another v Edgar Chagwa Lungu and 3 others* in which the Constitutional Court stated that: where the time for hearing the petition is limited by the Constitution, the Court is bound to enforce the time limit.”*

5.3.12 It was further stated that it is not in dispute that the nomination of candidates for Lumezi Constituency was concluded on 17th May 2021. Further that no complaint or challenge of the nomination was filed within the request time. It was submitted that the challenge of the 1st Respondent’s nomination came a little too late in the day. In placing reliance on the case of *Krige and Another v Christian Council of Zambia*⁽¹⁵⁾, it was

submitted that estoppel cannot be set up against a statute. Therefore, no relief in this regard can be granted to the 2nd and 3rd Petitioners. It was submitted that during the trial the 2nd and 3rd Petitioners failed to call evidence, including any expert witness, to show that the 1st Respondent does not possess an equivalent of a Grade twelve (12) certificate. It was submitted that it is evidence not in dispute that the Examination Council of Zambia is a body mandated by law to verify and confirm examination results. It was further submitted that by the evidence on the record the Examination Council of Zambia were satisfied that the 1st Respondent had the therefore he qualified to contest the elections for Member of Parliament.

5.3.13 It was submitted that the Petitions lacked merit as the Petitioners had failed failed to discharge the burden required at law and prayed that Petitions be dismissed with costs.

5.4 2nd Respondent's submissions

5.4.1 The 2nd Respondents submissions regarding the burden and standard of proof in Election petitions is as has already been discussed and requires no repetition.

5.4.2 It was submitted that the evidence of partisan witnesses should be treated with caution and required

corroboration to eliminate the danger of exaggeration and falsehood.

5.4.3 Reference was made **Section 97(2)(b) of Electoral Process Act No. 34 of 2016** which provides for the ground on which the election of a candidate can be voided. It was submitted that at trial nothing was led to show non-compliance to demonstrate any wrongdoing by the 2nd Respondent in the discharge of its mandate. It was submitted that the verification of academic results is a mandate of the Examination Council of Zambia and not the 2nd Respondent. It was submitted that the two independent bodies are involved in the elections and play distinct roles. Qualifications of the participants are dealt with by the Examinations Council of Zambia and that the 2nd Respondent only acts upon the recommendations it receives from the Examinations Council of Zambia. It was submitted that the 2nd Respondent has no authority to challenge the authenticity of the documents received from the Examinations Council of Zambia. Further that any error attributed to Examinations Council of Zambia cannot extend to the 2nd Respondent.

5.4.4 It was submitted that the issues being raised by the Petitioners were an afterthought after suffering a defeat.

6 LAW

6.1 I have considered the Petition, Answer and evidence tendered in this matter. I have also considered the submissions by counsel. By this Petition, the Petitioners seek to nullify the election of the 1st Respondent as a Member of Parliament for the Lumezi Constituency.

6.2 The jurisdiction of the High Court to hear and determine Election petitions in relation to Parliamentary elections is provided for in Article 73 of the Constitution, which provides that:

“(1) A person may file an election petition with the High Court to challenge the election of a Member of Parliament.

(2) An election petition shall be heard within ninety days of the filing of the petition.”

6.3 In addition, Section 96(1) of the Electoral Process Act provides as follows:

“(1) A question which may arise as to whether—

(a) a person has been validly appointed or nominated as a Member of Parliament;

(b) the seat of an elected or nominated Member of Parliament, mayor, council chairperson or councillor, has become vacant, other than a question arising from the election of a candidate as a Member of the Parliament; or

(c) a petition may be heard and determined by the High Court or tribunal upon application made by—

- (i) any person to whom the question relates; or*
- (ii) the Attorney General; may be determined by the High Court or a tribunal, as the case may be.”*

6.4 The instances when the High Court can nullify an election or declare the election of a candidate void are found under **Section 97(2)** of the Electoral Process Act and state as follows:

“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), where 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”

6.5 This section requires the Petitioners, to prove that as a consequence of corrupt practice, illegal practice or other misconduct, the majority of the electorate in the constituency did not vote for the candidate they preferred or at the time of the election the candidate was not qualified or person disqualified for election.

6.6 In the case of Mbololwa Subulwa v Kaliye Mandandi ⁽¹⁶⁾ it was stated as follows:

“The spirit of section 97 (2) (a) is to ensure that elections are held in a free, fair and legal manner. This is in order to uphold as well as advance constitutional democratic tenets that provide and enable voters to elect a candidate of their own choice.”

6.7 The law requires that the alleged corrupt practice, illegal practice or other misconduct must have been committed by the candidate or with his knowledge and consent or approval or by his election agent or polling agent.

6.8 Section 2 of the Electoral Process Act defines “election agent” and “illegal practice” as follows:

Election agent –

“a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate’s nomination paper”

Illegal practice –

“an offence which is declared under this Act to be an illegal practice”

6.9 In the case of Nkandu Luo and the Electoral Commission of Zambia v. Doreen Sefuke Mwamba and the Attorney General, 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...”

6.10 The said case went on to mention that:

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

6.11 The net effect of the above authorities is that it is not enough for the Petitioners to only prove that a candidate committed an electoral offence or engaged in other misconduct to nullify an election. The Petitioners must in addition, prove that the corrupt practice, illegal practice or other misconduct was widespread and prevented or may have prevented the majority of the voters in the constituency from electing a candidate of their choice in an election for it to be nullified.

6.12 In considering what amounts to “widespread” the Supreme Court in the case of Mbololwa Subulwa v Kaliye Mandandi stated as follows: -

“we adopted the meaning of the term ‘widespread’ given by the Supreme Court in the Mazoka v Mwanawasa¹ case. Although the latter case involved determination of a presidential election petition, the meaning given in that case adds some clarity. The Supreme Court put it thus: - “Since a presidential election involves all the 150 constituencies; the petitioners must prove electoral malpractices and violations of electoral laws in at least a majority of the constituencies.” [...] whether or not the majority of voters were or may have been prevented from electing a candidate of their choice is a question of fact that must be determined based on the evidence before the court.” (underlined for emphasis)

6.13 The Courts have been guided as to the standard of proof required in an election petition to prove the allegations therein. It is a standard higher than the usual balance of probabilities applicable in other civil matters

as per the case of Akashambatwa Mbikusita Lewanika, Hicuunga Evaristo Kambaila, Dean Namulya Mungombe, Sebastian Saizi Zulu, Jennifer Mwaba v. Frederick Jacob Titus Chiluba wherein it was stated that:

“Parliamentary election petitions are required to be proven to a standard higher than on a mere balance of probabilities.”

6.14 Further in the case of Abuid Kawangu v Elijah Muchima it was held that:

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

6.15 This position was reaffirmed in the case of Austin Liato v. Sitwala Sitwala.

6.16 The burden of proof in an election petition is the same as in any civil matter - lies on the Petitioners. In the case of Khalid Mohamed v The Attorney General⁽¹⁷⁾, Ngulube D.C.J, as he then was, held as follows:

“An unqualified proposition that a plaintiff should succeed automatically whenever a defence has failed is unacceptable to me. A plaintiff must prove his case and if he fails to do so the mere failure

of the opponent's defence does not entitle him to judgment. I would not accept proposition that even if a plaintiff's case has collapsed of its inanity or for some reason or other, judgment should nevertheless be given to him on the ground that defence set up by the opponent has also collapsed."

6.17 In the case of Brelsford James Gondwe v Catherine Namugala, it was echoed that:

"the burden of establishing the grounds lies on the person making the allegation and in election petitions, it is the petitioner in keeping with the well settled principle of law in civil matters that he who alleges must prove. The grounds must be established to the required standard in election petitions namely fairly high degree of convincing clarity:"

6.18 Section 15 of the Electoral Process Act provides for the general offences, but more specifically election offences are governed under part 8 of the Electoral Process Act and can be summarised in part as relating to this petition following the allegations as follows:

6.18.1 Section 81 of the Electoral Process Act

"A person shall not, either directly or indirectly, by oneself or with any other person corruptly—

- a) give, lend, procure, offer, promise or agree to give, lend, procure or offer, any money to a voter or to any other person on behalf of a voter or for the benefit of a voter in order to induce that voter to vote*

or refrain from voting or corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election;

b) give, lend or procure, offer, promise or agree to give, lend, procure, offer or promise, any money to a voter or for the benefit of a voter or to any other person or on behalf of that person on behalf of any voter or to or for any other person for acting or joining in any procession or demonstration before, during or after any election;

[..]

(e) advance or pay or cause to be advanced or paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or partially expended in bribery at any election;

6.18.2 Section 83 of the Electoral Process Act

“(1) A person shall not directly or indirectly, by oneself or through any other person—

(a) make use of or threaten to make use of any force, violence or restraint upon any other person;

[...]

(c) do or threaten to do anything to the disadvantage of any person in order to induce or compel any person—

[...]

(ii) to vote or not to vote;

(iii) to vote or not to vote for any registered political party or candidate;
(iv) to support or not to support any political registered party or candidate; or

6.19 It is apt to note that the learned authors of **Halsbury's Laws of England, 4th Edition Volume 15** at page 429 paragraph 784, defines what constitutes as a threat, as follows;

"In order to constitute undue influence a threat must be serious and intended to influence the voter, but it must appear that the threat should be judged by its effect on the person threatened and not by the intention of the person using the threat."

6.20 The Court is further guided when considering and evaluating evidence adduced by partisan witnesses that the same must be corroborated with independent evidence to strengthen the testimony of partisan witnesses.

6.21 In the Kaliye Mandandi case cited above, it was stated that: -

"...in terms of the requirement for corroborating evidence in election petitions, witnesses who belong to a candidate's own political party or who are members of the candidate's campaign team must be treated with caution and require corroboration in order to eliminate the danger of exaggeration and falsehood by such witnesses in an effort to tilt the balance of proof in favour of the candidate that they support".

6.22 As to what corroborating evidence is, the learned authors of **Black's Law Dictionary** define it as follows: -

"Evidence that differs from but strengthens or confirms what other evidence shows."

6.23 Lastly in the case of Christopher Kalenga v Annie Mushy and 2 others⁽¹⁸⁾ the Court stated as follows: -

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

6.24 In relation to the issue on the nomination of the 1st Respondent to stand as a Member of Parliament for the Lumezi Constituency The Electoral Process (General) Regulations, Regulation 18 (7) states that:

"The determination of the returning officer that a nomination is valid or invalid is final unless challenged through an election petition in accordance with Article 52(4) of the Constitution."

6.25 Article 52 of the Constitution provides that:

“A candidate shall file that candidate’s nomination paper to a returning officer, supported by an affidavit stating that the candidate is qualified for nomination as President, Member of Parliament or councillor, in the manner, on the day, and at the time and place set by the Electoral Commission by regulation.

(2)

(3)

(4) A person may challenge, before a court or tribunal, as prescribed, the nomination of a candidate within seven days of the close of nomination and the court shall hear the case within twenty-one days of its lodgement.

(5) The processes specified in clauses (1) to (4) shall be completed at least thirty days before a general election.

7 ANALYSIS

7.1 Facts not in dispute

7.1.1 From the evidence before the Court it is not in dispute that there were eight candidates that participated in the Lumezi Parliamentary Election that took place on 12th August, 2021. It is also not in dispute that the 1st Respondent, Munir Zulu, an independent candidate, emerged winner with 11, 929 votes followed by Pilila Gertrude Mwanza Jere, a Patriotic Front Party candidate, the 1st Petitioner, who polled 10,471. The demographic and geographic particulars of the region are also not in dispute. It is also not in dispute that during the campaign period the 1st Respondent used two motor vehicles with vehicle

registration marked ECL 2021. It is further not in dispute that no complaint was reported to the Electoral Commission of Zambia once polling had been opened and results communicated. These issues not being in dispute, they are admitted as facts in this case.

7.1.2 Now the grievances in this Petition relate to the following heads:

- 1) *The donations made by the 1st Respondents during the campaign period;*
- 2) *Use of the Patriotic front election campaign material and campaigning for the Patriotic Front Presidential candidate;*
- 3) *Threats and acts of violence perpetrated by the 1st Respondent and his agents during the campaign period; and*
- 4) *The 1st Respondent's nomination to stand despite failure to produce full grade twelve certificate.*

7.1.3 Before delving into the details of each allegation, this is an opportune time to state that the burden of proof lies on the Petitioners to prove the allegations to a **fairly high degree of convincing clarity**. It is also important that not only should the Petitioners prove that the Respondent or his election agent committed the alleged acts or omitted to do what was necessary but that the said conduct or omission was wide spread in the Constituency.

7.2 Donations

7.2.1 The evidence relating to the donations made by the 1st Respondent was mainly presented through the viva voce evidence of PW1 – PW14. In addition to this the 1st Petitioner in her Bundle of Documents exhibited photographs of the vehicles used by the 1st Respondent when distributing the donations. It was the evidence of the witnesses that they voted for the 1st Respondent because of the donations he made in their respective communities. The manner of donations in the different communities consisted of mainly bags of cement and roofing sheets. In one place blankets and sanitary goods were donated to a clinic. In some places it is alleged that the 1st Respondent gave out money. However, this particular allegation was not supported by any evidence. A critical analysis of the evidence of the witnesses shows a pattern where the 1st Respondent is alleged to have asked the needs of the community then after a few days some goods were delivered to either a school or a clinic. This evidence was not seriously challenged. Most of the witnesses were able to name the person or people that delivered the goods that were donated to the various communities. They all also stated that the people who delivered the items stated that they had been sent by the 1st Respondent. Now from the evidence led by the Petitioners could it be said the 1st Respondent should be held accountable for the donations as provided for by the law? That is, can it be said that the donations were made with the consent and full knowledge of the 1st

Respondent or by his electoral agent as provided by Section 97 (2) of the Electoral Process Act, No. 35 of 2016? And if he was to be held accountable for these donations can it be said that the conduct was so widespread as to influence the outcome of the election?

7.2.2 The evidence on the record is that the witnesses who were called to testify regarding the donations firstly confirmed that the 1st Respondent did not personally deliver any of the donated items. Secondly, in almost all the instances there was no evidence led to the effect that the donations were made with the knowledge and consent or approval of the 1st Respondent or of the 1st Respondent's election agent or polling agent. The evidence will show that PW2, PW3, PW6 and PW12 were party officials in the 1st Petitioner's party. Their evidence is therefore to be treated with caution as it is prone to exaggeration. The evidence of PW4, PW5, PW7, PW8, PW9, PW10, PW11, PW13 and PW14 seems to have been presented as evidence to corroborate the evidence of the party officials. However, a close analysis of this evidence shows that the witnesses do not address two critical issues namely:

- a) *the numbers, precise or estimated, of the people that attended the meetings that were allegedly held by the 1st Respondent;*
and
- b) *the identity of the persons that delivered the pledged items.*

7.2.3 Without this information the Court is left guessing regarding the extent of the influence on the electorate. The total number of registered voters in Lumezi Constituency as per the exhibited Registered Voters Polling Register is 53,451. It was necessary for the Petitioners to demonstrate, by way of evidence, the number of people that attended the meetings held by the 1st Respondent. This way an inference could have been drawn regarding the reach of the alleged undertakings made by the 1st Respondent. In relation to the identity of the people that delivered the items that were donated, it was important for the Petitioner, at the very least, to show with certainty the connection between the persons who were making the deliveries and the 1st Respondent. The standard of proof is not met by merely mentioning that some unknown people delivered the items and then told them that they were from the 1st Respondent. The standard of the law is that any alleged malpractice ought to have been carried out by the 1st Respondent or with his knowledge or consent or by his election or polling agents. Clearly, there ought to be evidence put before the Court that meets this criteria. The Court should not be left to speculate about the identity of the people who did the particular act or the form or extent of the Respondent's knowledge or consent regarding the conduct. In view of the foregoing I find that the allegation that the 1st Respondent's donations in the Constituency influenced the electorate to vote for him has not been proved to the required standard. It has also not been demonstrated that the donations were made by the 1st Respondents or his election or

polling agents or with their knowledge. Further, it has not been shown that the conduct was too widespread as to influence the voters in the Constituency. The allegation is therefore dismissed.

7.3 Use of Patriotic Front campaign material and campaigning for Patriotic Front Presidential Candidate.

7.3.1 It is undisputed evidence on the record that prior to the 2021 Elections the 1st Respondent was a member of the Patriotic Front Party. It is also not in dispute that through out the campaign period the 1st Respondent had two vehicles in his campaign fleet that had registration number plates marked "ECL 2021". It is also not in dispute that the Electoral Commission of Zambia issued guidance to Independent Candidates reminding them that they ought to have relinquished any political party affiliation at least two months before the election, failure to which the Commission would take appropriate action against the erring candidate. Other than the evidence of the two vehicles with the "ECL 2021" number plate, no other evidence was presented to show, not only that the 1st Respondent campaigned for the Patriotic Front party Presidential candidate but also that he used the party's campaign material. Furthermore, in cross examination all the witnesses were unequivocal in their evidence that they knew that the 1st Respondent was an Independent candidate and the 1st Petitioner was standing on the Patriotic Front ticket. Therefore, even in the event that it were true that the 1st Respondent did campaign for the Patriotic Front Presidential candidate there was no confusion in the minds of the electorate who the candidate was on the Patriotic

Front ticket for the position of Member of Parliament. This allegation again is not supported by sufficient evidence for this Court to make a finding that the 1st Respondent, in using two vehicles in his campaign fleet with the registration number “ECL 2021” the electorate were confused as to who was standing on the Patriotic Front ticket. The allegation is therefore dismissed.

7.4 Threats and acts of violence perpetrated by the 1st Respondent and his agents.

7.4.1 Evidence of threatened and actual violence came from the 1st Petitioner, 3rd Petitioner and PW19. The evidence of the 1st Petitioner was basically to the effect that she heard of threats by the 1st Respondent. Then as she was travelling on the Lundazi – Chipata road she was hounded off the road by a vehicle belonging to the 1st Respondent. No other witness was called to substantiate this incident. With regard the 3rd Petitioner, her allegation of violence was premised on an allegation that the 1st Respondent pulled a gun on PW19. She claimed that this incident caused fear within her camp. PW19, who is also the 3rd Petitioner’s brother, was the only witness called to testify of this incident. PW19 testified that the incident traumatized him so much that he was unable to vote on 12th August, 2021. Now again here the basic principle of liability applies which is that *“he who alleges must prove”*. It is not the burden of the Respondent to show that an incident didn’t happen. As was stated in the **Khalid Mohammed Case** – the fact that the defence fails does not entitle the Plaintiff to

a judgment. The allegations of violence ought to have been substantiated by independent evidence. In the instance of the 1st Petitioner, she was the only one who gave evidence about the incident. She claims that there were several reports of threats and also that she was being driven when she was run off the road. She, therefore, had an opportunity to call witnesses to support her evidence. However, no witness was called to attest to these allegations or to support her version of events. Furthermore, there was no evidence to show that it was the 1st Respondent or his agent in the vehicle or that this action had been sanctioned by him or with his consent or knowledge. The standard of proof was not discharged in this instance. Turning to the allegations by the 3rd Petitioner, the evidence was mainly that of PW18. In addition the 3rd Petitioner sought to exhibit a photograph of the 1st Respondent holding what appeared to be a firearm. The 3rd Petitioner said this was to demonstrate that the 1st Respondent had the propensity for violence using firearms. However, when quizzed about the photograph it became apparent that it was not a contemporaneous picture. She admitted herself that it was not relevant to the proceedings at hand. Furthermore, there was no evidence before the Court that the conduct of the 1st Respondent was widespread nor was the effect on the electorate of the said conduct in the alleged two isolated incidents demonstrated. This is allegation is therefore dismissed as being without merit.

7.5 Lack of a valid Grade 12 certificate

7.5.1 The main allegation by the 2nd and 3rd Petitioners was with regard the validity of the 1st Respondent's Grade 12 certificate. The allegation was brought pursuant to Section 97 (2)(c) of the Electoral Process Act which provides for an election to be nullified if in the first place the candidate did not qualify to participate in the election.

7.5.2 Now, the undisputed facts in this case are that 8 candidates successfully filed their nominations to run for the office of Member of Parliament for Lumezi Constituency. Subsequently, all eight candidates contested the election of 12th August, 2021 where the 1st Respondent emerged winner. The 2nd and 3rd Petitioners then launched a Petition wherein they alleged that the 1st Respondent did not possess a Grade 12 certificate as required by law.

7.5.3 At trial, the evidence of the Petitioners was that the certificate that had been presented to the Electoral Commission of Zambia by the Respondent was a forgery as there was no way the 1st Respondent could have taken the exam a year after he was born. The alleged forged Certificate was exhibited. During cross examination of the 3rd Petitioner she explained that she got the document from a WhatsApp Group. She further claimed that the 1st Respondent posted the same document himself. The 1st

Respondent denied knowing anything about the document. Instead he exhibited a copy of a certificate indicating that he had retaken his mathematics exam. He also produced correspondence from the Examinations Council of Zambia stating that he possessed the equivalent of a Grade 12 certificate.

7.5.4 It must be restated here that the burden of proving an allegation lies on the party that makes the allegation.

7.5.5 It is not in dispute that the institution that is charged with certification of results is the Examinations Council of Zambia. The role of the Electoral Commission of Zambia is to receive an affidavit from the candidate and not to verify results presented to it by a candidate. The fact that the 1st Respondent was declared duly nominated and was even entered on the ballot is prima facie evidence that he was qualified to participate in the elections. The evidence of the 3rd Respondent, especially the authenticity of the document that she produced, is highly questionable. No evidence has been led to show who authored the document. It is also not clear whether what was exhibited is what was verified by the Examinations Council of Zambia. The 1st Respondent did state that he presented both his first certificate and the one he exhibited in order for the assessment by the Examinations Council of Zambia in order for him to attain the requisite qualifications to participate in the elections. This evidence has not been rebutted by any evidence by the Petitioners.

7.5.6 At the very least the evidence of the 3rd Petitioner amounts to hearsay evidence which cannot be relied upon by the Court. As the questionable evidence is the only evidence for the Petitioners there are no grounds for this Court to question the eligibility of the 1st Respondent. The allegation regarding the eligibility of the 1st Respondent to stand is therefore dismissed.

8 VERDICT

8.1 The Petitioners having failed to prove the allegations against the 1st and 2nd Respondent to the requisite standard, the Petition is dismissed in its totality.

8.2 In view of the foregoing I do declare that the 1st Respondent, Munir Zulu, was duly elected as Member of Parliament for the Lumezi Constituency in the Eastern Province of the Republic of Zambia.

8.3 In following with the practice in cases of this nature I will order that each party bear its own costs.

8.4 Leave to appeal is granted.

Signed, Sealed and Delivered at Chipata this 22nd day of November, 2021.


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C. LOMBE PHIRI
HIGH COURT JUDGE