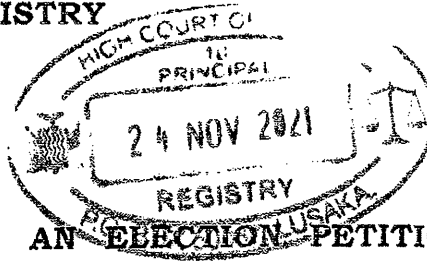


IN THE HIGH COURT FOR ZAMBIA  
AT THE DISTRICT REGISTRY  
HOLDEN AT MANSA  
(CIVIL JURISDICTION)



2021/HN/EP/004  
2021/HR/EP/002  
2021/HP/EP/060

IN THE MATTER OF: AN ELECTION PETITION FOR BANGWEULU  
CONSTITUENCY PARLIAMENTARY ELECTION IN THE SAMFYA DISTRICT  
OF THE REPUBLIC OF ZAMBIA HELD ON THE 12<sup>TH</sup> AUGUST 2021

AND

IN THE MATTER OF: ARTICLE 73 OF THE CONSTITUTION OF ZAMBIA,  
CHAPTER 1 OF THE LAWS OF ZAMBIA AS AMENDED BY ACT NO.2 OF  
2016

AND

IN THE MATTER OF: SECTION 96 OF THE ELECTORAL PROCESS ACT  
NO. 35 OF 2016

BETWEEN:

ALFONSO G. CHUNGU  
DERICK CHANDA  
NALUKENA KANYANTA  
PIUS M. CHILESHE

1<sup>ST</sup> PETITIONER  
2<sup>ND</sup> PETITIONER  
3<sup>RD</sup> PETITIONER  
4<sup>TH</sup> PETITIONER

AND

ANTHONY KASANDWE  
ELECTORAL COMMISSION OF ZAMBIA

1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT

BEFORE HON. JUSTICE ELITA PHIRI MWIKISA

FOR THE 1<sup>ST</sup> PETITIONER: MR J. CHILENGA OF MESSRS NYIRONO &  
CO

FOR THE 2<sup>ND</sup> PETITIONER: IN PERSON

FOR THE 3<sup>RD</sup> PETITIONER: IN PERSON

FOR THE 4<sup>TH</sup> PETITIONER: NIL

FOR THE 1<sup>ST</sup> RESPONDENT: MR. E.S. LILANDA OF MESSRS TUTWA S.  
NGULUBE & COMPANY

## **JUDGMENT**

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### **Cases Referred To:**

1. *Jyoti Basu & Others v Debi Ghosal & Others* 1982 AIR 983
2. *Simasiku Kalumiana v. Lungwangwa Geoffrey and the Electoral Commission of Zambia* 2006/HP/EP/007
3. *Simasiku Namakando and Eileen Imbwae* 2006/HP/EP/002
4. *Akashambatwa Mbikusita Lewanika and Others v Fredrick Titus Jacob Chiluba* (1998) Z.R 79
5. *Abiud Kawangu v Elijah Muchima* Appeal No. 8 of 2017
6. *Brelsford James Gondwe v Catherine Namugala* Appeal No. 175 of 2012
7. *Nkandu Luo and Electoral Commission of Zambia v Doreen Sefuke Mwamba and the Attorney General*, Selected Judgment No. 51 of 2018
8. *Mubika Mubika v Poniso Njeulu* SCZ Appeal No. 114 of 2007
9. *Anderson Kambela Mazoka v Levy Patrick Mwanawasa and others* (2005) Z.R 138
10. *Saul Zulu v Victoria Kalima* (2014) Z.R (Vol 1) 14
11. *Josephat Mlewa v Eric Wightman* (1995/1997) Z.R 106
12. *Chrispin Siingwa v Stanley Kakubo* CCZ Appeal No. 7 of 2017
13. *Richwell Siamunene v Sialubalo Gift* Selected CCZ Judgment No. 58 of 2017
14. *Nabukeera Hussein Hanifa v Kibule Ronald and Another* (2011) UGCH 72
15. *Christopher Kalenga v Annie Munshya and two others* 2011/HK/EP/03
16. *Wadada Rogers v Sasaga Isaiah Jonny and Electoral Commission* Election Petition No. 31 of 2011 (Ugandan Court of Appeal)
17. *Steven Masumba v Elliot Kamondo* Selected Judgment No.53 of 2017
18. *Mbolowa Subulwa v Kaliye Mandandi* Selected Judgment No.25 of 2018

19. *Mubita Mwangala v Inonge Mutukwa Wina*, SCZ Appeal No. 80 of 2007
20. *Bisigye Kiiza v Museveni Yoweri Kaguta and Another* (Election Petition No.1 of 2001) [2001] UGSC 3
21. *Samuel Mukwamatama Nayunda v Geoffrey Lungwangwa* Appeal No. 15 of 2017
22. *Changano Kakoma Charles v Kundoti Mulonda* Appeal No.5 of 2017
23. *Webster Chipili and David Nyirenda* Appeal No. 35 of 2003
24. *Levison Achitenji Mumba v Peter William Muzyamba Daka* Appeal No.38 of 2003
25. *Giles Chomba Yamba Yamba v Kapembwa Simbao*, Selected Judgment No. 6 of 2018
26. *Buhari v Obasanjo* (2005) CLR 7K
27. *Woodward v Sarsons* [1874-80] All E.R Rep 262
28. *Christabel Ngimbu v Prisca Chisengo Kucheka* Appeal No. 16 of 2017
29. *Sunday Chitungu Maluba v Rodgers Mwewa and Another* Appeal No. 4 of 2017
30. *Poniso Njeulu v Mubika Mubika* Appeal NO.9 of 2017

**Legislation Referred To:**

1. *The Constitution of Zambia Act No. 2 of 2016*
2. *The Electoral Process Act No. 35 of 2016*

**Works Referred To**

1. *Halsbury's Laws of England 4<sup>th</sup> Edition, Volume 15*

Three petitions were initially filed in the High Court and were given Cause Numbers 2021/HN/EP/004, 2021/HR/EP/002 and 2021/HP/EP/060 respectively. However, when the matter came up for scheduling conference on 8<sup>th</sup> September, 2021, the parties agreed and the Court ordered that the three Causes be

consolidated to be heard at the same time and in sequence based on the date that each process was filed into Court.

It must also be noted that Cause No. 2021/HP/EP/060, was dismissed following a preliminary issue raised by Counsel for the 1<sup>st</sup> Respondent herein.

### **PETITIONERS' CASE**

In his petition dated 26<sup>th</sup> August, 2021, the 1<sup>st</sup> Petitioner stated that he was one of the nine contenders in the parliamentary general elections for Bangweulu Constituency held on 12<sup>th</sup> August, 2021. The 1<sup>st</sup> Petitioner contested the election on the Democratic Party (DP) ticket while the 1<sup>st</sup> Respondent contested the election on the Patriotic Front (PF) ticket. That the 1<sup>st</sup> Respondent was declared duly elected Member of Parliament (MP) for Bangweulu Constituency having received sixteen thousand four hundred and fifty (16,450) votes, while the 1<sup>st</sup> Petitioner polled three thousand four hundred thirty-six (3,436) votes.

Being dissatisfied with the election results, the 1<sup>st</sup> Petitioner filed his Petition under Cause No. 2021/HN/EP/004 seeking the following reliefs:

*"That the declaration of the 1<sup>st</sup> Respondent as winner of the Parliamentary Seat for Bangweulu Constituency by the 2<sup>nd</sup>*



*Respondent is null and void; a declaration that the illegal practices and electoral malpractices affected the election results and the same ought to be annulled; that the Petitioner may have such further or other reliefs as the court shall deem fit and that the Respondents may be ordered to pay costs of and incidental to this petition."*

The 1<sup>st</sup> Petitioner alleged that the campaigns by the 1<sup>st</sup> Respondent and the manner in which the elections were held by the 2<sup>nd</sup> Respondent were characterized by and conducted without compliance to the provisions and principles of the Electoral Process Act No. 35 of 2016 (The EPA) and the Code of Conduct set out in the schedule thereto. That this disregard of the law affected the result of the election to the 1<sup>st</sup> Petitioner's detriment.

According to the 1<sup>st</sup> Petitioner, the voters in Bangweulu constituency were prevented from electing their preferred candidate in the elections because there was violence, intimidation, threats and undue influence, which were committed by the 1<sup>st</sup> Respondent and his agents. As such, that the election of the 1<sup>st</sup> Respondent as MP for Bangweulu Constituency was void for the following reasons: that on 6<sup>th</sup> June, 2021, the agents of the 1<sup>st</sup> Respondent, under his instructions, removed the 1<sup>st</sup> Petitioner's campaign posters without the authority of the 2<sup>nd</sup> Respondent; that on the same day, the agents of the 1<sup>st</sup> Respondent caused violence against the 1<sup>st</sup> Petitioner and his party officials resulting

in the 1<sup>st</sup> Petitioner being injured and unable to campaign for a period of one month thereby hindering him from utilising the campaign period apportioned to him by the 2<sup>nd</sup> Respondent; and further that the 1<sup>st</sup> Respondent and his agent, through a radio interview at Bangwela Radio Station, a station with coverage over the entire Bangweulu Constituency, issued intimidating statements and threats against the 1<sup>st</sup> Petitioner. The 1<sup>st</sup> Petitioner went on to allege that the violence and intimidation by the 1<sup>st</sup> Respondent and his agents had wide spread effect on the voters in Bangweulu Constituency preventing them from electing their preferred candidate.

Further, the 1<sup>st</sup> Petitioner alleged that the campaigns by the 1<sup>st</sup> Respondent were also characterized by acts of bribery, corrupt, illegal practices and misconduct. That at all the 1<sup>st</sup> Respondent's campaign meetings in Bangweulu Constituency, the 1<sup>st</sup> Respondent distributed money to the voters. It was his further testimony that on poll day, the 1<sup>st</sup> Respondent was ferrying voters to and fro the polling stations and each voter was given money and lunch after voting for the 1<sup>st</sup> Respondent.

It was contended that the manner in which the elections were held by the 2<sup>nd</sup> Respondent on poll day were characterized by non-

compliance to the provisions and principles of the EPA and the Code of Conduct set out in the schedule to the Act in that firstly, on polling day, the wife to the 1<sup>st</sup> Respondent, not being an accredited person by the 2<sup>nd</sup> Respondent, was distributing face masks to the voters within the boundary of the polling station, a conduct aimed at influencing the voters to vote for the 1<sup>st</sup> Respondent. Secondly, that the 2<sup>nd</sup> Respondent's officers at various polling stations in the constituency were affiliated to the 1<sup>st</sup> Respondent's political party thereby diminishing the credibility, impartiality and independence of the 2<sup>nd</sup> Respondent in holding free and fair elections. Thirdly, that the 1<sup>st</sup> Respondent's party officials engaged in an unauthorised use of the register of voters prior to the election date and the same compromised the electoral process because it misled the voters. Fourthly, that the 2<sup>nd</sup> Respondent, through the Zambia Police Service, denied the Petitioner's observers and accredited members access to the totalling centre from 20:00 hours to 03:00 hours, a conduct that diminished transparency in holding a free and fair election.

It was contended that the 1<sup>st</sup> Respondent has consequently been irregularly declared winner of the election in Bangweulu Constituency.

The Petition was supported by an affidavit verifying the Petition filed on the same date and deposed to by the 1<sup>st</sup> Petitioner herein.

On the other hand, the 1<sup>st</sup> Respondent filed an Answer to the petition dated 7<sup>th</sup> September, 2021, supported by an affidavit denying the 1<sup>st</sup> Petitioner's allegations. The 1<sup>st</sup> Respondent denied being responsible for the violence, intimidations, threats and undue influence that could have been committed during the elections. He further denied having knowledge, consenting to or approving the same. The 1<sup>st</sup> Respondent claimed that contrary to the allegations, the purported violence was actually perpetuated by the 1<sup>st</sup> Petitioner and his agents.

In relation to the campaign materials, the 1<sup>st</sup> Respondent denied removing any campaign posters belonging to the 1<sup>st</sup> Petitioner nor instructing anyone to have them removed. He stated that if the posters were removed, it was not with the consent, approval or knowledge of the 1<sup>st</sup> Respondent.

In response to the corrupt practices alleged, the 1<sup>st</sup> Respondent stated that if there were any corrupt practices, the 1<sup>st</sup> Petitioner should have reported to the Anti-Corruption Commission (ACC). The 1<sup>st</sup> Respondent further denied ferrying voters to different polling stations stating that the 1<sup>st</sup> Petitioner would be put to strict

proof thereof and whether those acts were done with the consent, approval and knowledge of the 1<sup>st</sup> Respondent.

The 1<sup>st</sup> Respondent in his Answer stated that the people of Bangweulu Constituency voted for him as their preferred candidate, and which fact can be seen from the voting pattern. It was stated that the election was free and fair and that the 1<sup>st</sup> Respondent was duly elected MP for Bangweulu Constituency with sixteen thousand four hundred and fifty (16,450) votes while the 1<sup>st</sup> Petitioner got three thousand four hundred thirty-six (3,436) votes. The 1<sup>st</sup> Respondent contended that the Petition is devoid of merit and that the 1<sup>st</sup> Petitioner is not entitled to any of the reliefs contained in the Petition and as such, that the petition be dismissed with costs.

The 2<sup>nd</sup> and 3<sup>rd</sup> petitioners filed their petition under Cause No. 2021/HR/EP/002 dated 27<sup>th</sup> August, 2021, stating that the said Kasandwe Anthony was not duly elected and the election was void.

In the said Petition, the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners stated that the 2<sup>nd</sup> Petitioner was a candidate for the Bangweulu Constituency seat in the parliamentary election held on 12<sup>th</sup> August, 2021, and that the 2<sup>nd</sup> Petitioner received three thousand five hundred thirty-one

votes (3,531) against the 1<sup>st</sup> Respondent's sixteen thousand four hundred fifty (16,450) votes.

The 2<sup>nd</sup> and 3<sup>rd</sup> petitioners alleged that the 1<sup>st</sup> Respondent was not duly elected because the election in the said Bangweulu Constituency was held in an atmosphere which was not free and fair due to widespread malpractices, bribery, vote buying and corruption. According to the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners, the selection of presiding officers by the 2<sup>nd</sup> Respondent was not transparent as some of the presiding officers were relatives of the 1<sup>st</sup> Respondent. Furthermore, the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners alleged that the 2<sup>nd</sup> Respondent did not follow the election regulations which required that names of presiding officers be stuck on the notice board on time so that candidates with complaints about the presiding officers selected could write to the conflict management committee (CMC) team. It was alleged that the names were stuck on the notice board by the 2<sup>nd</sup> Respondent at Samfya District Council, just two days before elections.

It was also alleged that the 1<sup>st</sup> Respondent and his agents were giving out money to voters during campaigns and on polling day and Further that the PF members together with Good Governance Zambia (GGOZA) officials were at the polling stations cooking food

for voters and persuading the said voters to vote for all PF candidates.

The petition was supported by an affidavit deposed to by the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners herein essentially deposing to the contents of the petition.

In response to the 2<sup>nd</sup> and 3<sup>rd</sup> petitioner's petition, the 1<sup>st</sup> Respondent filed an Answer dated 7<sup>th</sup> September, 2021. In denying the allegations, the 1<sup>st</sup> Respondent stated that he had no role to play in the selection of presiding officers or any of the polling officers in the election.

On allegations of bribery, corrupt and illegal practices, the 1<sup>st</sup> Respondent denied ever distributing money to the voters and stated that it was not possible to distribute K20 notes to all voters in all polling stations. The 1<sup>st</sup> Respondent also denied having any relationship with GGOZA and cooking any food for any voters as it was not possible to cook food for all voters in such a vast Constituency.

It was further stated that the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners failed to show that the allegations raised affected the entire election and that the Petition be dismissed with costs.

When the matter came up for trial on 22<sup>nd</sup> September, 2021, the 1<sup>st</sup> Petitioner called 13 witnesses.

PW1, was the 1<sup>st</sup> Petitioner, Alfonso Chungu. He began his testimony by confirming that he contested the parliamentary elections held on 12<sup>th</sup> August, 2021, on the DP ticket. PW1 testified that Bangweulu Constituency is comprised of 10 wards namely; Kapata, Katanshya, Mano, Lupili, Chimana, Kapilibila, Musaba, Lumamya, Isamba and Lufwishi Wards. He added that the constituency had 96 polling stations spread across the aforementioned Wards.

PW1 narrated that prior to the campaigns, the Council Secretary, who was also the District Electoral Officer, together with the Returning Officer, called interested parties to inform them about the dos and don'ts during the campaign period. He told the court that all parties were present at the said meeting and among the things discussed were issues of violence, intimidation, bribery, impersonation, the use of undue influence to manipulate the voters among other things. It was PW1's evidence that the 2<sup>nd</sup> Respondent then drew up a campaign programme in the presence of all political parties and the independent candidates. The programme was to be followed by all participants and it was hoped



that the campaigns would be conducted in a manner prescribed by the 2<sup>nd</sup> Respondent.

PW1 testified further that, the laws and principles guiding the management and conduct of elections were abrogated several times by the 1<sup>st</sup> Respondent and his agents. For instance, it was PW1's evidence that on 6<sup>th</sup> June, 2021, the DP was expecting its President, Mr Harry Kalaba, in the Constituency, for canvassing and as procedure required, the Police were informed. PW1 also narrated that the Police were informed that Mr Kalaba would pass through Mano, Lupili and Chimana Wards which were within the same proximity. In preparation for this, PW1 said that they stuck some campaign posters which PF agents removed. According to PW1, this was done in order to disadvantage them, as a party, because voters would be prevented from knowing about them on polling day. PW1 testified that when he got to the scene with his campaign team, they did not find the PF agents but all the campaign posters were torn and littered around the area.

It was PW1's further evidence that on the same day, 6<sup>th</sup> June, 2021, the 1<sup>st</sup> Petitioner, Damson Chalwe and Luka Mwape were attacked, beaten and injured by Joriba Mwila, James Chikoleke and Darius who were PF cadres. He said that the said cadres were

dressed in PF regalia and that there was a Land-Cruiser parked there belonging to the 1<sup>st</sup> Respondent. PW1 testified that because of the injuries he sustained, he was unable to campaign for one month which meant that since each candidate was given a week to campaign in a particular ward, he could not follow that programme and as a result was unable to campaign in all the Wards.

It was PW1's further testimony that the injuries he sustained due to the beatings, as shown by the medical report on record, goes to show that there was indeed violence which occurred during the campaigns. PW1 also testified that their campaign vehicles registration numbers ASB 654 and ALJ 1559 were also destroyed in the process.

Apart from that, PW1 said that the 1<sup>st</sup> Respondent went on radio Bangwela, a radio station with a media coverage across Bangweulu constituency, to justify the beating of the 1<sup>st</sup> Petitioner and threatened people that the same would happen to them. PW1 told the Court that the said media coverage had an effect on the outcome of the election as the said station had a wide coverage in the Constituency and people listened to it a lot.

PW1 went further to narrate that his team including himself were denied entry to the totalling centre and they did not know what

happened to the Gen 20 forms. He further told the Court that he was chased by the armed police officers and soldiers who were manning the gate to the totalling centre. PW1 also testified that voters in the Constituency were influenced in the sense that they received hand-outs and money which in itself had a bearing on the manner they cast their votes.

On allegations of bribery, corrupt and illegal practices as well as misconduct, PW1 told the Court that the 1<sup>st</sup> Respondent's campaign was characterised by distribution of money to voters in all 10 wards with a message that the voters should only vote for PF candidates. That the distribution of money continued even on polling day itself. Further, PW1 testified that on polling day, the 1<sup>st</sup> Respondent hired a fleet of vehicles for the purposes of carrying voters from their respective places to the polling stations. He stated that these vehicles were used across the Constituency in all 10 Wards and that the voters were also taken to designated places to have meals after voting. PW1 also testified that the wife to the 1<sup>st</sup> Respondent was also seen distributing face masks at Mulisha polling station on polling day.

PW1 went on to tell the Court that the polling agents at Chinsanka were found with pre-marked voter registers. He also told the Court

that there were presiding officers who were either PF cadres, relatives to the 1<sup>st</sup> Respondent or relatives to other members who contested in various positions and that these presiding officers were allowed to assist those voters who could not read or write and since these presiding officers had conflicting interests, those candidates had an advantage due to high illiteracy levels in the Constituency.

PW1 testified that it was clear from the foregoing that the voters in Bangweulu Constituency were prevented from voting for a candidate of their choice as elections were characterised by violence, threats, intimidation, undue influence, vote buying, bribery, corrupt and illegal practices and failure by the 1<sup>st</sup> Respondent to comply with the provisions and principles of the law. PW1 concluded his testimony by asking the Court to declare the election null and void.

Under cross-examination, PW1 testified that according to the election time table on record, the PF should have been in Mano Ward, Doris Chisanga in Chimana Ward and the 2<sup>nd</sup> Petitioner should have been in Lupili Ward on 6<sup>th</sup> June, 2021. He admitted that DP supporters were in the three Wards on 6<sup>th</sup> June, 2021, but stated that their presence was not in contradiction with the time

table. He explained that the presidential visits were regulated by the 2<sup>nd</sup> Respondent and the time-table did not apply to presidential candidates. He conceded that the election time-table was from the 2<sup>nd</sup> Respondent and it applied at district level as well.

On the allegations of violence, PW1 testified that he did not know the exact number of polling stations where the purported violence took place but that it could be over 5 out of 96 polling stations in the Constituency. He said that the violence on 6<sup>th</sup> June, 2021, took place in Lupili ward. PW1 testified that the people who beat him up on 6<sup>th</sup> June, 2021, were Joriba Mwila, James Chikoleke and Darius who were agents of the 1<sup>st</sup> Respondent. He testified further that he did not see the 1<sup>st</sup> Respondent when he was being beaten but that the violence was committed with the consent of the 1<sup>st</sup> Respondent because the agents who beat him up were with the 1<sup>st</sup> Respondent. PW1 conceded that he did not have pictures of the Land-Cruiser that was at the scene when he was being beaten. He also testified that he did not have a recording of the programme where the 1<sup>st</sup> Respondent was justifying the beating of the 1<sup>st</sup> Petitioner on Bangwela radio station.

It was PW1's further evidence that the DP agents were denied entry to the totalling centre by the representatives or security personnel

of the 2<sup>nd</sup> Respondent although the said personnel were not before Court to testify. However, when referred to paragraph 11 D of his Petition, which stated that the observers and accredited members of the DP were given access at 03:00 AM, which was a contradiction to his testimony in court, PW1 maintained that they were denied entry.

PW1 however conceded that at the totalling Centre, there is only a summation of all the votes gathered from the various polling stations. PW1 admitted that there were DP agents at all the polling stations in Bangweulu Constituency except at the totalling Centre. He told the Court that not all of the agents communicated how many votes the DP got from each of the polling stations. He also stated that he only received ten GEN 20 forms out of 96 and that he therefore did not know how many votes the DP got in the other polling stations as himself and his agents were denied access to the totalling centre.

In relation to allegations of bribery, corrupt and illegal practices as well as misconduct, PW1 stated that in the videos produced, the 1<sup>st</sup> Respondent is not seen distributing money to the voters.

On allegations that the 1<sup>st</sup> Respondent hired trucks to ferry voters, PW1 testified that the owners of those trucks were not before Court

to testify although other witnesses would testify on the same. He told the Court that he was informed by the owners of the said vehicles that they entered into contracts for the hire of the said trucks although the 1<sup>st</sup> Respondent was not captured in the videos entering into any contract with the owners of the said trucks. PW1, however, conceded that the pictures in his bundles of documents only showed parked trucks as opposed to trucks ferrying voters.

PW1 further testified that he did not find the 1<sup>st</sup> Respondent with pre-marked registers but that it was the 1<sup>st</sup> Respondent's agent who was found with them. PW1 admitted that he was aware that the 2<sup>nd</sup> Respondent, sells voter registers as it is a public document. When asked how the pre-marked PF registers affected the outcome of the elections, he testified that it brought confusion as some people started complaining that the agents were supposed to go in the polling stations with registers that were not marked. He also explained that the voter registers should only be marked when a voter presents their details just before voting.

When it was put to him that results in the public domain show that Lupili 1 and 2 polling stations were won by a UPND candidate, and Chiteta 1, 2 and 3 polling stations were also won by an independent candidate, indicating that voters were not influenced

to vote for the 1<sup>st</sup> Respondent, PW1 testified that he did not know that those candidates won in those wards but that most of the voters were still influenced.

PW1 admitted that at the meeting referred to earlier with the 2<sup>nd</sup> Respondent, the process to undertake in the event of malpractices was explained. He stated further that they were told to report any such malpractices to relevant authorities mandated to ensure order during the election period such as the district electoral officers and the Returning Officer. He admitted that he had the contact number for one of the police officers throughout the campaign period as well as on polling day although the officer was later transferred. He also confirmed that he had the returning officer's number and could engage him whenever he wanted clarity on certain issues.

PW1 also testified that there was a suspension of campaigns because of the period of mourning of President Kaunda even though the PF were still campaigning. He conceded that it would be fair to conclude that since campaigns were suspended, he was not illegally hindered from campaigning during that period.

In re-examination, PW1 clarified that the time-tables that they drew up were applicable at local level and were for MPs whilst the



presidents had their own at national level. He also said that there was therefore no conflict in schedules and that is why the police allowed the DP President to go to the three Wards.

PW1 also testified that he was beaten on 6<sup>th</sup> June, 2021, which was before the period of national mourning for the late President Kaunda, was declared. As such, he was unable to campaign before that period of national mourning.

PW2, was Damson Chalwe. He gave similar testimony as PW1. He testified that he stood as a candidate on the DP ticket for Council Chairperson in Samfya District. PW2 also testified that on 6<sup>th</sup> June, 2021, between 13:00 hours and 14:00 hours as he and PW1 were heading to his home for lunch, they found PF cadres who had blocked the way and that the PF cadres were riding in a Land-Cruiser that they had been using during the campaigns. He also testified that the PF cadres stopped the vehicle that he and PW1 were riding in and started beating the duo including Mwape Luka who was in their company. PW2 further testified that he knew that their assailants were PF cadres because they were wearing PF regalia and that he also knew them as security cadres for the PF as he was once PF District Secretary. He mentioned their names as Darius Chishiba, James Chikoleke and Joriba.

Under cross-examination, PW2 told the Court that Darius Chishiba was arrested for beating up PW1 and for damaging PW1's vehicle. That Darius Chishiba was taken to Court on 30<sup>th</sup> June, 2021, in Samfya, where he admitted the charge and was convicted and fined K2,200. He also testified that he did not have any proof to show that the Land-Cruiser that the PF cadres were using belonged to the 1<sup>st</sup> Respondent. PW2 also confirmed that he did not see the 1<sup>st</sup> Respondent amongst the people who beat him up on 6<sup>th</sup> June, 2021.

PW2 admitted that campaigns were stopped and only road shows were allowed. He said that they had the right to go to other wards to introduce themselves to the voters and that was the reason why the 2<sup>nd</sup> Respondent drew up a timetable to clearly show that a particular party must be at a specific place at a specific time.

Under continued cross-examination, PW2 testified that PW1 said the truth when he told the court that none of the culprits were arrested as Darius Chishiba was not arrested by the Police but by DP members who then took him to Mansa Police station. He said that the Police from Mansa then took Darius to Samfya where the alleged offence occurred and then the culprit was thereafter taken to Court, convicted and fined K2,200. When challenged about the

truth of his testimony, he denied that there were contradictory statements between him and PW1 as PW1 in his testimony stated that no arrests were made.

In relation to the Land-Cruiser being used by the PF cadres, PW2 testified that the said Land-Cruiser belonged to the 1<sup>st</sup> Respondent because in 2016, he (PW2) used to drive the said motor vehicle before he defected to DP and that that was why he was so confident that the Land-Cruiser belonged to the 1<sup>st</sup> Respondent.

PW3, was Patrick Nkonge. He testified that on 12<sup>th</sup> August, 2021, around 08: 00 hours, the 1<sup>st</sup> Respondent's motor vehicle was seen with his agents who were looking for transporters to ferry people to various polling stations. That one of the vehicles hired was a Mitsubishi truck belonging to a person named Chalwe and it was ferrying people from two polling stations, namely, Mwaba and Kaminsa. He also testified that the second vehicle was a Fuso truck belonging to Gideon Mwango which took people to Chikundu and Twingi polling stations. According to PW3, the two transporters were paid K3,000 each. He further stated that in each vehicle that was transporting the voters, there was a person distributing money to voters and telling the voters to vote for the 1<sup>st</sup> Respondent and all candidates standing on the PF ticket. He

said that when he approached one of the people distributing money telling him that what he was doing was wrong, the response he got was that if other political parties did not have money they should not have contested.

Furthermore, PW3 testified that on the same day around 15:00 hours, he received a call from a DA polling agent at Chinsanka polling station informing him that the PF at Chinsanka polling station stream 3 had pre marked registers even before voting had commenced. He said that he got to Chinsanka polling station stream 3, and informed the presiding officer what he had heard. That the presiding officer in turn went to the PF table to check the said registers and confirmed that the PF registers were indeed pre-marked. That the polling agent who had the pre marked register was then taken outside where he explained that the said registers were left by the 1<sup>st</sup> Respondent who had left them with the Councillor contesting on the PF ticket. That the presiding officer then went to check the registers from the other two streams and found that they were also pre-marked. That it was shocking to discover that some of the people marked on the registers in question, had died and others had gone away but were also appearing on the register. He explained that other names on the

pre-marked register were still on the queues waiting to go vote. PW3 stated that this caused a lot of confusion at the polling station.

PW3 also testified that the presiding officer and police who were there, told him to suspend the issue of pre-marked voter registers and that it would be considered at the time of counting the votes. That the counting of votes started around 22:00 hours when other police officers went there from Samfya. That the said police officers upon arrival, started firing gunshots and that's how everyone scampered in different directions. He went on to state that the presiding officer and the police did not allow him and others to be in attendance whilst votes were being counted in order for them to verify those registers, despite him being an election agent.

Under cross examination, PW3 testified that he saw the 1<sup>st</sup> Respondent's vehicle with the 1<sup>st</sup> Respondent's agents distributing money to people who were transporting voters on 12<sup>th</sup> August, 2021, but that he did not see the 1<sup>st</sup> Respondent. PW3 testified that there were no written contracts to support this allegation although considering the village set up, contracts were verbal.

PW3 testified that he did not have documents to prove that he was PF Deputy District Youth Secretary in the term which ended in

2016. PW3 also testified that he did not have any evidence to show that the people he mentioned as appealing in the voters register are dead. He also testified that he did not have his accreditation card before Court to show that he was an accredited election agent. When cross-examined further, PW3 admitted that anybody can have a voter's register but it can only work inside the polling station. PW3 admitted that the PF's voter register was not the only one used. He told the court that all the party agents and independent candidates' agents had voter registers. He also confirmed that the PF agent who was found with the pre-marked registers was not found with peoples' voters cards and NRCs. PW3 further stated that his concern was that the voters register was pre-marked outside the polling station. When asked how a political party would benefit from a pre-marked voter register when they do not have voters cards and NRCs, PW3 answered that PF agents were collecting some peoples NRCs and voter's cards and that that was where their worry was emanating from. When questioned further, PW3 admitted that he did not have evidence to show that the PF agents were collecting NRC's and voters cards before the elections. He conceded that it would be unfair to accuse someone of vote buying without any evidence. He also admitted that there

was confusion at the time of voting and that that is what caused the police to fire bullets in the air in order to disperse people.

In re-examination, PW3 explained that people who benefited from the distribution of money and the food that was cooked on 12<sup>th</sup> August, 2021, were the ones appealing before Court to testify as such it would be fair to bring these allegations against the 1<sup>st</sup> Respondent even without hard evidence.

PW4 was Mwewa Haggai Chitala. He testified that he was appointed as the DP Provincial Campaign Manager and that on 26<sup>th</sup> May, 2021, between 07:00 hours and 08:00 hours, he received a phone call from one John Milambo informing him that the PF were removing DP and other opposition party posters and that when he got to Lupili ward, he found approximately 20 people in PF regalia. PW4 also testified that he knew those people as PF members firstly because of the regalia they wore and secondly because he too was once PF Constituency Secretary and so he knew them. He testified that he saw Joriba and Rasta amongst the people who were there that day. That the duo were in a Land-Cruiser branded with pictures of the 1<sup>st</sup> Respondent. PW4 further told the Court that he then went to see the District Chairman for

PF, one Godfrey Mwila, who assured him that he would speak to the cadres to stop what they were doing.

PW4 also testified that on 6<sup>th</sup> June, 2021, he received information that the 1<sup>st</sup> Petitioner, PW2 and Luka Mwape had been beaten. PW4, testified that he reported the matter to the police and wrote a letter to the Conflict Management Committee (CMC), which letter was on record.

It was further PW4's testimony that the 1<sup>st</sup> Respondent and Mr James Kapilila went to Bangwela Radio, which covers the whole of Samfya district and Lunga district, and PW4 heard the 1<sup>st</sup> Respondent say that people would be beaten and thrown in trenches. It was further his testimony that he tried to get the recording from radio Bangwela but failed.

PW4 further narrated to court that on 23<sup>rd</sup> July, 2021, he heard that there was going to be a meeting at Kasoma Bangweulu School, in Mano ward, which was to be addressed by the 1<sup>st</sup> Respondent and his delegation. He told the court that at the said meeting, money was being given to people with NRCs and voters cards and that he took videos using his mobile phone showing people collecting money. The said videos were produced before court and marked "V1", "V3" and "V4". PW4 further told the Court that the



1<sup>st</sup> Respondent and Mr James Kapilila were however not shown in the said videos because he took the videos from a distance and the place was crowded.

It was further PW4's evidence before Court that on 12<sup>th</sup> August, 2021, after voting, he went round polling stations to see how people were voting and that when he got to Mulisha polling station, he found that the 2<sup>nd</sup> wife to Mr James Kapilila, was the presiding officer there. He said that the wife to the 1<sup>st</sup> Respondent was also giving out face masks to people on the queue, and that around 15:00 hours on the same day, he went to Chinsanka polling station in Kapata ward, where he found confusion because one Fearless Kapepa, was found with pre-marked voters registers, which PW4 saw for himself. That when asked why he was found with pre-marked registers, Fearless Kapepa said that they were not useful at the polling station but were only used to identify people in villages who had voters cards and NRCs, who were later taken to different polling stations where they had registered.

Under cross examination, PW4 confirmed that he complained about the malpractices to the Conflict Management Committee but was never heard. PW4 testified that the chairman of the committee is an uncle to the 1<sup>st</sup> Respondent and that it was possible they were

not called because of the relationship between the two. He however conceded that he did not have any evidence to show that the letter of complaint to the Conflict Management Committee was received or acknowledged by the Committee.

He also admitted that the 1<sup>st</sup> Respondent was not captured in the videos where his agents were distributing money. He testified that he did not know whether Joriba, Rasta and Mutoba were mentioned as agents in the 1<sup>st</sup> Respondents nomination paper. In re-examination, PW4 testified that when he got to Chinsaka he found people pulling Fearless Kapepa and that at the time, the presiding officer had already retrieved the pre-marked registers from him but that Fearless Kapepa admitted in the video that he had pre-marked registers.

PW5, King Mwewa, told the Court that he is a PF member who was in the campaigning committee in July, 2021. He said that on 9<sup>th</sup> July, 2021, he was informed by the Lumanya ward Councillor that the 1<sup>st</sup> Respondent wanted to have a meeting with the people, as such, PW5 should tell people to gather which he did. He told the court that when the 1<sup>st</sup> Respondent arrived, he made the people queue up and each group of 5 people were given K50 to share.

PW5 also testified that on 17<sup>th</sup> July, 2021, he and others had a meeting with Councillor Kapya Chola who emphasized that cadres should attack people who talked negatively about Mr Edgar Chagwa Lungu and the 1<sup>st</sup> Respondent. That on 21<sup>st</sup> July, 2021, Ms Lizzy Matafwali, a candidate on the FDD ticket, held a meeting where she stated that there was no development in the area under the PF government, and that as a member of the PF, PW5 was upset with those remarks, consequently he disturbed that meeting after which people scattered. He said that he reported what he had done to Mr Kapya Chola who gave him a K50.

It was further his testimony that on 9<sup>th</sup> August, 2021, the 1<sup>st</sup> Respondent went back and encouraged people to vote for him and distributed t-shirts and chitenges as well as K10 notes. He went on to tell the court that on 12<sup>th</sup> August, 2021, the 1<sup>st</sup> Respondent went to Lumamya ward around 12:00 hours and gave Elizabeth Chalwe and Paul Mumba K600 to distribute K5 each to those with NRCs and voter's cards. He testified that he was given K20 by the Secretary since he was inside the Polling Station overseeing the voting process.

Under cross-examination PW5 testified that Mr Kapya Chola is a Councillor in Lumamya ward and that Kapya Chola was the 1<sup>st</sup>

Respondent's agent. PW5 also testified that he was a polling agent at Kafubashi polling station and that there was a form from ECZ where the District Commissioner signed as well as himself representing the PF party. PW5 further testified that it is possible for a person who is not a PF member to wear a PF t-shirt and that he did not have a PF card to show that he was a member of the PF. He testified further that he was a PF agent at Kafubashi polling station and found himself in Lumamya ward on poll day because that is where he lives. He however, admitted that he did not know what it meant to be an agent of someone standing as a candidate in elections. He reiterated his testimony in chief by stating that he used to cause confusion when he found people speaking negatively about the PF as he was an ardent supporter and member of PF.

That the meeting on 17<sup>th</sup> July, 2021, was held at Kafubashi primary school although the time table on record does not show those dates. When asked who won at Kafubashi polling station, PW5 testified that it was the 1<sup>st</sup> Respondent who won. When it was put to him that it was Reuben Chama who won at the Kafubashi polling station, PW5 conceded and testified that Reuben Chama won and beat the 1<sup>st</sup> Respondent by 8 points.

PW5 also testified that he was not with the 1<sup>st</sup> Respondent when he disturbed Ms Matafwali's meeting on 21<sup>st</sup> July, 2021. He however, conceded that he did not have proof to show that the 1<sup>st</sup> Respondent was bribing the people.

PW6, was Robson Mwewa. He testified that on 5<sup>th</sup> June, 2021, he heard the headman saying there would be a meeting the following day on 6<sup>th</sup> June, 2021. He said that people were told to go for the meeting with their NRCs and voters cards and that on the material day, the PF went to Chitundwa school to address the people where the 1<sup>st</sup> Respondent was asking the people to vote for the PF. PW6 testified that after the address, people were asked to queue up and after showing their NRCs and voter's cards, they were given money by the 1<sup>st</sup> Respondent. He said that at the same meetings the women were in their own queue also getting money from Mr James Kapilila.

It was further PW6's testimony that in July, 2021, the PF went back to distribute t-shirts, caps and chitenges. He went on to testify that on 11<sup>th</sup> August, 2021, the 1<sup>st</sup> Respondent and James Kapilila went back to Kapilibila ward in a white Toyota Landcruiser Registration No. BAD 2724 carrying bags of mealie meal. PW6 testified that he was amongst those chosen to offload the mealie

meal from the motor vehicle. That the 1<sup>st</sup> Respondent then gave one Edmund Mwape K2,500 and instructed him to buy relish so that when people returned from voting, they should go and have a meal. He said that the 1<sup>st</sup> Respondent then told him to tell the people that if they did not vote for the PF, a machine would capture them. He testified that after voting, his grandmother and himself went to the house where food was being prepared and ate from there.

Under cross-examination, PW6 testified that he voted for the PF because he believed that there was a machine that was capturing people when they were voting. He also reiterated his earlier testimony that on 6<sup>th</sup> June, 2021, the 1<sup>st</sup> Respondent and James Kapilila distributed money to the voters but conceded that he did not have a video or any other evidence to show that the 1<sup>st</sup> Respondent and James Kapilila were distributing money. He testified that he did not report the issue of bribery to the Police because he did not know that it was an offence. He also testified that he did not see any camera or object in the booth when he was voting and that he did not complain about that issue to the ECZ, or 2<sup>nd</sup> Respondent herein.

PW7 was Clement Chitala. He testified that on 12<sup>th</sup> August, 2021, he was in Lumamya ward as a local observer for Doris Chisanga, who was an independent candidate in the general election. He testified that he arrived at Chishikishi polling station between 08:00 hours and 09:00 hours and found the 1<sup>st</sup> Respondent distributing money to the voters. It was PW7's evidence that the police who were there to monitor the elections, did not do anything when PW7 reported to them that the 1<sup>st</sup> Respondent was giving out money to people who were on the queue to vote. PW7 told the court that he observed that the police, who were engaged to ensure that there was law and order at the polling stations on poll day, were just watching the 1<sup>st</sup> Respondent distributing money to the voters on the queue at Chishikishi polling station. PW7 said that he even produced his Identification card (ID) given to him by the 2<sup>nd</sup> Respondent, (ECZ), as a local observer, as contained at page 61, of the 1<sup>st</sup> Petitioner's bundle of documents produced and marked as "CC5". PW7 further told the Court that the 1<sup>st</sup> Respondent was very confident that the PF was going to win the elections.

Under cross-examination, PW7's evidence was unshaken as he maintained the same position that he saw the 1<sup>st</sup> Respondent giving out money to voters on the queue at Chishikishi polling

station and that when he reported the matter to the police officers manning the elections, they did not do anything about it. PW7 testified in cross examination, that, the presiding officers at the polling station did nothing even after being informed about the purported illegal conduct of the 1<sup>st</sup> Respondent whom he saw giving out money to the electorate.

PW7 also testified that he did not know that there was a relationship between the 1<sup>st</sup> Respondent and the presiding officer.

He also testified that he did not have further evidence to show that the 1<sup>st</sup> Respondent was distributing money other than what he had said. He testified further that he saw the 1<sup>st</sup> Respondent distributing money around 08:00 hours to 09:00 hours on 12<sup>th</sup> August, 2021. When it was put to him that an earlier witness testified that the 1<sup>st</sup> Respondent was seen in the morning of 12<sup>th</sup> August, 2021, at Kafubashi polling station distributing money, PW7 admitted that it was not possible for the 1<sup>st</sup> Respondent to have been in two different places at the same time but he added, however, that Kafubashi and Chishikishi polling stations are both in Lumamya ward.

PW8 was Bupe Kunda. She told the Court that on 12<sup>th</sup> August, 2021, she went to vote from Chipota polling station in Lumanya



ward at around 11:30 to 12:00 hours. PW8 testified that the 1<sup>st</sup> Respondent was handing out K20 notes to voters on the queue at Chipota polling station in Lumamya ward asking them to vote for him and all PF candidates. PW8 further testified that he was also a recipient of the money and that they were later treated to some food at Mr Alex Chola's house, the Youth Vice Secretary for PF at the time.

Equally, PW8 testified that there was a police officer who witnessed the the distribution of money by the 1<sup>st</sup> Respondent but did nothing about it. That neither the presiding officers nor the police officers attempted to stop the 1<sup>st</sup> Respondent from giving out money.

Under cross-examination, PW8 maintained the position that the 1<sup>st</sup> Respondent was giving out money to voters on the queues at Chipota polling station. His evidence was not shaken in cross-examination.

PW8 further testified that it would take him about 30-40 minutes to move from Chipota polling station to Chishikishi polling station using a bicycle. It was his testimony that it was possible for the 1<sup>st</sup> Respondent to move from Chipota polling station to Chishikishi polling station since the distance between the two polling stations

is approximately 3.5km. He further clarified that the distance between Chipota polling station and Kafubashi polling station is about 7km. That from Chishikishi polling station to Chinanda, the distance is about 140km-150km. He still maintained that it was possible for the 1<sup>st</sup> Respondent to have been distributing money in all those places on the polling day. PW8 further testified that he did not have pictures or videos showing the 1<sup>st</sup> Respondent distributing money.

Under re-examination, PW8 clarified that it would take about 7 minutes for a person to drive from Chishikishi to Chipota polling station and 6 minutes from Chipota to Kafubashi polling station. He went on to testify that it would take about 2 hours for someone to drive from Kafubashi to Chinanda.

PW8 also testified that he was not happy with the candidate he voted for. He said that even though he was alone in the booth, it was difficult for him to take someone's money without honouring his obligation.

PW9 was Barbara Mwewa. She testified that in the last week of July, 2021, she was informed that the 1<sup>st</sup> Respondent would have a meeting in Kantanshya ward, Chimembe village and that all villagers should go to the said meeting with their NRCs and voters

cards. PW9 testified that at the meeting, they were asked to line up according to gender and they were put in groups of five and were given K100 for each group of 5 to share amongst themselves.

PW9 narrated further that sometime in August, 2021, she saw Erick Kunda carrying 25kg bags of mealie meal and when she inquired from Eric Kunda where the said bags of mealie meal were coming from, she was told that they were brought by the 1<sup>st</sup> Respondent for meals to be cooked on polling day. She said that buckets of cooking oil were also delivered. PW9 testified that after voting she went to Lewis Mwansa's house, where the food was cooked from, to have a meal.

Under cross-examination, she said that she did not have any other evidence other than her testimony to prove the allegations that the 1<sup>st</sup> Respondent was distributing money. She also testified that she did not see the 1<sup>st</sup> Respondent offloading the mealie meal but that she saw the mealie meal.

In re-examination, PW9 explained that the 1<sup>st</sup> Respondent used to campaign using money in the 2021, election, and that people voted for the candidates who gave them money as opposed to those who did not.

PW10 was Abraham Sosala. He testified that around 25<sup>th</sup> July, 2021, the 1<sup>st</sup> Respondent distributed money at Mitikula in Kantanshya ward. He stated that he was also a recipient of a K20 note. That on 12<sup>th</sup> August, 2021, as he was going to vote, he met Maglina Mwaba, a PF leader at Ward level, who told the voters to vote for all the PF candidates and that if they did not vote for the PF candidates, a machine would capture them. He also testified that after voting, he went to have a meal at a certain house.

Under cross-examination he testified that he did not have pictures or videos showing the 1<sup>st</sup> Respondent distributing money.

PW11 was Hellen Kashimbaya. She testified that on 23<sup>rd</sup> July, 2021, the 1<sup>st</sup> Respondent gathered people at Kasoma Primary School in Mano ward and distributed K20 notes, chitenges and t-shirts. According to her, the 1<sup>st</sup> Respondent asked them to vote for PF and that if they did not vote for the PF, they would get sick by developing abscesses or boils. She said that she got frightened by that statement and hence voted for PF.

Under cross examination, PW11 testified that the people at Mano ward, were threatened by the 1<sup>st</sup> Respondent and that is why they voted for him. She testified that she put an 'x' on all four PF candidates on the documents she was given at the polling station

because she was scared that she would get sick if she did not vote for the PF.

When asked whether she reported this to the Police, she said that she did not report to the police that the 1<sup>st</sup> Respondent was giving out money. PW11 also showed the Court the chitenge she received but stated that she had used up the K20 note she was given. She further stated that she did not have any picture or video showing the 1<sup>st</sup> Respondent giving out money.

PW12 was Chimuzza Muyafye. He testified that the 1<sup>st</sup> Respondent was distributing K20 notes to people at Sobamu in Lupili ward. PW12 however failed to identify the 1<sup>st</sup> Respondent.

PW14 was Elias Kalaka. He narrated that he was accredited with the 2<sup>nd</sup> Respondent as an election agent under the DP and was authorised to go to all polling stations in Bangweulu Constituency, including the totalling centre. PW14 testified that on 12<sup>th</sup> August, 2021, he went to Kapata ward where he found two fuso trucks which were hired by the 1<sup>st</sup> Respondent to ferry people from various places to polling stations and that after voting, they were taken back to their respective places.

PW14 also testified that when people finished voting in Kapata ward, particularly at Chinsanka polling station, there was confusion which was caused by a PF agent who was found in the polling station with a pre-marked voters register. That as a result of that confusion, the voters were not transported back to their respective places.

PW14 produced pictures of the vehicles that were purportedly seen transporting voters to amplify his testimony. The said vehicles had registration number BAK 2740 belonging to Gideon Mwango and the other had registration number ABK 1647, a Mitsubishi Fuso. It was PW14's further evidence that Gideon Mwango, disclosed that the 1<sup>st</sup> Respondent paid them K3,000 for each vehicle. He produced a video marked "EK8" showing Gideon Mwango explaining that he was a member of the UPND and was paid K3,000 to transport the voters. PW14 said he was informed by Gideon Mwango that the 1<sup>st</sup> Respondent's instructions were for them not to drop the voters at the polling stations but just close to the polling station.

Under cross examination, PW14 testified that the vehicles were captured on polling day when they were parked at Chinsaka bus station. He conceded that the video produced was not showing the

ferrying of voters but of immobile vehicles. PW14 also told the Court that it's a general practice for the vehicles to be found at the station as it is near the shops.

The 2<sup>nd</sup> Petitioner took the stand as PW15. He testified that he contested the parliamentary elections held on 12<sup>th</sup> August, 2021, as an independent candidate. He narrated to court that the campaigns started on a good note as the 2<sup>nd</sup> Respondent provided a campaign timetable which everyone was following, but that as the campaigns continued, the agents of the PF namely, cadres and the district chairman of PF, Godfrey Mwila, started engaging in massive malpractices such as corruption and bribery throughout Bangweulu constituency. That as such, the campaigns were compromised in favour of the 1<sup>st</sup> Respondent.

PW15 explained that to start with, the selection of presiding officers and polling agents was not done correctly as the PF submitted a list of cadres and relatives to be included on the list of presiding officers and polling agents. It was his evidence that this resulted in the 2<sup>nd</sup> Respondent failing to release the list of presiding officers and polling agents in time. PW15 testified that by releasing the list late, two days before the elections he had no

opportunity to question the 2<sup>nd</sup> Respondent on the issues arising there from.

It was PW15's further testimony that the vice District Coordinator for GGOZA, Mr Chiteule, informed him that GGOZA was a branch of PF which was helping the PF to distribute PF regalia and mealie meal to people of Bangweulu constituency in order to secure a win for PF in the election. He testified that Mr Chiteule also informed him that GGOZA was capturing names, NRCs and voters cards for all voters in the constituency. He explained to court that he was further informed that a coordinator was employed in each ward and that the said coordinator in turn employed ten staff to promise voters that upon winning the elections, a reward would be given to them. Furthermore, that food would be cooked on election day so that those that were captured as voters would be given food to eat.

PW15 told the Court that he reported the distribution of mealie meal and other malpractices to the Officer in charge at Samfya Police Station on 10<sup>th</sup> August, 2021. It was his further evidence that he also reported to the provincial office of the President as well as to the Council Secretary, who was the District Elections Officer. He stated that despite all this effort, no action was taken.



PW15 testified further that the PF went ahead with their plans of cooking food for voters. It was further PW15's testimony that the 1<sup>st</sup> Respondent spent much time in Lumamya, Kapilibila and Lufwishi wards on poll day. That the 1<sup>st</sup> Respondent was moving from one polling station to another transporting voters in a Land Cruiser as well as distributing money to voters at polling stations.

It was PW15's further testimony that the 1<sup>st</sup> Respondent's agents, namely, Mr James Kapilila and Godfrey Mwila were also in other wards distributing money which activity disadvantaged candidates like PW15 who had no money to give. PW15 alleged that the 1<sup>st</sup> Respondent was doing all these malpractices freely without being stopped by the police and that one of the main reasons was that out of the ten wards, only Lupili ward has a police station.

PW15 also testified that violence was the order of the day during the campaigns as UPND supporters who attempted to stop the 1<sup>st</sup> Respondent from giving out money on polling day, were beaten by the Zambia National Service (ZNS) officers and later arrested. That the 1<sup>st</sup> Petitioner was also beaten by PF cadres. PW15 testified that based on the massive corruption, bribery and malpractices, he was of the view that the atmosphere was not free and fair for the people

who participated in these elections and that his prayer was for the elections to be nullified.

Under cross examination, PW15 admitted that the roads in Bangweulu Constituency are generally bad and that it takes time for vehicles to pass from one place to another. He testified that it was possible for the 1<sup>st</sup> Respondent to be found in Lumamya, Kapilibila and Lufwishi Wards distributing money as the Wards are next to each other. PW15 also testified that he did not personally see the 1<sup>st</sup> Respondent distributing money to the electorate on 12<sup>th</sup> August, 2021.

He testified furthermore that he reported the said malpractices to the Police. He added that he also had audios marked "DC7" and "DC8" to corroborate his evidence that he met with the Council Secretary where he reported a number of issues such as the role GGOZA played in the elections. That it is clear from the five recordings that GGOZA was affiliated to the PF and was distributing mealie meal. PW15 also conceded that he did not write to the conflict management committee.

PW15 testified that the 2<sup>nd</sup> Respondent has a role in appointing presiding officers and polling agents and he admitted that some of these agents were from the candidates themselves.

PW16 was Morgan Chilufya. He testified that on 12<sup>th</sup> August, 2021, the 1<sup>st</sup> Respondent went to Pwele polling station to tell people to vote for PF. That after addressing the crowd, he got some money and distributed it to the people for them to buy relish. PW16 narrated that from Pwele, the 1<sup>st</sup> Respondent went to Malawi polling station where he was a polling agent although he did not go inside the polling station as there was another polling agent inside. PW16 testified that he voted from Pwele Polling station then proceeded to Malawi polling station where he also saw the 1<sup>st</sup> Respondent distributing money and telling people to vote for the PF and that after voting everyone should go to the various camps where food was being cooked so they could be fed. PW16 also testified that at the beginning of August, 2021, the 1<sup>st</sup> Respondent gathered people at Mushili polling station where each person was given a K10 note by the 1<sup>st</sup> Respondent.

Under cross-examination, PW16 said that he did not recall what time he voted at Pwele polling station. He also testified that the distance between Pwele polling station and Malawi polling station is 3km. PW16 also said that he did not know what time he saw the 1<sup>st</sup> Respondent at Malawi polling station but that it was approximately between 10:00 hours to 11:00 hours. He argued

that it was not true that the 1<sup>st</sup> Respondent was elsewhere around that time.

PW16 admitted that he did not see the 1<sup>st</sup> Respondent distributing mealie meal to people or cooking nshima although he said that he saw other people cooking nshima.

Under further cross-examination, PW16 testified that he was a member of GGOZA whose main job was to gather people and instruct them to vote for PF. That he attended two GGOZA meetings, and at the second meeting, they distributed chitenge materials and t-shirts although the 1<sup>st</sup> Respondent was not in attendance at both meetings.

PW16 further testified that he only visited two polling stations in Lumamya ward and could therefore not speak to what happened at the other five polling stations in the ward as he did not go there.

In re-examination PW16 testified that GGOZA used to pay him and that it was no longer active after the elections.

PW17 was Nsama Sweta. He gave similar testimony as the other witnesses that K20 notes were distributed by the 1<sup>st</sup> Respondent and that the ones who were cooking for voters on poll day were cooking from her neighbour's house. She however added that

sometime in July, 2021, when the 1<sup>st</sup> Respondent and Mr James Kapilila called for a meeting at Chilumbwa school, in Musaba Ward, to ask for votes, it was stated at that meeting that those who benefitted from social cash transfer would stop benefitting if the people voted for other political parties other than the PF. That as a result of that message, PW17 was afraid that if she voted for another party then her elderly mother would stop receiving the social cash transfer money and thus decided to vote for PF.

Under cross-examination, PW17 testified that she voted from Samfya Secondary School in Chimana ward. She testified that she did not see the 1<sup>st</sup> Respondent on polling day as she just voted and went home. PW17 also stated that she would not know who was cooking or eating but that she just saw people cooking around 06:00 hours.

She stated that the 1<sup>st</sup> Respondent was giving out K20 notes on 11<sup>th</sup> August, 2021, around 15:00 hours to 16:00 hours. She said that she did not have any evidence to prove the allegation that the Respondent was giving out money.

It was PW17's further testimony that she did not go to inquire from others whether it was true that if she voted for another party her

mother would stop benefitting from the social cash transfer. That she took it as gospel truth because the PF was the ruling party.

PW18, Benson Chola, testified that on 12<sup>th</sup> August, 2021, he went to vote at Chipota polling station around 06:00 hours because he stood as a candidate for Councillor under the DP. He narrated that after he voted, he went to go and see what was happening at Mushili polling station where he found the 1<sup>st</sup> Respondent with a motor vehicle, grey in colour, carrying some people.

Under cross-examination, PW18 testified that he saw the 1<sup>st</sup> Respondent at Mushili polling station around 08:00 hours and that he did not have any evidence showing the 1<sup>st</sup> Respondent ferrying voters to Lumamya ward.

PW19 was Honest Musenge. He testified that the period when Dr Kenneth Kaunda died, he saw the 1<sup>st</sup> Respondent's vehicle at Sobamu and when he went there, the 1<sup>st</sup> Respondent told the people that gathered there that they would be given money if they voted for the PF and failure to which, the people would be bewitched and develop boils. He said that all the people there, including himself, were given K20 notes.

He also testified that on poll day, he saw the 1<sup>st</sup> Respondent's wife distributing hand sanitizers and face masks in the company of ECZ officials at Chinanda polling station. He testified that he captured the 1<sup>st</sup> Respondent's wife distributing the said items in a video produced and marked "HM9".

Under cross-examination, PW19 testified that he got to Chinanda polling station around lunch time and it was a sunny day. He said that Chinanda polling station is in Lupili ward.

PW20 was Chola Mapili. He testified that he was a PF cadre whose role was to help distribute K20 notes and t-shirts to the people in different wards. He stated that all the money they were distributing in the wards came from the 1<sup>st</sup> Respondent and that he was paid by the 1<sup>st</sup> Respondent for doing that.

PW20 further told the Court that the 1<sup>st</sup> Respondent informed him together with the other cadres that he did not want DP to reach that area and that they were not allowed to have meetings in that area. He told the court that they were given power to beat up people by the PF and cause confusion. For instance, that when he went to Musaila station, he said that he and other cadres found someone wearing a DP t-shirt and cap but when they asked him to remove it, the person refused to do so and was beaten. He also

testified that there was a fight which ensued between the DP members and the PF members.

PW20 also gave evidence that they also went to Mwamfuli, where they started tearing DP posters. He testified further that they also beat up the 1<sup>st</sup> Petitioner together with PW2 and also smashed their car.

PW20 also told the Court that he used to work in the company of Joriba, Darius, Chishiba, Mpundu, Mulewa, Mutoba and Chime to cause violence and confusion. Further that they used to move with three Land-Cruisers, an open van and another maroon open van. That two of the Land-Cruisers were white and another maroon and then a grey open van.

PW20 testified that the wards they went to were Chimana ward, Chipako ward, Kantashya ward, Mpata ward and Twingi ward.

Under cross examination, PW20 testified that the three land cruisers belonged to the 1<sup>st</sup> Respondent as they were coming from his home. He testified further that he became a PF member when Mr Sata became President but did not have a membership card in Court. He admitted that the 1<sup>st</sup> Respondent told them as cadres to abide by the laid down procedures. He also testified that he only



knew three wards in Bangweulu Constituency, namely, Chimana, Kantanshya and Chipako wards.

He also admitted that the 1<sup>st</sup> Respondent was not there when he and the other cadres were beating up the three DP members.

Under further cross-examination, he admitted that he caused the confusion at Musaila station and that the 1<sup>st</sup> Respondent was not there when they beat up the 3 DP members.

In re-examination, PW20 testified that the 1<sup>st</sup> Respondent was aware about them blocking the road where the DP president was supposed to pass as he was the one who sent them to do so.

PW21 was Lameck Chabu. He testified that on polling day, he was told to go to Kasanka polling station in Lumamya ward as he heard that the 1<sup>st</sup> Respondent was distributing money there. That when he got there, the 1<sup>st</sup> Respondent was in the car but Mr James Kapilila disembarked from the vehicle and went to distribute money where people had gathered.

He testified that he confronted that 1<sup>st</sup> Respondent but that he was rebuked by him instead before Mr Kapilila drove off. That when PW21 in the company of other people, drove to Samfya, they found an Army vehicle with soldiers who instructed them to get out of the

vehicle and that they were then beaten and taken to Mansa Police Station. He testified that when they were being beaten the 1<sup>st</sup> Respondent was there. PW21 testified that he was a UPND top commander of foot soldiers.

Under cross-examination, PW21 told the Court that he voted at around 08:00 hours on poll day from Makasa polling station. He also stated that he used a motor bike to move from Samfya to Kansanka polling station and it took them about an hour to get there as the distance is about 80kms. That he arrived at Kansanka around 15:00 hours. He confirmed that the 1<sup>st</sup> Respondent was in the car throughout the time he saw him and as such he did not see the 1<sup>st</sup> Respondent physically giving out money.

PW21 testified that when Mr Kapilila drove off with the 1<sup>st</sup> Respondent, he followed them almost immediately. That he saw the 1<sup>st</sup> Respondent telling the soldiers to beat them up. He said that he was with other people in the IFA truck when they were being beaten although he did not have any evidence to that video. He further testified that he did not report the issue of distributing money to the police.

Under re-examination, PW21 testified that the 1<sup>st</sup> Respondent was aware that Mr James Kapilila was giving out money.

PW22 was Kaloko Musaba. He testified that in the last week of July, 2021, the 1<sup>st</sup> Respondent announced at Isamba ward, at Mufumba polling station, that people were required to go and attend a meeting where the 1<sup>st</sup> Respondent was going to be giving out money to the people there. PW22 said that those who attended the meeting were given K20 notes each and that in the week prior to voting, the 1<sup>st</sup> Respondent took food to a certain place.

He testified further that on polling day, he was a polling agent for the FDD and that when they took a break and went outside, they found a group of PF members who were preparing food which was later eaten by the PF voters. He also testified that all the staff in the polling station took a break on poll day. He testified that the house he went to eat from was for Tolomeo Ng'andwe, who was a member of GGOZA.

Under cross-examination, PW22 testified that when the polling staff went out for a break, people stopped voting and that the one who made the decision to go on break was the elections officer from the 2<sup>nd</sup> Respondent. He also testified that GGOZA and the PF were the same people as they used to work hand in hand.

It was his further testimony that the 1<sup>st</sup> Respondent gave out K20 notes or money to people. He testified further that he did not see

the 1<sup>st</sup> Respondent cooking nshima nor did he see him at the two houses where he went to eat nshima from. When it was put to him that in the last week of July, the 1<sup>st</sup> Respondent was in Lusaka, PW22 testified that he could not have missed him. He also testified that he worked with the presiding officer at the polling station but did not report what he had seen. In re-examination, he testified that he did not attend the training of polling agents.

PW23 was Loveness Kasanka. She testified that on 12<sup>th</sup> August, 2021, in the afternoon, she found the 1<sup>st</sup> Respondent giving out money to people at Mpolo polling station and she too got a K20 note from him. She said that he was alone when she met him and that the people who were receiving money were told to vote for PF. Under cross-examination, PW23 testified that if she had not been given money she would not have voted for the PF. She testified that the 1<sup>st</sup> Respondent was alone when he was giving her money.

PW24 was Element Kunda. He testified that on 12<sup>th</sup> August, 2021, he went to vote and found confusion at the polling station because the presiding officer was assisting people who could not read and write to vote for the PF regardless of how they wanted to vote. That the presiding officer was taken outside by the police who

reprimanded him and warned him not to continue with that behaviour.

PW24 also told the Court that he also met the 1<sup>st</sup> Respondent who gave him a K20 and told him to vote for PF. That the 1<sup>st</sup> Respondent further told him to go and eat food at the kitchen. He said that he voted for the PF and went to the kitchen to eat food thereafter.

Under cross-examination, PW24 testified that he voted from Chishikishi polling station around 09:00 hours. He testified that he did not have a watch and could therefore not say what time he saw the 1<sup>st</sup> Respondent although some time had passed from the time he went to the polling station to the time he met the 1<sup>st</sup> Respondent and that he saw him in the afternoon.

PW24 testified that he did not know the distance between Mpolo and Chishikisa but that it was far. He also said that the road network was not good and agreed that it would take hours for a vehicle to move from one place to another as the vehicles would be moving at low speed.

In relation to the confusion at Chishikishi, PW24 testified that he was outside the polling station and conceded that he did not see the presiding officer aiding voters. When it was put to him that the

voter register which was in the public domain did not show his name appearing at the said polling station, PW24 stated that his name was there and he voted.

He testified that he voted for the 1<sup>st</sup> Respondent because he got money from him and was therefore fulfilling his contract.

In re-examination he testified that it takes hours to move from chishikishi to Mpolo polling station and that the road was bad.

PW25 was Adrian Chalwe. He testified that on 10<sup>th</sup> August, 2021, the 1<sup>st</sup> Respondent held a meeting at Sakala in Isamba ward. According to PW25, after the meeting, people lined up, were given K20 notes each and were implored to vote for all PF candidates on 12<sup>th</sup> August, 2021. PW25 testified that when he went to vote, he became confused because of the money he got and he therefore did not vote for a candidate of his choice.

Under cross-examination, he testified that the 1<sup>st</sup> Respondent was at Sakala polling station on 10<sup>th</sup> August, 2021, at around 15:00 hours. He however conceded that he did not have any pictures or videos to prove his allegations. He testified that he got the K20 note because he needed it.

PW26 was the 3<sup>rd</sup> Petitioner herein. He narrated that on 14<sup>th</sup> July, 2021, he attended a meeting where Hon. Given Lubinda and Professor Nkandu Luo were speaking to civil servants in Samfya District. He testified that Professor Nkandu Luo, who was the running mate to Mr Edgar Chagwa Lungu, addressed the meeting and towards the end of the meeting she instructed one of her assistants to give out K100 notes, chitenge materials and the party manifesto to everyone who was in attendance. He said that Professor Nkandu Luo encouraged them to ensure that the ruling party goes through in the 2021, elections for the sake of continuity. PW26 testified that he sneaked out of the meeting before he could be given the K100 note.

It was PW26's further testimony that two people from the said meeting, namely Mr Kaputula (the coordinator of the meeting) and Mr Manfred Chibokaila, turned out to be returning officers for Samfya Correctional Facility and Bangweulu Constituency respectively. In addition, that Mr Manfred Chibokaila was the key person in the training of returning officers and polling assistants and the deployment of the said people.

PW26 testified that he was an accredited local monitor and on polling day, he went to vote early as he had the responsibility of

deploying polling agents to different polling stations. That as he was deploying the agents, he discovered that the presiding officers in those areas were friends to the 1<sup>st</sup> Respondent.

He also told the Court that he went to Chishikishi polling station when he heard that voting had been stopped because the presiding officer there was helping illiterate people to vote wrongly. That when he got to Chishikishi he stood at a distance and started taking a video of the commotion there.

PW26 also narrated to court that around 16:00 hours on the same day (poll day) he received a call from one of the polling agents from Makasa polling station who informed him that voting had been stopped because they had run out of ink at that polling station. That when he got there, he was denied entry by the police officer there despite having an ID to show that he was a local monitor in the constituency.

PW26 also testified that on 13<sup>th</sup> August, 2021, he went to the totalling centre after 18:00 hours to monitor the ballot boxes which the presiding officers were taking and that he noticed that the presiding officers were taking open ballot boxes as most of them had no seals. He further testified that all the monitors got agitated at that point and he took a video of what was going on in the hall



at that time. It was his evidence that after that, he went down stairs to see what was going on and he found presiding officers opening up the ballot boxes. When he asked them why they were opening them, he was informed that all queries should be referred to the Returning officer or Council Secretary who was an election officer at that time. He testified further that when he confronted the Returning officer, he walked out of the room and police officers then surrounded the hall and asked all monitors and observers to be quiet or risk being thrown out. He said that the results were then announced and he left the room. PW26 produced a video marked "NK11" in order to corroborate his evidence.

Under cross examination, PW26 conceded that the ballot boxes were at the totalling station for tallying as they had already been counted at different polling stations. He also conceded that he had deployed agents at polling stations, although not all polling stations, and that the agents witnessed the counting of votes at the polling stations. He furthermore conceded that after counting, the votes were entered on the Gen 20 form and that the winner was announced at that particular polling station.

PW26 explained that the confusion was as a result of taking open ballot papers which was against the EPA as they were supposed to

be sealed and opened in the presence of all election observers. He testified that the video marked "NK11" was showing open ballot boxes which had the Gen 20 forms with them. PW26 testified that if the boxes were opened, it made it possible for the Gen 20 forms to be tampered with.

He further told the Court that Mr Manfred Chibokaila is a teacher at Samfya Primary School and that it would not be fair to conclude that he attended the meeting, which was addressed by Professor Nkandu Luo, as a civil servant as opposed to attending it as a returning officer. PW26 testified that he was a spy at the said meeting and page 32 of the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioner's bundle of documents shows that the meeting took place although he did not have the minutes of that meeting. He also testified that he did not see the 1<sup>st</sup> Respondent at that meeting.

PW26 told the court that he voted for his preferred candidate on 12<sup>th</sup> August, 2021. He testified that his polling agents witnessed the counting of votes at polling stations and the hectic counting of ballots. He admitted that ballot papers have to be counted before leaving the polling station to the totalling centre as per procedure and are only recounted if there is a call for one. He stated that he did not request for a recount at the totalling centre.

The witness also told the Court that as a presiding officer, one should not be aligned to any political party, should be sober minded with a minimum of grade 12 certificate and should apply to the 2<sup>nd</sup> Respondent. He admitted that the best place to pick presiding officers from among those who are already in formal employment because they are presumed to have academic qualifications. He added that that is why civil servants are always told to be non-partisan. PW26 conceded that apart from word of mouth there was no other evidence to show that the presiding officer at Chishikishi polling station marked a wrong candidate on behalf of a voter.

He testified that he did not have any evidence to prove that Makasa polling station was closed before time.

In re-examination, PW26 testified that Mr Chibokaila attended the meeting as a presiding officer and not as a civil servant. That the Gen 20 forms were not electronically sent as there was a challenge with the telecoms network in most rural areas in Bangweulu Constituency.

PW27 was Kafupi Chola. He testified that on 12<sup>th</sup> August, 2021, he voted at East 8 polling station after which he went to observe what was happening at Chishikishi polling station as he was an

election agent. He said that he was allowed access inside the polling station and that he found the presiding officer with a young lady who was arguing that she wanted to cross on the "fish" and not "on the boat". That he started paying attention to what was going on and discovered that the confusion was as a result of people wondering why the presiding officer was voting for people wrongly and not according to their preferred candidate. PW27 testified that voting was stopped so that the matter would be resolved. He said that it was decided that the presiding officer should stop assisting people to vote and that any person who could not read or write should not ask the presiding officer for assistance but should pick a relative to help them vote and the voting continued. He also said that the presiding officer in question was James Kabuta, who was a relative to the 1<sup>st</sup> Respondent.

Under cross-examination, PW27 testified that he did not have an election agent card but that he entered that polling station with a document allowing him as polling agent. That he did not know that the 2<sup>nd</sup> Respondent gives cards as opposed to forms. He also stated that he did not know whether the DP won at that polling station.

PW27 also testified that he voted at East 8 polling station for his preferred candidate and that he did not have a phone to take a video.

PW28 was Mukoso Kennedy, from Chitundwa, in Samfya district. He testified that in the 1<sup>st</sup> week of July, 2021, he went to Chitundwa School ground in Kapilibila ward where the 1<sup>st</sup> Respondent held a meeting. PW28 testified that at the said meeting, the 1<sup>st</sup> Respondent asked the people to vote for him as Member of Parliament for Bangweulu Constituency. PW28 also testified that the 1<sup>st</sup> Respondent then asked those with NRC's and voters cards to line up so he could give them money. PW28 further testified that the 1<sup>st</sup> Respondent then stated that those who will not vote for the PF would be captured by a machine. PW28 testified that he was given a K20 and he voted for the PF.

### **RESPONDENTS' CASE**

On the other hand, in the Respondents' case, there were a total of 8 witnesses. RW1 was Manfred Bwalya. He told the Court that he was the Returning Officer for Samfya in Bangweulu Constituency in the 2021, General Elections. He stated that he was in charge of all electoral activities and his duties included; coordinating the packaging of all electoral materials in the constituency,

supervising and deploying all poll staff to the different polling stations, and receiving results from all polling stations in the constituency among other things.

RW1 narrated that the closing time of all polling stations in the constituency was 18:00 hours. He said that thereafter, they started receiving results between 22:00 hours to 23:00 hours which results were already announced at the polling stations. RW1 explained that the results from the polling stations were delivered to the totalling centre by presiding officers after all announcements and computations were done at the polling stations. RW1 also informed the Court that the results, once compiled, verified and signed by the presiding officer or the polling agents, were distributed to key stakeholders present at the polling station on GEN 20 forms and the presiding officer stuck the results at the particular polling station for the public to see. He testified that the announcement of results was done at the polling station and therefore when in transit to the totalling centre, there was nothing that could change the results that were announced at the polling station.

RW1 further explained that the results were delivered by hand to the Returning Officer in tamper proof envelopes clearly labelled

with the type of election results as announced at the polling station. He also narrated that when results were received at the totalling centre, the first thing the presiding officers did was to hand over all unused ballot papers including spoilt ballot papers which were in well enclosed envelopes. Secondly, that all votes or ballot papers for each particular candidate were sealed in envelopes marked "H" and were packed in ballot boxes which were well sealed with plastic seals. That all this was done hand in hand with uniformed officers, namely the police.

RW1 testified that they normally receive ballot boxes without seals. RW1 referred to the video produced marked "NK11" and explained that the only boxes that came with seals were the ones that came with security materials such as unused ballot papers, votes for each particular candidate in that election, used seals, plastic seals and marked registers by the polling assistants. That these were the only materials that were sealed in the ballot boxes. He went on to explain that materials that were received in unsealed boxes or partially sealed boxes included stationary, lamps, cells/batteries for the lamps, and lids for the protection of ballot boxes which sometimes get lost if they are not kept well.

It was his further evidence that before opening the totalling centre, he conducted registration of the people present there. He said that document marked "BM12" at page 71 of the 2<sup>nd</sup> Respondent's bundle of documents shows that the DP had a representative by the name of Elizabeth Mwewa who signed and was appearing at No. 13 contrary to the allegation that the DP were denied entry to the totalling centre.

In relation to pre-marked registers, RW1 told the Court that the 2<sup>nd</sup> Respondent has the mandate to produce and certify the official register to be used in an election. That these registers are sold to key stakeholders as explained in the video produced and marked as "BM13". RW1 furthermore explained that pre-marked voter registers whether inside or outside the polling stations cannot influence the outcome of the elections because the 2<sup>nd</sup> Respondent normally has its own certified registers which it uses in the polling stations. That is to say that the presiding officers and polling assistants have voters registers which they use to identify voters at a particular polling station. RW1 explained that they check if the voters are eligible and appearing on the voters register, then call out the name, the NRC number and the voters card numbers loudly after which they mark an 'X' against the name of the voter.



RW1 said that the possession of a pre-marked register by any one political party has no effect on the election as the guiding register is the one used by the 2<sup>nd</sup> Respondent.

Furthermore, that it was not possible for a person to vote on behalf of a deceased person. RW1 explained that during voter register compilation, there is a period when there is an exercise called physical inspection of the register of voters. That this is when the 2<sup>nd</sup> Respondent receives reports of persons who have died and that when it comes to compilation, the register has two sections, the last section, which is called the exclusion list, which has a list of people who are not eligible for different reasons, for example, where a person is deceased or where there are duplicated or double entries.

RW1 also testified that the 2<sup>nd</sup> Respondent has a mechanism in place which it uses when employing its staff. He narrated that an advert for vacant positions is given out to the public on print media electronically for anyone interested to apply. In addition, that the 2<sup>nd</sup> Respondent constitutes a shortlisting panel, the chairperson being the clergy from the three mother church bodies. That the Drug Enforcement Commission (DEC) and the police are also part of the committee as well as the Secretary and Senior Human

Resource Officer of the town councils of the country. That the composition entails that no particular party can influence the process as the shortlisting committee is composed of high integrity institutions.

He testified further that the selection of all staff is based on merit and experience. RW1 also told the court that the 2<sup>nd</sup> Respondent normally uses NRC numbers as opposed to full names during the assessment of poll staff for confidentiality purposes. He testified that the poll staff are exposed to written assessments and practical assessments and the results help in picking the required number of poll staff.

RW1 testified that he did not at any point attend any PF meeting as such he could not speak to it. In buttressing his testimony, he referred to page 31 of the 2<sup>nd</sup> Petitioner's bundle of documents and stated that he could not see his name on the attendance register of that meeting.

RW1 further explained that campaign time tables are prescribed by the 2<sup>nd</sup> Respondent and they are formulated at district level because it is only at each district or constituency where the number of wards and the number of participants are well known. RW1 also testified that it is not true that presidents of political

parties subscribe to a different timetable. He explained that it was stated when the time table was being formulated that if there was any political party president visiting, leaders of that political party at district level must engage the district electoral officer and other key stakeholders in giving chance to that leader.

In relation to conflict resolution, RW1 testified that the 2<sup>nd</sup> Respondent has a mechanism of resolving conflicts in each constituency and district. He said that there is a conflict management committee which deals with conflicts such as violence, vote buying among other vices and these must be reported in writing to the secretariate.

RW1 testified further that none of the malpractices mentioned were brought to his attention on polling day. He stated that it would therefore be fair to conclude that the elections in Bangweulu Constituency were free and fair. He stated that some of the indicators to show that the elections were free and fair are that people were allowed to campaign freely, people participated in all types of elections easily and voters were able to cast their votes freely without any intimidation and lastly that the announcement of results was done immediately after the close of the poll.

In cross-examination, RW1 admitted that one of the attributes of being a poll staff is to be non-partisan although it was not possible to tell who was partisan or not by looking. He denied the allegations that some of the poll staff were affiliated to PF and stated that when the names were vetted to the public, people were given chance to write to the conflict management committee if there was biasness in the selection of poll staff. He also testified that there was a committee that was selected by the 2<sup>nd</sup> Respondent to select poll staff and that committee was not under his supervision. When asked if he had any evidence to prove that he did not spearhead the selection of poll staff, he testified that if evidence was needed that committee could have been summoned.

RW1 also admitted that as per page 10 of the 2<sup>nd</sup> Petitioner's bundle of documents, the PF were not supposed to be in Lupili ward between 6<sup>th</sup> June, 2021, and 12<sup>th</sup> June, 2021.

RW1 testified further that he did not abrogate Section 71(3)(a) of the EPA. He also stated that people who witness malpractices can report to him as Returning Officer and he would in turn report to the District Elections Officer but that it was not his duty to report cases to the police as they are handled by the conflict management committee.

RW1 admitted that he saw the 3<sup>rd</sup> Petitioner at the totalling centre on 13<sup>th</sup> and 14<sup>th</sup> August, 2021, but that he did not remember the 3<sup>rd</sup> Petitioner protesting about open ballot boxes neither did he remember him complaining about people writing on Gen 20 forms. He testified that Gen 20 forms do not form part of security materials. He also said that when counting is finished, the votes are put in separate envelopes marked "H" and they are sealed. That the used seals are then put in a separate envelope. That the counterfoils are also put in a separate envelope. That the marked register, voters register and letters of authority to vote are also put in a separate envelope and sealed. He went further to explain that rejected ballot papers are also put in a separate envelope and are sealed. That these are sensitive materials and that is why they are referred to as security materials. That they are then put in a ballot box and sealed with a plastic seal.

RW1 told the Court that there was a list of selected poll staff and there was list of deployment plan. He explained further that the document marked "BM13" was a list of shortlisted poll staff for 2021, which was in public domain as it was put on the Council notice board and thereafter, the names were compiled. He testified that the document marked "BM13" of shortlisted poll staff was

stuck on the notice board after the training of poll staff way before the election day. He admitted that the deployment plan was however put on the notice board a day before the elections.

When it was put to him that "BM13" only had NRCs and results, and when asked how people were expected to comment on the same when there were no names, RW1 testified that they put NRC numbers on the "BM13" short listed poll staff for the sake of confidentiality.

RW1 also testified that under the 2<sup>nd</sup> Respondent, there are forms which are used to log in complaints. He explained that a complaint should be in writing on forms called objection forms concerning the decision of the presiding officers and an appeal lies to the Returning Officer. That these forms were not only important at the totalling centres but also in Court.

Under further cross-examination, RW1 testified that his mandate as Returning Officer was to manage the election activities and not campaigns. He however conceded that he could not point to any regulation that allows a person to author a document without the 2<sup>nd</sup> Respondent's logo.

He further testified that it was not allowed to recruit relatives of contesting candidates. He also admitted that it did not sit well with him for a candidate to be a member of the conflict management committee.

In re-examination, RW1 told the Court that he never received any complaint to the effect that a polling station was closed to allow people and polling staff to go on break.

RW2 was Given Mwape. She testified that she was the Administrative Officer for Samfya District Council and Secretary of the Conflict Management Committee. She said that the 2<sup>nd</sup> Respondent established a conflict management committee at national and district levels mandated to settle minor electoral disputes that may arise. She stated that at district level, the conflict management committee is composed of a chairperson, vice chairperson, civil society organisations, registered political parties, DEC, Zambia Police, Media and ZANIS. She explained that the conflict management committee is mandated to mediate conflicts, advise conflicting parties and resolve minor electoral disputes.

RW2 narrated to court that the 2<sup>nd</sup> Respondent sent master trainers and training commenced on 3<sup>rd</sup> May, 2021, and ended on 7<sup>th</sup> May, 2021. She testified that such things as handling electoral

disputes, preventing conflicts and resolving conflicts were taught at the said training in order to foster free and fair elections. That the trainers emphasized that the mediation team should not investigate but should just advise and counsel the political parties.

RW2 testified that she was the Secretary of the conflict management committee and one of her duties was to receive official complaints. She testified that she never received any complaint from the DP as shown by the report produced and marked "GM15" at pages 1-4 of the 2<sup>nd</sup> Respondent's bundle of documents. She testified that when a complaint letter is received, she signs against it and puts a date stamp on it to indicate when the complaint was received.

Under cross-examination, RW2 testified that she was non-partisan. She testified that during campaigns she did not come across any form of violence in Lupili ward as the matter was not reported to the conflict management committee.

RW2 also gave testimony that there were 12 members in the conflict management committee and this number included representatives from political parties. That each organisation sent a representative and no decisions were made or meetings held without representatives. She testified that the UPND DP and PF



were part of the meetings as shown by the minutes at page 5 of the 2<sup>nd</sup> Respondents bundle of documents and that Mr Kafupi Kaniki was the representative from the DP. When asked further whether the DP was notified that they needed a representative on the Committee, she answered that the DP were represented and stated that a letter was written to the chairperson although that person did not appear before the conflict management committee.

RW2 testified further that only written complaints were heard by the conflict management committee but she could not point at the law which provided for that, although that was what they were taught at the training.

She also testified that out of the 10 wards and 96 polling stations, the Conflict Management Committee only managed to visit Pwele in Lumamya ward because they received a complaint from the public and they thought it was important for them to go there as they saw indicators that there could be conflicts there. She also testified that the conflict management committee only reacted to conflicts which were reported. RW2 testified that the reason why the committee did not visit all the other wards, is because they were not allowed to investigate.

RW2 further testified that the report in the 2<sup>nd</sup> Respondent's bundle of documents was done on 27<sup>th</sup> August, 2021, as the intended target for the report was the 2<sup>nd</sup> Respondent itself.

She admitted that Mr James Kapilila stood as counsellor in the 2021, elections and he was also a member of the conflict management committee.

RW2 also testified that page 3 of the 2<sup>nd</sup> Respondents bundles of documents shows recommendations but denied that the said recommendations were not inspired by violence in Bangweulu Constituency during the campaign period. She explained that what inspired the recommendations were the traditional leaders who are key players in helping to prevent conflicts.

In re-examination, RW2 testified that at the time Mr James Kapilila became a member of the conflict management committee, he was just a counsellor for Local Government.

RW3 was Maliseli Phiri. He testified that he is a biomedical technologist at Samfya District Hospital. He testified that on 8<sup>th</sup> July, 2021, the 1<sup>st</sup> Respondent visited Samfya District Hospital and tested for COVID-19 and the result came out positive as shown by document marked "MP16" at page 106 of the 2<sup>nd</sup> Respondent's

bundle of documents. That the 1<sup>st</sup> Respondent had to be in quarantine for 14 days as a result.

He also testified that the document marked "MP16" is an official document even if it did not have a date stamp. He furthermore testified that a person who tests positive for COVID-19 should be in quarantine and that he did not know that the 1<sup>st</sup> Respondent travelled to Lusaka during that period.

RW4 was James Kapilila. He testified that towards the end of April, 2021, the PF through the District Chairperson received a letter from the 2<sup>nd</sup> Respondent requesting to submit one name to sit on the district Conflict Management Committee and they chose him. He testified further that there was no conflict of interest because at the training they were informed that as a representative of the PF, his role was to take information from the Conflict Management Committee and pass it on to various political parties and organisations. RW4 also testified that he did not remember the PF being summoned by the Conflict Management Committee.

RW4 testified that he was not guilty of the allegations levelled against him such as vote buying as he learnt from the Conflict Management Committee on the need to abide by the electoral code of conduct. That it was for this reason that the Local Government

tribunal upheld his election as Council Chairperson as shown by the judgment on record.

Under cross-examination, RW4 testified that he never gave any money to anyone in the 2021, elections. He testified that there was no conflict of interest even if he was contesting for the position of Council Chairperson because many stakeholders were represented on the Conflict Management Committee.

He also told the court that he did not refute the fact that his two wives were presiding officers in the Bangweulu Constituency elections as his wives were qualified to for the said positions.

In re-examination, RW4 testified that he did not deliberate on matters pertaining to PF. It was his testimony that his wives are born Zambian citizens with NRCs who were born registered voters with grade 12 certificates. He said that they were both teachers, non-partisan and seasoned civil servants so that just like anyone else, they applied to the 2<sup>nd</sup> Respondent, were subjected to aptitude tests, were trained and were finally recruited as poll staff. RW4 concluded his testimony by stating that the elections were free and fair in Bangweulu Constituency.

The 1<sup>st</sup> Respondent opened his case by calling RW5, Ndalasa Noah Kabengele. He testified that on 12<sup>th</sup> August, 2021, he went to Chipota polling station to vote around 09:30 hours but he only managed to vote around 12:00 hours. He said that he waited for his wife to vote and then left the polling station around 13:00 hours. He testified that it was not true that the 1<sup>st</sup> Respondent was giving out money as he did not see him at the polling station the whole time he was there. He testified that he was not in any political party at the time of voting.

Under cross-examination, when it was put to him that senior citizens, among other groups, were given priority on poll day and him being 71 years old, he should have been given priority to vote, RW5 responded that he does not fight for things such as jumping the queue. That moreover, there were police officers there and whenever people would jump the queue, other people would complain. He also testified that he was a headman in the area. He testified further that he was around the polling station after voting because he was waiting for his wife to also vote so that they could go home together.

RW5 however, admitted that he knew the 1<sup>st</sup> Respondent. He testified further that the 1<sup>st</sup> Respondent went to his house when

he was doing door to door campaigns and that he (RW5) was given a t-shirt, a cap and a chitenge for his wife. He also said that when he was inside the classroom voting, he could not see what was going on outside.

Under further cross-examination, RW5 testified that he took about 7-10 minutes to vote inside the polling station.

RW6 was Patrick Chiteule. He testified that he was the Deputy Coordinator for GGOZA, which organisation was educating people on voter apathy. That GGOZA is affiliated to CARITAS Zambia. He testified that the organisation never used to work hand in hand with the PF and it was non-partisan.

RW6 testified that he recalled the conversation he had with the 2<sup>nd</sup> Petitioner in the audio produced before court marked "DC8". That in that audio, he was explaining the role of GGOZA. RW6 explained that further usually, a lot of eligible voters fail to turn up on poll day and that they were therefore encouraging people to turn out in huge numbers on poll day. He testified further that GGOZA used to give the electorate they were educating, GGOZA t-shirts and mealie meal. He also testified that GGOZA would also take down the NRC numbers and the names on the voters cards during this

process. He explained that they were getting the names for proper identification of their members.

RW6 also told the court that he did not belong to any political party. He added that after he and the others were oriented, they were sent to go and look for Ward coordinators and polling station coordinators as well as foot soldiers. He said that these people were trained in accordance with the aims of GGOZA and were told not to associate with any political party. He furthermore explained that foot soldiers were people who were sent to far-fetched areas to educate people on voter apathy.

In cross examination, RW6 testified that he went to the 2<sup>nd</sup> Petitioner's house to educate him about GGOZA. It was his testimony that GGOZA had a representative in every ward in Bangweulu Constituency. He testified that he gave the 2<sup>nd</sup> Petitioner GGOZA representative numbers to let him know about the work GGOZA was doing and also to introduce him to some representative like one Agness Mwenye, so that if he found them in the field, he would not suspect them of working for a political party. He also told the court that he was paid by GGOZA.

RW6 admitted that he remembered the 2<sup>nd</sup> Petitioner's complaint that GGOZA seemed to be working with the PF and that the 2<sup>nd</sup>

Petitioner wanted to speak to the Provincial Coordinator of GGOZA, Father Maurice Mwansa, over the same. He testified that he also remembered the 2<sup>nd</sup> Petitioner complaining about the distribution of mealie meal to the people of Bangweulu Constituency.

RW6 testified further that all the 10 wards received the mealie meal, GGOZA regalia in form of t-shirts, chitenges and caps. RW6 also testified that the PF regalia he got were for his children because he personally could not have them because of his involvement with GGOZA. He denied campaigning for the 1<sup>st</sup> Respondent and said that the audio recording and what he was testifying in court were not in contradiction.

RW6 also testified that there was no contract between him and GGOZA before court. He admitted that he said that members of GGOZA were not allowed to associate themselves with political parties but added that they were allowed to associate with independent candidates. When asked why he was then testifying on behalf of the 1<sup>st</sup> Respondent who was a candidate on the PF ticket, RW6 testified that he was testifying on behalf of GGOZA. He admitted that GGOZA was not part of these proceedings and admitted further that he was in Court testifying at the insistence



of the 1<sup>st</sup> Respondent to these proceedings even though he was not supposed to be affiliated to any candidate.

In re-examination, RW6 explained to court that he was before Court standing on behalf of GGOZA because there were allegations that GGOZA was supporting PF.

RW7 was Anthony Malama. He testified that he was the Campaign Manager for the 1<sup>st</sup> Respondent as well as his Agent as contained on the nomination papers. He testified that the campaigns went well and all guidelines provided and agreed to by stakeholders were adhered to as per calendar that was issued.

He testified further that it was difficult to source for funds as businesses were not doing well due to the COVID-19 pandemic and so in-flow of cash was low. As a result, he said that logistical arrangements for the campaigns suffered. According to RW7, it was therefore not possible for them to distribute money to 57,000 registered voters in the whole constituency as they did not have the necessary funds. He admitted that campaigns are generally very expensive and even though their campaigns were successful because the 1<sup>st</sup> Respondent won, they still had to use the little funds available.

RW7 also testified that James Kapilila was also a candidate under the PF had his own campaign team. He said that they only met once during the campaigns. RW7 testified that they were not using a Land-Cruiser during campaigns but a bus and a harrier motor vehicle.

In cross-examination, RW7 testified that he was an MP for Nchelenge Constituency in the last General Elections of 2016, under the PF. He testified further that there were door to door campaigns, following the guidelines that were given, as opposed to rallies. He said that during the door to door campaigns, his team were using two vehicles, namely a bus and harrier vehicle. He further testified that he did not know the owner of the harrier as it was just given to his team.

RW7 testified that all he required for him to be an agent for the 1<sup>st</sup> Respondent was an NRC. He testified that he did not receive any reports of violence in Lupili ward and was not aware of money being distributed to the voters on 12<sup>th</sup> August, 2021.

RW7 agreed that the 1<sup>st</sup> Respondent tested positive for COVID-19 on 8<sup>th</sup> August, 2021. He also testified that he was aware that two days later the 1<sup>st</sup> Respondent travelled to Lusaka.

He also told the court that it was not possible to visit more than three wards in Bangweulu Constituency unless one was just driving in and out. He said that the nearest wards could be visited in one day.

RW8 was the 1<sup>st</sup> Respondent herein Antony Kasandwe. He testified that the three Petitioners in this case have admitted that they never saw him committing all the offences alleged against him and that neither did they see his Agent commit them. RW8 denied threatening violence at radio Bangwela and stated that if he did, the petitioners would have brought evidence before the Court as it would have been possible for them to summon the radio station to Court. He also denied distributing any money to the 57,000 registered voters in Bangweulu Constituency as it was not possible to do so. He narrated that he fell ill on 6<sup>th</sup> July, 2021, and went to hospital to get tested for COVID-19 on 8<sup>th</sup> July, 2021. He said that the results came out positive. He said that he was given medication but got worse two days later and decided to travel to Lusaka to seek further medical attention at Mums Clinic where he stayed until 31<sup>st</sup> July, 2021. He testified further that it was therefore not possible for him to contribute the money he is alleged to have been distributing during the campaign period as he was away.

It was further his evidence that on polling day, he went to the polling station near his residence around 09:00 hours and joined the queue to vote. He said that he voted slightly before 12:00 hours then went back home. He testified that he did not go to any other polling station after casting his vote and that the Petitioners' witnesses testified that they saw him in different areas on that day but that those are far-flung areas with parts of the roads being in very bad state. He also testified that the distance from his residence to some of the areas is about 65kms of gravel road and 80km is tarred. Further that for him to get to Pwele from Chishikishi, he had to cross a bridge which was submerged because of the heavy rainfall experienced in the 2020/2021 rain season. He explained that an alternative route between Chishikishi and Pwele would have to be used in order to get to that destination and the distance covered on the alternative route would be around 125kms using Tuta Road. RW1 testified that it was therefore not possible for him to go to all those areas in one day.

RW8 also denied the allegations levelled against him that he hired vehicles or cooked meals around the constituency on poll day. He also denied distributing any mealie meal around the Constituency or being part of the violence that took place in parts of the

Constituency if at all there were any. He testified further that to his knowledge, none of the poll staff were his relatives. That the chairman of the Conflict Management Committee was not his uncle. He said that his wife never distributed any face masks that is why the video evidence brought into court to show this allegation was not admitted into evidence as it did not show his wife distributing any masks hence it was of no relevance. He testified further that during accreditation of polling agents, the 2<sup>nd</sup> Respondent advised all players to provide masks and hand sanitizers to their agents.

RW8 furthermore testified that he never worked with GGOZA at all. He also denied knowing Rasta, Joriba and Chishiba and said that his registered election Agent was Anthony Malama RW7, and that anything that his agent did during the 2021, election campaign, was sanctioned by his Agent, RW7.

On the allegation that DP posters were removed by his PF cadres, because the PF president would be visiting the constituency, RW8 testified that the PF president had already visited the constituency by the time the posters were removed, and that the President of PF visited Samfya on 1<sup>st</sup> June, 2021.

He added that there were inconsistencies in the testimonies given by the Petitioners' witnesses, especially from those witnesses that testified that they saw the 1<sup>st</sup> Respondent distributing money in July, 2021, when he was not in the Constituency up until 31<sup>st</sup> July, 2021. He said that most of the petitioners' witnesses were DP and they left the PF when their preferred candidates were not adopted.

In cross-examination, RW8 re-iterated that he did not distribute any money to voters. He also told the court that he was in Lusaka from 11<sup>th</sup> to 31<sup>st</sup> July, 2021.

When put to him that even small cars pass on the bridge which he said was submerged in water, RW8 maintained that at election time, the bridge was still submerged and there was too much current of water, as a result, vehicles could not pass.

RW8 further told the court that there were no cadres in Samfya only party officials and that he also did not know anything about PW20 who claimed to be a PF cadre, or any such cadres. He also denied using any Land-Cruiser for campaigns.

When RW8 was referred to the Laboratory report marked "MC16" contained at page 106 of the 2<sup>nd</sup> Respondent's bundle of

documents, RW8 testified that the document was not signed on the authorizing part but that the technician signed on the other part. He also conceded that there was no date stamp on the said document.

RW8 also admitted that he distributed PF regalia in the constituency. He denied the allegation that the reason the witnesses failed to get video evidence of him distributing money was because the environment was hostile. He told the Court that his wife was accredited with the 2<sup>nd</sup> Respondent although there was no evidence on record to that effect. RW8 also denied the allegation that Damson Chalwe (PW2) used to drive his (RW8) vehicles.

RW8 also testified that he travelled to Lusaka on doctor's orders. He also testified that his Agent, RW7, did not distribute any money, nor pay anyone to ferry voters, or cook for voters with his knowledge or consent. He also admitted that Father Mwansa from GGOZA was his colleague as they both went to the same seminary.

In re-examination, RW8 explained to court that on the COVID-19 laboratory test form, the procedure is that a person first goes to the OPD and is given a book with an official stamp. He said that the nurses then check vitals such as temperature, weight, Blood

Pressure among other things. He went on to explain that one then proceeds to see a Clinician or Doctor as the case may be. That after interacting with the Doctor RW8 was sent to the laboratory and the Doctor wrote in the book what tests he should do at the laboratory. He said that he was tested and then sent back to the Doctor.

Learned Counsel for the 1<sup>st</sup> Respondent and for the 1<sup>st</sup> Petitioner filed written submissions dated 29<sup>th</sup> October, 2021, and 4<sup>th</sup> November, 2021, respectively, which I have taken note of.

## **FINDINGS**

I have carefully considered the evidence on record as well as the written submissions by both learned Counsel. The undisputed facts are that the 1<sup>st</sup> Petitioner, 2<sup>nd</sup> Petitioner and 1<sup>st</sup> Respondent contested the parliamentary election for Bangweulu Constituency held on 12<sup>th</sup> August, 2021. Following the election, the Returning Officer announced the results as follows in relation to the parties herein: 1<sup>st</sup> Petitioner polled 3,436 votes, 2<sup>nd</sup> Petitioner polled 3,531 votes and the 1<sup>st</sup> Respondent polled 16,450 votes. The 1<sup>st</sup> Respondent was then declared as duly elected MP for Bangweulu Constituency. The Petitions were filed on 26<sup>th</sup> August, 2021, and



27<sup>th</sup> August, 2021, respectively and the Answers on 7<sup>th</sup> September, 2021.

The petitioners seek to nullify the election of the 1<sup>st</sup> Respondent as MP for Bangweulu Constituency on grounds that the elections were characterised by widespread vote buying, bribery, corrupt and illegal practices, intimidation, undue influence, threats and violence orchestrated by the 1<sup>st</sup> Respondent and his agents contrary to the EPA and the Electoral Code of Conduct.

It is prudent to note from the outset that in a trial of an election petition, the court is put in a straight jacket. I am fortified by the case of **Jyoti Basu & Others v Debi Ghosal & Others** 1982 AIR 983<sup>1</sup> in which the Supreme Court of India stated as follows:

**"An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, the court is put in a straight jacket."**

I am therefore bound by the various pieces of legislation that regulate the conduct of elections as well as the testimony evidence of the various witnesses before court, particularly those of the petitioners and respondents. It is also the duty of this court to evaluate the evidence in terms of credibility of the witnesses as well as the demeanour of the witnesses. In the case of **Simasiku Kalumiana v. Lungwangwa Geoffrey and the Electoral Commission of Zambia 2006/HP/EP/007<sup>2</sup>** which is persuasive, the court held therein that:

**"At the end of the petitioner and respondent's cases, it became apparent that it is a question of credibility. There is a need to put credibility of witnesses in three categories.**

- (i) Witnesses who are party members of the petitioners' and respondents' parties.**
- (ii) Witnesses engaged by the Electoral Commission of Zambia which is supposed to be neutral as a conductor of the electoral process.**
- (iii) Monitors and police officers who unlike the Electoral Commission of Zambia are not party to these proceedings.**

**The whole petition turns out of the credibility of witnesses as you have most petitioners' witnesses giving evidence to support allegations contained in the petition, while witnesses for the respondent dispute those allegations.... The witnesses have to be subjected to strict scrutiny of their integrities."**

In the case of **Simasiku Namakando and Eileen Imbwae 2006/HP/EP/002<sup>3</sup>**, the Court added as follows:

***“witness or witnesses belonging to the 1<sup>st</sup> Petitioner’s or Respondents party who gave evidence against their own party candidate.”***

The determination of the issues in this petition centre on the interpretation of Section 97 of the EPA. The issue that needs to be determined is whether or not the 1<sup>st</sup> Respondent was duly elected as MP for Bangweulu Constituency.

Section 97 of the EPA provides for nullification of an election and it reads as follows:

**97(1) “An election of a candidate as a Member of Parliament, Mayor, Council Chairperson or Councillor shall not be questioned except by an election petition presented under this part.**

**(2) The election of a candidate as a Member of Parliament, Mayor, Council Chairperson or Councillor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be, that-**

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

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

**(ii) with the knowledge and consent or approval of a candidate or of that candidate’s election agent or polling agent; and**

**the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred.”**

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

- in such provision and that such non-compliance affected the result of the election; or
- (c) The candidate was at the time of the election a person not qualified or a person disqualified for election.

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

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

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

(c) in all other respects the election was free from any corrupt practice or illegal practice, on the part of the candidate or that candidate's election agent;

the High Court or a tribunal shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void.

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

It is trite that the burden of proof lies with the petitioners to prove their case. The Supreme Court in the landmark decision of *Akashambatwa Mbikusita Lewanika and Others v Fredrick*

*Titus Jacob Chiluba* (1998) Z.R 79<sup>4</sup>, held that:

**“As part of the preliminary remarks which we make in this matter, we wish to assert that it cannot be seriously disputed that parliamentary election petitions have generally long required to be proved to a standard higher than on a mere balance of probability.... It follows also that the issues raised are required to be established to a fairly high degree of convincing clarity.”**

The Constitutional Court has also pronounced itself on the standard of proof in election petitions. In the case of **Abiud Kawangu v Elijah Muchima Appeal No. 8 of 2017<sup>5</sup>**, the Constitutional Court stated at J20 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.”**

In addition, in the case of **Brelsford James Gondwe v Catherine Namugala Appeal No. 175 of 2012<sup>6</sup>**, the Supreme Court stated that:

**“The burden of establishing any one of the grounds lies on the person making the allegation and in election petitions, it is the petitioner in keeping with the well settled principle of law in civil matters that he who alleges must prove. The ground(s) must be established to the required standard in election petitions namely a fairly high degree of convincing clarity.”**

As I analyse the evidence, I have it borne in my mind that the burden lay on the petitioners to prove all the allegations made in

their petitions. They must prove the allegations to the required standard with cogent evidence otherwise no judgment will be entered in their favour.

It is important to note that there is a threshold that must be satisfied before an election can be nullified under Section 97 of the EPA. In the case of **Nkandu Luo and Electoral Commission of Zambia v Doreen Sefuke Mwamba and the Attorney General**, **Selected Judgment No. 51 of 2018**<sup>7</sup>, the 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...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.”**

In the case of **Mubika Mubika v Poniso Njeulu SCZ Appeal No. 114 of 2007**<sup>8</sup>, which the Constitutional Court cited with approval in the case of **Jonathan Kapaipi v Newton Samakayi**, the Supreme Court stated that:

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

In shedding light on what widespread means, the Supreme Court in the case of **Anderson Kambela Mazoka v Levy Patrick Mwanawasa and others (2005) Z.R 138<sup>9</sup>**, stated that:

**“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.”**

Further, in the case of **Saul Zulu v Victoria Kalima (2014) Z.R (Vol 1) 14<sup>10</sup>**, which involved a parliamentary election, the Supreme Court stated as follows:

**“what was of import in the court below is whether the distribution of chitenge materials and bicycles was done on such a large scale that the majority of voters in that constituency were or may have been prevented from electing a candidate of their choice.”**

In like manner, in the case of **Josephat Mlewa v Eric Wightman (1995/1997) Z.R 106<sup>11</sup>**, the Supreme Court held that:

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

In light of the cases cited above, it is incumbent upon the petitioners in this case to produce cogent evidence that the corrupt or illegal practice or indeed misconduct was widespread so as to influence the majority of the voters in Bangweulu Constituency.

It is also prudent to note from the outset who an election agent or polling agent is. Section 2 of the EPA defines the two terms as follows:

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

**“Polling agent means an agent appointed by a candidate in respect of a polling station”**

In the case of **Chrispin Siingwa v Stanley Kakubo CCZ Appeal No. 7 of 2017<sup>12</sup>**, the Constitutional Court stated that Regulation 55(1) of the Electoral Process (General) Regulations 2016, is succinct in its provisions and requires that an election agent must be specifically appointed and named in the candidate’s nomination paper. It is thus, important to note that not everyone in a candidate’s political party is his election agent as an election agent has to be specifically appointed and named in the candidate’s nomination paper as illustrated above.



Pursuant to the cases cited above, in order for the petitioners to succeed in this Petition, they must prove the following to a fairly high degree of convincing clarity:

- (i) That the said violence, intimidation, threats, undue influence, bribery, corrupt and illegal practices were widespread as to influence the majority of the voters and that they were committed by the 1<sup>st</sup> Respondent or with his knowledge and consent or approval or of his election agent or polling agent; and
- (ii) That the majority of voters in Bangweulu Constituency were or may have been prevented from electing a candidate whom they preferred in that Constituency, as a result.

I will now consider the allegations raised by each of the petitioners, in relation to the 1<sup>st</sup> Respondent, namely; Violence, Threats, Undue Influence, Intimidation, and corrupt and illegal practices.

**(a) Violence**

Part VIII of the EPA sets out the specific election offence of violence under the umbrella of undue influence. Section 83(1) of the EPA provides that:

**“A person shall not directly or indirectly by oneself or through any other person-**

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

Further, Regulation 15(1)(a) the Electoral Code of Conduct, 2016, provides that:

**“A person shall not-**

**(a)cause violence or use any language or engage in any conduct which is likely to lead to violence or intimidation during an election campaign or election.”**

Additionally, in the case of **Richwell Siamunene v Sialubalo Gift**

**Selected CCZ Judgment No. 58 of 2017<sup>13</sup>**, the Constitutional Court stated:

**“When section 83 is read with section 97, it is clear that the violence or threat of violence must be perpetrated by the candidate or with the candidate’s knowledge and approval or consent or that of his election or polling agent. In order for the candidate to be liable for the illegal practice or misconduct, it must be shown to be that of his official agent; there must be proof to the required standard that he had both knowledge of it and approved or consented to it; or that his election or polling agent had knowledge and consented to or approved of it.”**

Having the above stated law and principles in mind, the allegations of violence, threats and intimidation as they appear on record are that during the campaign period on 6<sup>th</sup> June, 2021, the 1<sup>st</sup> Petitioner was assaulted by Joriba, Darius Chishiba and James Chikoleke who were alleged PF cadres. This testimony was given by the 1<sup>st</sup> Petitioner himself and was confirmed by PW2 who testified that he knew the cadres to be PF because apart from them

being in PF regalia, he worked with them when he was still a member of the PF party. Both PW1 and PW2 are members of the DP and I will digress at this point to state that it is important to note that witnesses from a litigant's own political party are partisan witnesses, as such, their evidence should be treated with caution in order to eliminate the danger of exaggeration and falsehood. In the case of **Nabukeera Hussein Hanifa v Kibule Ronald and Another (2011) UGCH 72<sup>14</sup>** referred to in the case of **Christopher Kalenga v Annie Munshya and two others 2011/HK/EP/03<sup>15</sup>**, which is of persuasive value to me, 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 behave in a saintly manner, while those of the other candidate were all servants of the devil. In election contests of this nature, witnesses most of them motivated by the desire to score victory against their opponents, deliberately resort to peddling falsehoods. What was a hill is magnified into a mountain."**

Similarly, in another Ugandan case of **Wadada Rogers v Sasaga Isaiah Jonny and Electoral Commission Election Petition No. 31 of 2011 (Ugandan Court of Appeal)<sup>16</sup>**, it was stated that:

**"No number of witnesses is required to prove a fact. In election matters partisan witnesses have a tendency to exaggerate claims about what might have happened during elections. In such situations, it is necessary to look for 'other' evidence from an independent source to confirm the truthfulness or falsity of the allegation."**

In addition, in **Steven Masumba v Elliot Kamondo Selected Judgment No.53 of 2017<sup>17</sup>**, the Constitutional Court stated at J47 that:

**"First and foremost, both PW11 and PW12, belonged to the Appellant's own political party and were members of his campaign team and hence their evidence was evidence of partisan witnesses which should be treated with caution and required corroboration in order to eliminate the danger of exaggeration and falsehood."**

I must however hasten to state that the mere fact that a witness is not partisan does not mean that such a witness is credible. I am fortified by the case of **Changano Kakoma Charles v Kundoti Mulonda Appeal No. 5 of 2017** where the Constitutional Court stated that:

**"We wish to state that the mere fact that a witness is not partisan does not mean that such a witness is credible. The issue of credibility is broad and includes the demeanour and the perception on truthfulness of the witness and consistency of one's testimony."**

In applying the principles illustrated above, I am mindful of the evidence given by PW1 and PW2 and will treat it with caution because they both belonged to the DP hence their evidence was partisan.

PW20, despite testifying that he was a PF member, testified on behalf of the 2<sup>nd</sup> Petitioner. PW20 told the Court that he and other colleagues assaulted PW1 (the 1<sup>st</sup> Petitioner), PW2 and Luka Mwape. PW20 however conceded that the 1<sup>st</sup> Respondent was not at the scene when they were beating up PW1, PW2 and Luka Mwape. He also conceded that he did not have proof to show that he was a PF member as he did not produce a membership card to that effect.

I am of the considered view that there was indeed violence during the campaign period as indicated above because the evidence showing that PW1, PW2 and Luka Mwape were assaulted on 6<sup>th</sup> June, 2021, was not challenged in cross-examination and it was further amplified by medical reports on pages 4-6 of the 1<sup>st</sup> Petitioner's bundle of documents which were admitted into evidence. I accordingly find as a fact that there was violence perpetrated by the PF in Lupili ward on 6<sup>th</sup> June, 2021, during the campaign period.

Having found that there was violence, the question that begs an answer is therefore whether the violence on 6<sup>th</sup> June, 2021, was perpetrated by the 1<sup>st</sup> Respondent or with his knowledge and consent or approval or by his election agent or polling agent.

The 1<sup>st</sup> Respondent denied instructing anyone to attack PW1, PW2 and Luka Mwape. In his testimony, the 1<sup>st</sup> Respondent denied being part of any violence that took place in any part of the Constituency. I also note that PW1, PW2 and PW20 who testified in relation to this incident stated that they never saw the 1<sup>st</sup> Respondent at the scene of the violence. Further, the 1<sup>st</sup> Petitioner (PW1) and PW2 did not show that the alleged PF cadres that assaulted them, namely one Darius Chishiba, James Chakoleke and Joriba, were either the agents of the 1<sup>st</sup> Respondent or that they acted with the knowledge and consent or approval of the 1<sup>st</sup> Respondent or of his election or polling agents. I note that PW2 testified that the cadres that assaulted him and others were wearing PF regalia but that in itself does not show that the violence was done with the knowledge, consent or approval of the 1<sup>st</sup> Respondent or of his agents.

In the case of **Richwell Simunene v Siabubalo Gift** *supra*, the Constitutional Court stated as follows:

**“Mere proof that the UPND supporters were indeed involved in the said acts does not warrant an inference being drawn that the Respondent had directly or indirectly incited the UPND supporters to act as they did. To so hold would amount to speculation and it is not the duty of this Court to make assumptions based on nothing**

**more than party membership and candidacy in an election.”**

In light of the foregoing, even if the witnesses had proved that indeed the persons that assaulted them were PF cadres, it does not warrant an inference that the 1<sup>st</sup> Respondent had directly or indirectly incited them to act as they did. The Petitioners’ needed to prove that the said cadres acted with the knowledge and consent or approval of the 1<sup>st</sup> Respondent or the 1<sup>st</sup> Respondent’s agent for this allegation to succeed.

I am therefore of the considered view that even if there was evidence of violence on 6<sup>th</sup> June, 2021, it does not suffice to prove, to a fairly high degree of convincing clarity, that it was perpetrated by the 1<sup>st</sup> Respondent. There is also no proof that the said PF cadres were the 1<sup>st</sup> Respondents election or polling agents as defined by Section 2 of the EPA or that they acted with the knowledge and consent or approval of the 1<sup>st</sup> Respondent.

In the case of **Abiud Kawangu** supra, the Constitutional Court stated as follows:

**“It follows that, the trial Court’s finding on the 2<sup>nd</sup> element that the act was limited to Lwakela School area and had no bearing on the results of the whole constituency was unnecessary once the court found the first element was not proved.”**

This entails that once I find, as I have indeed found, that the said violence could not be attributed to the 1<sup>st</sup> Respondent or his agents, it goes without saying that I do not have to determine whether it had a widespread effect or not.

In another incident of violence, it was PW20's evidence that he and other PF cadres went to Musaila Station and assaulted a DP supporter who was wearing DP regalia. There is however no proof that PW20, was acting as an agent of the 1<sup>st</sup> Respondent or with the 1<sup>st</sup> Respondent's knowledge and consent or approval. In fact, PW20, in cross examination, took personal responsibility for that act of violence committed at Musaila station. It is for this reason that I am of the opinion that the violence that took place at Musaila station cannot be attributed to the 1<sup>st</sup> Respondent for lack of evidence.

PW21 testified that he was a UPND top commander of foot soldiers. His evidence was that on polling day, Army officers assaulted him together with his colleagues. PW21 further told the Court that they were then thrown into cells at Mansa Police Station from around 21:00 hours to about 16:00 hours the following day. He testified furthermore that all this was done at the instance of the 1<sup>st</sup> Respondent who was present when the soldiers assaulted him and



others. I would like to point out at the outset that there was no corroborating evidence to that effect. In the case of **Steven Masumba v Elliot Kamondo Selected Judgment Supra**, the Constitutional Court referred to Black's Law dictionary and defined corroborating evidence as:

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

Similarly, in the case of **Mbolowa Subulwa v Kaliye Mandandi Selected Judgment No.25 of 2018<sup>18</sup>**, the Constitutional Court stated that corroborating evidence is independent evidence that strengthens or confirms other evidence.

Applying the above principles to the case in casu, the evidence adduced by PW21 was not corroborated by any other independent evidence. This allegation thus fails.

#### **(b) Threats**

The learned authors of Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 15, at page 429 paragraph 784, in defining what constitutes a threat stated as follows:

**"in order to constitute undue influence a threat must be serious and intended to influence the voter, but it would 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.....An unsuccessful threat has been held to amount to undue influence."**

In relation to threats, the 1<sup>st</sup> Petitioner alleged that the 1<sup>st</sup> Respondent went to Bangwela Radio Station and issued threats and intimidating statements stating that following the beating of the 1<sup>st</sup> Petitioner by the 1<sup>st</sup> Respondent's agents, the same would happen to everyone else supporting another political party. PW4, the DP Provincial Campaign Manager, substantiated this evidence by stating that he listened to the radio programme where the 1<sup>st</sup> Respondent said that people would be beaten and thrown into trenches if they did not support the PF. It was submitted that the said radio station had a wide coverage in the Constituency and people heard what happened to the 1<sup>st</sup> Petitioner hence creating fear in the people, which in turn had a negative effect on the outcome of the election, in the sense that people ended up voting for the 1<sup>st</sup> Respondent and PF party.

Be that as it may, no further evidence was produced to substantiate this allegation as PW1 and PW4, in cross-examination, both conceded that they did not have any recording of the said radio program that was aired on Radio Bangwela. Further, there was no independent witness brought before Court to testify that he or she listened to that particular programme and heard the 1<sup>st</sup> Respondent make the said threats or statements.

I am therefore of the considered view that in the absence of cogent evidence, such as a recording of the interview program where the alleged threats were uttered, or evidence from an independent witness, I am unable to make a finding of fact that the said threats were made by the 1<sup>st</sup> Respondent on radio Bangwela, thereby affecting the outcome of the election. I also note that the two witnesses were partisan witnesses, namely, PW1 and PW4 as they both belonged to DP. As such, they ought to have brought independent evidence to corroborate the allegation. This allegation thus fails.

In a different incident of threats uttered by the 1<sup>st</sup> Respondent, PW11 and PW19 both testified that the 1<sup>st</sup> Respondent told the voters that if they did not vote for the PF they would be bewitched and get sick by developing "ifi pute" known as boils.

Section 83(1)(b) of the EPA provides that:

**"A person shall not directly or indirectly by oneself or through any other person-**

**(b)inflict or threaten to inflict by oneself or by any other person, or by any supernatural or non-natural means, or pretended supernatural or non-natural means, any physical, psychological, mental or spiritual injury, damage, harm or loss upon or against any person."**

In view of the above, PW11 testified that she got frightened by the statement uttered by the 1<sup>st</sup> Respondent to the effect that she

would develop boils if she did not vote for him hence her decision to vote for the PF candidate who is the 1<sup>st</sup> Respondent herein. PW11 added that the people were threatened by the 1<sup>st</sup> Respondent at a meeting held at Kasoma Bangweulu Primary School, in Mano ward and that that is why she voted for PF. I took note of PW11's demeanor and was of the view that she was a truthful witness who maintained her position even in cross-examination. I find PW11 to be a credible witness. Furthermore, there is nothing on record suggesting that she was a partisan witness. Similarly, PW19 testified that in June, 2021, the 1<sup>st</sup> Respondent told people at Sobamu lodge in Lupili ward, that those who would not vote for the PF, would be bewitched. I also took note of PW19's demeanor and found him to be a credible witness. There is also no proof of him being a partisan witness.

There was however no other independent witness to corroborate the evidence given by either PW11 or PW19 to the effect that the people in the respective wards namely, Mano and Lupili wards would be bewitched if they did not vote for the 1<sup>st</sup> Respondent or PF.

In light of the above, I find that the alleged threats made by the 1<sup>st</sup> Respondent have not been proved for lack of corroboration.

I would like to state at this point that even if it were proved by PW11 and PW19 that the said threats were made by the 1<sup>st</sup> Respondent, the petitioners have failed to satisfy the second requirement that the alleged threats had a wide spread effect on the majority of voters. I say so because PW11 testified that the 1<sup>st</sup> Respondent held a meeting at Kasoma Bangweulu Primary School in Mano ward where the 1<sup>st</sup> Respondent is alleged to have uttered the said statement, yet a perusal of the 1<sup>st</sup> Petitioner's bundle of documents at pages 1-3, shows that the 1<sup>st</sup> Petitioner in fact won at Kasoma Bangweulu 1, 2 and 3 polling stations. Even though PW11 stated that people in that area, including herself, voted for PF because they were frightened that they would get boils, I find her evidence to have been controverted by the evidence that in spite of that, the 1<sup>st</sup> Petitioner won at Kasoma Bangweulu polling station.

In the same vein, the record shows that despite the alleged threats of witchcraft, PW19 told the court that he exercised his free will to vote, meaning that the said threats did not influence PW19 to vote for his preferred candidate, namely, the 1<sup>st</sup> Respondent.

In another incident of undue influence, it was PW17's testimony that the 1<sup>st</sup> Respondent, sometime in July, 2021, held a meeting

in Musaba ward where he told people that those who benefitted from social cash transfer would stop benefitting if the people voted for other political parties other than the PF. PW17 further testified that when she heard that statement, she was afraid that her old mother would stop benefitting from the social cash transfer and so PW17 decided to vote for the PF instead.

Section 83 (1)(c) of the EPA provides that:

**“A person shall not directly or indirectly, by oneself or through any other person-**

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

**(iii) to vote or not to vote for any registered political party or candidate.”**

Further, Section 81(1)(c) of the same Act provides that:

**“A person shall not, either directly or indirectly, by oneself or with any other person corruptly-**

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

In applying the law cited above, I note that PW17 testified that she forgot about same things that happened in 2012, and she also gave contradictory testimonies in relation to her political affiliation even though she admitted belonging to PF in cross-examination. In the case of Abiud Kawangu supra, the Court stated as follows:

**“...the Respondent himself gave contradictory evidence and assigning his remaining testimony less weight. The said contradictions could not have formed the basis for the lower court to disbelieve or totally discard the testimony of the Respondent or his witnesses given the principle in *Ndongo v Moses Mulyango and Another* wherein the Supreme Court declined to do away with evidence of a Respondent even after finding contradictions in his evidence as it was able to find other evidence from the Appellant’s own evidence to support the fact in issue.”**

Other than the testimony of PW17, there seems to be no other evidence to prove the allegation that the 1<sup>st</sup> Respondent threatened the electorate that they would stop receiving social cash transfer, and to show that it influenced the majority of the voters in the ward in that they were prevented from voting for their preferred candidate. The allegation therefore fails.

Equally, PW6 testified that the 1<sup>st</sup> Respondent told the voters at Kapilibila ward that if they did not vote for the PF, a machine would capture them as they were voting and as a result, PW6 said that out of fear, he voted for the PF. He maintained this position in cross-examination although he conceded that he did not see any camera or object in the booth when he was voting. In like manner, PW28 testified that he heard the 1<sup>st</sup> Respondent state at a meeting at Chitundwa School grounds that a machine would capture those who would not vote for the PF, hence he voted for the PF.

Both PW6 and PW28 testified on the issue of the 1<sup>st</sup> Respondent telling the electorate that a machine would capture them if they did not vote for the PF. So, there was corroboration of that evidence, but the question again is, was the alleged misconduct widespread? I find that it was not, as it allegedly was spoken by the 1<sup>st</sup> Respondent only in Kapilibila ward, and no where else.

As stated in the case of **Nkandu Luo and Electoral Commission of Zambia v Doreen Sefuke Mwamba and the Attorney General, Supra**, in addition to proving the electoral malpractices 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. It is thus, the responsibility of the petitioners to show that the conduct or practice complained of had a widespread effect and in this particular case, only two witnesses PW6 and PW28, mentioned the issue of the machine capturing voters coming from the 1<sup>st</sup> Respondent's alleged statement.

A perusal of the record shows that no other evidence was adduced to show that the threats expressed by the 1<sup>st</sup> Respondent had a wide spread effect on the voters. The said incident was an isolated



one in Kapilibila ward and it cannot therefore be said to have had a widespread effect in the Constituency. It is for the reasons that this allegation fails.

PW8 testified that he received a K20 note from the 1<sup>st</sup> Respondent who asked for his vote in return. It was PW8's evidence, in re-examination, that he did not vote for his preferred candidate because even though he was alone in the booth when voting, he felt that it was not morally right, for him to receive money from the 1<sup>st</sup> Respondent, and not honour his obligation. Similarly, PW23 testified that on polling day she found the 1<sup>st</sup> Respondent distributing K20 notes to voters at Mpolo polling station and that she too received that money. PW23 testified further that had she not received the money, she would have voted differently. In another similar incident, PW25 testified that because he received a K20 note from the 1<sup>st</sup> Respondent, he felt obliged to vote for the PF.

As regards PW8 and PW23's evidence, the record shows contradictory statements as to the 1<sup>st</sup> Respondent's whereabouts on polling day. Different witnesses testified that they saw him on polling day in the afternoon in far off areas. I therefore find that this evidence was not proved. The evidence of PW8, PW23 and

PW25 will be evaluated later in the judgment when I will be dealing with the allegation of bribery. I however take judicial notice of the fact that these particular witnesses harboured a traditional belief that if they did not vote for the 1<sup>st</sup> Respondent after being given money, something bad would happen to them, hence, their deeply entrenched fear of witchcraft.

### **Corrupt and Illegal Practices**

In the case of **Mubita Mwangala v Inonge Mutukwa Wina, SCZ Appeal No. 80 of 2007<sup>19</sup>**, which the Constitutional Court has cited with approval in a plethora of cases, the Supreme Court testified as follows:

**“In order to declare an election void by reason of corrupt practice or Illegal practice or any other misconduct, it must be shown that the majority of voters in a constituency were or may have been prevented from electing the candidate in that constituency whom they preferred....**

**It is clear to us that the corrupt practice or illegal practice or indeed any misconduct must affect the majority of the voters in a constituency. In other words, the corrupt practice or illegal practice or misconduct must be wide spread in the constituency so as to affect the majority of voters....”**

In light of the above provisions, it is prudent to not only prove the corrupt or illegal practice or misconduct but to also prove that the

conduct complained of was widespread so as to influence the majority of voters in the Constituency.

**(a) Bribery**

**Section 81 of the EPA provides as follows:**

**“A person shall not, either directly or indirectly, by oneself or with any other person-**

**(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.”**

In the case of **Bisigye Kiiza v Museveni Yoweri Kaguta and Another (Election Petition No.1 of 2001) [2001] UGSC 3<sup>20</sup>** the Supreme Court of Uganda defined bribery as follows:

**““bribery at election” is defined by Black’s Law Dictionary Edition, as the offence committed by one who gives or promises to give or offers money or valuable inducement to an elector, in order to corruptly induce the latter to vote in a particular way or to abstain from voting, or as a reward to the voter for having voted in a particular way or abstained from voting.”**

It was the petitioners’ evidence that the 1<sup>st</sup> Respondent was distributing money to the voters in different wards during the campaigns and on polling day. PW4 and PW11 both testified that the 1<sup>st</sup> Respondent was distributing money to people who had NRC’s and voter’s cards at Kasoma Bangweulu School in Mano ward on 23<sup>rd</sup> July, 2021. This evidence was thus corroborated and

I find that the 1<sup>st</sup> Respondent distributed money to eligible voters in Mano ward on 23<sup>rd</sup> July, 2021, but the question is how widespread was it? I will answer this question later.

Similarly, PW6 and PW28 both testified that the 1<sup>st</sup> Respondent was distributing money in Kapilibila ward. PW28, testified that this happened at Chitundwa polling grounds. PW28 testified that he could not remember the exact date but when asked to estimate when it could have happened he testified that it may have been in the 1<sup>st</sup> week of July, 2021. Both PW6 and PW28 gave similar testimony in that they were both from Chitundwa ward, except that PW6 testified that the 1<sup>st</sup> Respondent went to Chitundwa school on 6<sup>th</sup> June, 2021, while PW28 testified that he could not recall the date but that it should have been in the first week of July, 2021. Other than the difference on the dates, the rest of their testimonies were the same to the effect that they saw the 1<sup>st</sup> Respondent distributing money to voters at Kapilibila ward at Chitundwa. I looked at the demeanor of both witnesses and I gathered that they were truthful and consistent, in their testimonies on this particular issue.

PW5, PW7, PW8, PW16, PW21, PW23 and PW24 all testified that the 1<sup>st</sup> Respondent distributed money in Lumamya ward. The said

witnesses testified that they saw the 1<sup>st</sup> Respondent distributing the said money in different places or polling stations at Lumamya ward. All the witnesses testified that they saw the 1<sup>st</sup> Respondent distributing the said money in different locations, on different dates or at different times. None of these witnesses' evidence was corroborated and as such, I find that the petitioners failed to prove that the 1<sup>st</sup> Respondent distributed money in Lumamya ward to the required standard of proof in election petitions.

PW9 and PW10 both testified that they saw the 1<sup>st</sup> Respondent distributing money in Kantashya ward. However, PW9 testified that the 1<sup>st</sup> Respondent was seen distributing the said money in Chimembe village while PW10 testified that the 1<sup>st</sup> Respondent was seen distributing money in Mitikula. No other independent witness came to Court to corroborate the two witnesses' testimony as such, I find that this allegation fails for lack of corroboration.

PW12 and PW19 both testified that they saw the 1<sup>st</sup> Respondent distributing money in Lupili ward at Sobamu. The two witnesses however alleged to have seen the 1<sup>st</sup> Respondent in June 2021, and on 7<sup>th</sup> July, 2021. There was no independent evidence adduced to corroborate their testimonies and it is for this reason that this allegation fails.

Similarly, PW22 and PW25 both testified that they saw the 1<sup>st</sup> Respondent distributing money in Isamba ward at Mufimba polling grounds and at Sakala, respectively. There was no independent witness to corroborate the testimonies of PW22 and PW25 to that effect. This allegation also fails for lack of corroboration.

PW17 also testified that the 1<sup>st</sup> Respondent distributed money in Musaba ward but there was no corroboration to that effect.

From the foregoing, it is only PW4, PW11, PW6 and PW28 whose evidence proves that there was distribution of money by the 1<sup>st</sup> Respondent in Mano and Kapilibila wards respectively. I am alive to the fact that the petitioners were not expected to bring the entire electorate to come and testify before court, I nonetheless hold the view that in order to meet the applicable standard in election petitions, at least two witnesses should have testified on the same issue of bribery in order for it to have been corroborated such as PW4, PW11, PW6 and PW28 did, in respect of the finding that the 1<sup>st</sup> Respondent distributed money to the electorate in Mano and Kapilibila wards, respectively.

The learned authors of Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 15 at para. 780 stated as follows:

**“Due proof of a single act of bribery by or with the knowledge and consent of the candidate or by his agents, however insignificant that act may be, is sufficient to invalidate the election....For this reason, clear and unequivocal proof is required before a case of bribery will be held to have been established. Suspicion is not sufficient and the confession of the person alleged to have been bribed is not conclusive.”**

The Constitutional Court qualifies the above quotation in the case of **Samuel Mukwamatama Nayunda v Geoffrey Lungwangwa** Appeal No. 15 of 2017<sup>21</sup>, when it held that:

**“Section 97(2)(a) of the Electoral Process Act limits the corrupt practices, illegal practices or other misconduct which can lead to the nullification of an election. The said acts ought to have been committed by the candidate personally, or by a third party with his knowledge and consent or approval or the knowledge and consent or approval of his election or polling agents. And it must also be proved that the majority of voters were prevented or may have been prevented from electing the candidate of their choice. Parliament’s intention was to ensure that an election will only be nullified for acts linked to the candidate, directly or indirectly by his knowledge and consent or approval or that of his election agent.**

**Under the current electoral regime as provided in section 97(2)(a), the position on proof of one corrupt or illegal practice or misconduct being sufficient to nullify an election still stands but only to the extent where it is also proved that the one act in issue prevented or may have prevented the majority of voters from electing a candidate of their choice. Therefore, under the current Act, it is no longer enough to only prove the commission of a single corrupt or illegal act or misconduct by a candidate or the agent without also showing that the same affected or may have affected the majority of the electorate concerned, thereby preventing them from electing their preferred candidate.”**

Having found that there was distribution of money in Mano and Kapilibila wards, it is prudent to determine whether the said money was distributed by the 1<sup>st</sup> Respondent herein or his election agents and whether it was widespread. I note that PW4 and PW11 testified that they saw the 1<sup>st</sup> Respondent distributing money to voters in Mano and Kapilibila wards, on 23<sup>rd</sup> July, 2021, which period the 1<sup>st</sup> Respondent said he was in Lusaka. The 1<sup>st</sup> Respondent testified that he fell ill on 6<sup>th</sup> July, 2021, and tested positive to Covid-19 on 8<sup>th</sup> July, 2021. The 1<sup>st</sup> Respondent, testified that he was in Lusaka from 11<sup>th</sup> to 31<sup>st</sup> July, 2021. This evidence was substantiated by the medical and diagnostic laboratory report at page 104 of the 2<sup>nd</sup> Respondent's bundle of documents dated 12<sup>th</sup> July, 2021, which showed that the 1<sup>st</sup> Respondent did some tests at Mum's Clinic in Lusaka on the same date. The document at page 105 shows the results and a Mums Clinic date stamp at the bottom of the page. Furthermore, RW7, the 1<sup>st</sup> Respondent's Campaign Manager, corroborated the 1<sup>st</sup> Respondent's evidence. During cross-examination of the 1<sup>st</sup> Respondent however, the Learned Counsel for the 1<sup>st</sup> Petitioner, Mr Chilenga, challenged the evidence of RW3, RW7 and RW8 that the 1<sup>st</sup> Respondent was in Lusaka from 11<sup>th</sup> to 31<sup>st</sup> July, 2021, stating that there were



inconsistencies, but I did not see any inconsistencies as a perusal of the proceedings shows that RW7, in examination in chief testified that the 1<sup>st</sup> Respondent suffered from Covid-19 which grounded him for almost a month. I find that there was no mention of thirty days in the testimony of RW7 and I therefore accept the evidence of RW8 that he was in Lusaka during the period in question.

I take judicial notice of the fact that a person who has tested positive for Covid-19 should be in isolation for at least 14 days which in fact was mentioned by RW3 in his testimony in court.

In the case of **Changano Kakoma Charles v Kundoti Mulonda Appeal No.5 of 2017<sup>22</sup>**, the Constitutional Court stated as follows:

**“In election petitions, the burden of proof lies on a petitioner and where the trial court finds evidence unconvincing or where his evidence does not prove the allegation to the required high standard, it matters not the evidence proffered by the other party, the case will fail.”**

In light of the above case, I find that the petitioners have proved the allegation that the 1<sup>st</sup> Respondent was distributing money in Mano ward through the evidence tendered by PW4 and PW11 because the time they saw the 1<sup>st</sup> Respondent doing so, the 14 day period in which the 1<sup>st</sup> Respondent was expected to be in

quarantine had elapsed. The evidence proffered by PW4 and PW11 was therefore corroborated. There was however no further evidence adduced by the 1<sup>st</sup> Respondent to show that he was out of the Constituency when the 14 day period had lapsed. It is on that basis that I, accept PW4 and PW11's evidence.

Having found that the 1<sup>st</sup> Respondent was distributing money in in Mano and Kapilibila wards, the question that follows is whether the said distribution of money affected the majority of voters by preventing them from electing a candidate of their choice. To ably answer this question, I will apply the principle in the case of **Anderson Kambela Mazoka v Levy Patrick Mwanawasa supra**, in which the Supreme Court stated that the petitioners must prove electoral malpractices and violations of electoral laws in at least a majority of the constituencies. See also the case of **Mlewa and Wightman supra**. Further, in the case of **Saul Zulu v Victoria Kalima**, which involved a parliamentary election, the Court stated as follows:

**"what was of import in the court below is whether the distribution of chitenge materials and bicycles was done on such a large scale that the majority of voters in that constituency were or may have been prevented from electing a candidate of their choice."**

Applying the above guidelines to the evidence on record, I note that even though there is proof that the monies were distributed in Mano and Kapilibila wards, there is proof suggesting that some voters were influenced by the said distribution of money. For instance, the record shows at pages 1-3 of the 1<sup>st</sup> Petitioner's bundle of documents that the 1<sup>st</sup> Pctitioner won at Kasoma Bangweulu 1, 2 and 3 polling stations despite PW4 and PW11 testifying that money was distributed in Mano ward at Kasoma Bangweulu School. Consequently, I am of the considered view that the majority of voters in Mano ward cannot be said to have been prevented from electing their preferred candidate as can be seen from their voting pattern. Put simply, the 1<sup>st</sup> Petitioner would not have won at Kasoma Bangweulu polling station in Mano ward, if the majority of voters were or may have been prevented from choosing a candidate of their choice as a result of the distribution of the money at the said Kasoma Bangweulu school.

Furthermore, in the case of **Mubika Mubika v Poniso Njeulu** *supra*, the Supreme Court stated as follows:

**"The evidence, therefore does not indicate widespread vilification of the respondent, neither does it indicate that the majority of the registered voters were influenced by the respondent. In this type of allegation, statistics of registered voters who attended rallies should have been**

**given to assist the trial court on the extent of influence in the constituency.”**

As illustrated in the case cited above, the record shows that there was no clear indication of how many people were present at the meeting at Kasoma Bangweulu school on 23<sup>rd</sup> July, 2021. Furthermore, two wards out of 10 wards in the Bangweulu Constituency cannot be said to be representative of majority of the voters therein. I take further judicial notice of the register at pages 4-6 of the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners' bundle of documents showing the number of voters in Bangweulu Constituency which had a total of 57,856 voters. The said Mano ward had a total of 7,943 voters out of the total of 57,856 voters registered in Bangweulu Constituency while Kapilibila ward had a total of 3,757 voters. This cannot be said to be representative of the majority of the voters in the Constituency in that the said voters in Mano and Kapilibila wards, were not even half of the total registered voters (57,856) translating into at least 28,928 voters. I am of the considered view and accordingly find that the evidence led was not representative of the majority of the voters as it fell well below 28,928 voters which is half of the registered voters of 57,856 in the whole of Bangweulu Constituency. Thus, the threshold in Section 97(2)(a) has not been satisfied and I therefore find that the distribution of money to

voters did not have a widespread effect on the electorate in Bangweulu Constituency. This allegation thus fails.

**(b) Removal of DP campaign Posters**

According to Section 89(1) (i) of the EPA:

**A person shall not-**

- (i) Without lawful authority, destroy, mutilate, deface or remove any notice which is exhibited in accordance with this Act or under any regulations issued under this Act, or any document made available for inspection under this Act and any such regulations."**

In the case of **Mubita Mwangala v Inonge Mutukwa Wina supra and Mubika Mubika v Poniso Njeulu, Supra**, the Supreme Court held that it is the responsibility of the petitioner to show that the campaign posters were removed by the 1<sup>st</sup> Respondents or his agents.

PW1 and PW2 testified that on 6<sup>th</sup> June, 2021, PF agents removed DP campaign posters that they had stuck at Chiteta ground but that when they got to the scene, they did not find the PF agents but all the campaign posters were torn and littered around the area. PW2 testified that they were informed by one Damiano Makungu, that it was the PF agents that removed the posters but this witness was not called to substantiate the evidence given. It therefore becomes hearsay evidence which is inadmissible.

Furthermore, PW4, the Provincial Campaign Manager for the DP testified that on 26<sup>th</sup> May, he found about 20 people wearing PF regalia and removing DP/UPND posters at Mwamfuli village in Lupili ward. It was PW4's evidence that he was able to identify them because of the PF regalia they were wearing and because he was the Constituency Secretary of the PF at the time or before he joined the DP. I note that PW1, PW2 and PW4 were all partisan witnesses belonging to the same political party namely, DP. As such, there was need for independent witnesses to corroborate their evidence.

PW20, an alleged PF cadre, testified that he and other PF cadres went to Mwamfuli where they removed DP posters that were stuck. It is trite that he who alleges must prove, however, the record shows that PW20 failed to prove that he was a PF cadre adducing evidence as a person without an interest to serve, as he indicated that he belonged to PF at the time. I therefore find that the evidence tendered was not corroborated. Further, I am of the considered view that in the absence of cogent evidence that the 1<sup>st</sup> Respondent or his agents with the 1<sup>st</sup> Respondent's knowledge and consent or approval, removed the said campaign posters at Chiteta and Mwamfuli, I cannot find that the removal of the posters was

perpetuated by the 1<sup>st</sup> Respondent or his agents. The petitioners have failed to prove this allegation.

**(c)Ferrying of voters**

PW3, an election agent, testified that on polling day there were two trucks belonging to one Gideon Mwango and one Chalwe, which were ferrying voters to polling stations. This evidence was corroborated by PW14, a DP election agent, who gave similar testimony that two trucks were hired by the 1<sup>st</sup> Respondent to ferry people from various places to various polling stations to vote. In cross-examination PW14 however, conceded in cross-examination, that the pictures and video on record did not show people being ferried as the said trucks were stationary.

A perusal of the pictures taken by PW14, at pages 66-73 of the 1<sup>st</sup> Petitioner's bundle of documents do not corroborate the evidence of PW3 and PW14 as the trucks in the pictures and videos produced as "EK7" just show stationary trucks without any proof of people being ferried. Further, the alleged owners of the trucks were not called as witnesses to corroborate the evidence given by PW3 and PW14. The witnesses being partisan witnesses, as shown, needed to have their evidence corroborated and in the absence of such corroboration, there is nothing on record to prove

that the trucks in question were indeed used to ferry voters on poll day on the instructions of the 1<sup>st</sup> Respondent or his agents. I accordingly find that the required standard of proof has therefore not been satisfied and the allegation fails.

PW18 testified that he was standing as Councillor under the DP ticket and as such I find that he was a partisan witness. It was PW18's testimony that he found the 1<sup>st</sup> Respondent ferrying voters to Mushili polling station in a grey vehicle. During cross-examination, he conceded that he did not have independent evidence to amplify his allegation.

I am of the considered view that PW18, also being a partisan witness, his evidence was not corroborated and should be treated cautiously in order to eliminate the danger of exaggeration and falsehood. There is no other independent evidence to corroborate the allegation that the 1<sup>st</sup> Respondent or his agents with his knowledge and consent or approval were ferrying voters to polling stations on poll day. The evidence presented thus falls short of the standard of proof required to prove the said allegation and therefore fails.

Furthermore, PW6 testified that his grand-mother was ferried to the polling station by a vehicle hired by the 1<sup>st</sup> Respondent and



that he heard from his friend that the 1<sup>st</sup> Respondent had provided transport for people to be ferried to polling stations. There was however no proof tying the said allegation to the 1<sup>st</sup> Respondent or his agent as a result, this allegation also fails.

In the case of **Webster Chipili and David Nyirenda Appeal No. 35 of 2003<sup>23</sup>**, the Supreme Court stated that in election petitions, issues of bribery and treating have to be established to a fairly high degree of clarity. I am of the considered view that in light of the foregoing, the allegations have not been proved to the required standard.

**(d) Cooking of meals for the voters**

The learned authors of Halsbury's Laws of England, 4<sup>th</sup> Edition, Volume 15 at paragraph 781 stated as follows:

**"A person guilty of treating is guilty of a corrupt practice. The following persons are guilty of treating:**

**(1) any person who corruptly, by himself or by any other person, either before or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or providing, to or for any person (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting or (b) an account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting.....**

**Treating intended to secure general popularity and so to influence votes, is corrupt treating and a corrupt practice."**

PW6, PW8, PW9, PW10, PW16 PW22 and PW24 testified that there was food that was prepared by PF agents for voters to go and eat after they had voted. PW9 and PW22 testified that they were treated to some food at Lewis Mwansa and Tolomeo Ngándwe's houses respectively. PW6 and PW10 testified that after voting, they both went to eat some food that was prepared for the voters elsewhere even though they did not state where the food was prepared from or where they went to have it from. PW8 testified that the food was prepared at Alex Chola's place, the Youth Vice Secretary for PF. PW16 gave evidence that on polling day, he heard the 1<sup>st</sup> Respondent telling people to vote and thereafter to go to various camps where food was being prepared for the voters. He conceded in cross-examination however, that he did not see the 1<sup>st</sup> Respondent distributing mealie meal to people or cooking nshima for them although he said that he saw other people cooking.

PW24 testified that on polling day, he met the 1<sup>st</sup> Respondent who told him to vote and thereafter to go and eat food prepared for the voters, which he did.

In light of the evidence tendered by PW6, PW8, PW9, PW10, PW16 PW22 and PW24, I find that there was treating in the Constituency on polling day. In the case of **Levison Achitenji Mumba v Peter William Muzyamba Daka Appeal No.38 of 2003**<sup>24</sup> the Supreme Court stated that the act of giving meat to would be voters amounted to treating, which was an electoral offence that amounted to a corrupt and illegal practice in relation to the offence of treating. I am of the considered view that the allegation that there were meals that were prepared for voters amounted to treating.

The question that follows is whether the said acts of cooking meals, have been attributed to the 1<sup>st</sup> Respondent or his agents. PW6 testified that he carried the bags of mealie meal that were delivered by the 1<sup>st</sup> Respondent and James Kapilila. PW9 testified that sometime in August, 2021, she saw 25kg bags of mealie meal and buckets of cooking oil being delivered and when she inquired, she was informed that the 1<sup>st</sup> Respondent was the one that delivered them. I find this to be hearsay as the person who saw the 1<sup>st</sup> Respondent delivering the said food stuff was not brought to court as an independent witness to prove that allegation. PW16 was a partisan witness from the Socialist party and no one corroborated

his testimony that he heard the 1<sup>st</sup> Respondent at Malawi polling station, telling voters to go to various camps to eat food prepared for them after voting. Similarly, PW22 was a partisan witness being a member of the FDD. He testified that he did not see the 1<sup>st</sup> Respondent at the houses where food was being prepared from neither did he see the 1<sup>st</sup> Respondent at the house where he (PW22) went to eat from.

In view of the above, I am of the considered view that the witnesses have failed to link the 1<sup>st</sup> Respondent to the allegation. They have also not shown that the PF members who were cooking these meals, were the 1<sup>st</sup> Respondent's agents or that they were doing so with the 1<sup>st</sup> Respondent's knowledge and consent or approval. There is also no statistical evidence to show how many people partook in the eating of those meals.

I further find that the cooking of meals was not widespread as only a handful of witnesses testified to that effect. The undisclosed number of people who ate the meals prepared, therefore, cannot be said to have materially affected the election result to such an extent that it ought to be nullified. I find that the witnesses were only representative of Kapilibila, Lumamya, Kantanshya and Isamba wards. The petitioners have not therefore, proved that the

majority of the voters were or may have been prevented from electing a candidate of their choice because of the alleged treating.

This allegation therefore fails as the required standard of proof has not been satisfied by the petitioners.

**(e) Pre-marked Voter Registers**

PW3 testified that a PF agent at Chinsanka polling station was found with pre-marked registers. The evidence was confirmed by PW4 and PW14. In cross-examination, PW3 admitted that the PF register was not the only register being used in the polling station at Chinsanka polling station as all parties were allowed to have voter registers.

In response to the said allegations, RW1, the Returning Officer, testified that the possession of a pre-marked register by one political party had no effect on the outcome of elections. RW1 explained that the 2<sup>nd</sup> Respondent (Electoral Commission of Zambia) produces and certifies an official register which is used on polling day at the polling stations. It was RW1's further testimony that there is an exercise called physical inspection of the register of voters before elections which exercise results in a register having an exclusion list which contains names of those that are not eligible to vote such as deceased persons as shown on pages 26

and 58 of the 1<sup>st</sup> Petitioner's bundle of documents. This evidence was not rebutted in cross-examination.

I therefore accept RW1's evidence on the issue that there is a certified register of voters that is used at the polling stations. I am fortified by Section 58(1)(d) of the EPA which provides for a certified register of voters as forming part of voting material. This certified register of voters also forms part of what RW1 termed as "security material" as shown in Section 66(1)(c)(i).

I have also had occasion to peruse the 1<sup>st</sup> Petitioner's bundle of documents at page 27, which contains an ECZ Certificate with guidelines. Clause 2 (vi) of the said guidelines states that:

**"Under no circumstances should a person be allowed to vote where the voter card number produced appears under the exclusion list, even though they hold what appears to be an apparently correctly issued voter's card."**

From the evidence above, I am of the considered view that the petitioners herein, have not proved how the pre-marked register belonging to the PF affected the outcome of the 2021, election results as none of the witnesses stated how the said pre-marked voter registers affected the outcome of the election. I will therefore not delve into this allegation any further. The allegation also fails.

On the allegations against the 2<sup>nd</sup> Respondent, the Constitution of Zambia Act No. 2 of 2016, (The Constitution) expressly gives the function to conduct elections to the Electoral Commission of Zambia (ECZ), the 2<sup>nd</sup> Respondent herein. Article 229 (2) of the Constitution provides that:

**229 (2) "The Electoral Commission shall-**

- (a) implement the electoral process;**
- (b) conduct elections and referenda;**
- (c) register voters;**
- (d) settle minor electoral disputes, as prescribed;**
- (e) regulate the conduct of voters and candidates;**
- (f) accredit observers and election agents, as prescribed;**
- (g) delimit electoral boundaries; and**
- (h) perform such other functions as prescribed."**

Allegations against the 2<sup>nd</sup> Respondent herein are made pursuant to Section 97(2)(b) of the EPA. which provides as follows:

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

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

In the case of **Giles Chomba Yamba Yamba V Kapembwa Simbao**, Selected Judgment No. 6 of 2018<sup>25</sup> the Constitutional Court stated as follows:

**“The question is, what are the key elements of the above provision? In our view, the key ingredients are as follows:**

- (i) there must be non-compliance with the provisions of the Act relating to the conduct of an election and it must appear to the court or tribunal that the electoral principles as laid down by the law have not been adhered to; and**
- (ii) the non-compliance must affect the result of the election.**

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

**The ECZ must fulfil this function by ensuring that the requirements of the Electoral Process Act are respected and observed in the electoral process. Section 97(2)(b), therefore, concerns non-compliance to the provisions of the Act by ECZ, the body charged with the conduct of elections under Article 229(2)(b) of the Constitution, and not the candidates to an election or their agents.”**

In the same case the Constitutional Court added that:

**“Therefore, where there is a breach of this statutory duty and such breach substantially affects the results of an election, the election can be declared a nullity pursuant to section 97(2)(b).”**

In the case of **Buhari v Obasanjo (2005) CLR 7K<sup>26</sup>** the Supreme Court of Nigeria stated as follows:



**"The burden is on the petitioners to prove that non-compliance has not only taken place but has also substantially affected the result...there must be clear evidence of non-compliance, then, that the non-compliance has substantially affected the election."**

Furthermore, the Court in England in the case of **Woodward v Sarsons [1874-80] All E.R Rep 262<sup>27</sup>**, emphasized the position of the law that the court will only invalidate an election on account of irregularities in the conduct of an election if it is satisfied that the non-compliance with the electoral law was so great that it rendered the conduct of the election invalid and that the non-compliance must have also been so great as to satisfy the court that it did affect the result of the election.

In the cases of **Giles Chomba Yamba Yamba v Kapembwa Simbao, Supra** and **Christabel Ngimbu v Prisca Chisengo Kucheka Appeal No. 16 of 2017<sup>28</sup>**, the Constitutional Court stated that there must be proof not only that there was non-compliance with the law but also that such non-compliance did affect the result of the election.

The said principles in the above cited cases echo the requirement in Section 97(2)(b) of the EPA which sets the threshold for nullifying an election of a Member of Parliament where non-

compliance with the electoral law in the conduct of an election is alleged as is the case in casu.

PW1, the 1<sup>st</sup> Petitioner herein alleged that DP agents were denied entry into the totalling centre by the representatives of the 2<sup>nd</sup> Respondent. The said personnel were not before Court to answer to this allegation. PW1, however, admitted that there were DP agents at all polling stations in Bangweulu Constituency and conceded that what happens at the totalling centre is just a summation of results already counted and announced at the polling station. The record also shows that contrary to PW1's allegation that the DP were denied entry at the totalling centre, RW1 testified that page 71 of the 2<sup>nd</sup> Respondent's bundle of documents, shows that there was a representative from DP by the name of Elizabeth Mwewa at the totalling centre who even signed against her name indicating that she was present at the totalling centre. This evidence was challenged by the 1<sup>st</sup> Petitioner and I note that the said document referred to was not on the 2<sup>nd</sup> Respondent's headed paper. RW1 also failed to produce the accreditation card belonging to the said Elizabeth Mwewa during cross-examination. Furthermore, RW1 also explained that once results were compiled, verified and signed by presiding officers,

they are distributed to key stakeholders at the polling stations on GEN 20 forms and as a result, they could not be changed at the totalling centre.

Section 36 (2) of the EPA provides as follows:

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

Further, in the case of **Bisigye Kiiza v Museveni Yoweri Kaguta and Another supra**, the Supreme Court of Uganda stated that:

**"I agree with what was said in Gunn v Sharpe (supra) that an election (whether a Presidential or parliamentary) is not to be upset for an informality or a triviality. The objection to an election must be something substantial, something calculated really to affect the result of the election. The court should look at substance of the case and see whether the informality or errors are of such a nature as to be firmly calculated in a rational mind to produce a substantial effect upon the election. I am very conscious of the importance of the principle which occurs throughout election cases, which I have looked at, that elections should not be lightly set aside simply because there have been informalities or errors."**

I am of the considered view that even if the 1<sup>st</sup> Petitioner has refuted the evidence on record that there was a DP representative at the totalling centre, the fact that DP was not represented at the totalling centre cannot invalidate the results at the totalling centre as per Section 36 (2) of the EPA cited above. This allegation therefore fails on that premise.

There was also an allegation made by the 3<sup>rd</sup> Petitioner that presiding officers took open ballot boxes, with GEN 20 forms in the said boxes, to the totalling centre. PW26 produced a video marked "NK11" to substantiate his allegations. RW1 responded to this allegation by explaining what happens when results are delivered by the presiding officers. RW1 explained that unsealed ballot boxes are normally delivered but the said ballot boxes contain materials that are not considered to be security materials. Under cross-examination, RW1 testified that GEN 20 forms do not form part of security material and this evidence was not challenged further thereby, suggesting that they were not required to be in sealed ballot boxes as alleged by the 3<sup>rd</sup> Petitioner.

Section 66 of the EPA provides that:

- (1) "A presiding officer shall, at the close of a polling station, in the presence of an accredited observer, monitor or election agent
  - (a) Complete a ballot paper account form reflecting the number of-
    - (i) Ballot boxes entrusted to that presiding officer;
    - (ii) Used ballot boxes;
    - (iii) Unused ballot boxes
    - (iv) Ballot papers entrusted to that presiding officer;
    - (v) Issued ballot papers;
    - (vi) Unissued ballot papers; and
    - (vii) Cancelled ballot papers;
  - (b) Seal each unused ballot box entrusted to that presiding officer; and
  - (c) Seal in separate ballot boxes

- (i) **The certified segment of the Register of Voters for the polling district;**
- (ii) **The unused ballot papers entrusted to that presiding officer;**
- (iii) **The spoilt ballot papers; and**
- (iv) **The written record of any objections concerning voting."**

In light of Section 66 above, there is no provision requiring GEN 20 forms to be in sealed ballot boxes. The 3<sup>rd</sup> petitioner did not bring evidence to show that the materials requiring to be sealed as shown in Section 66 where in fact not sealed. In the absence of such evidence, it is difficult to find in favour of the 3<sup>rd</sup> Petitioner.

In relation to the selection of election agents, the 2<sup>nd</sup> Petitioner testified that the selection of presiding officers and polling agents was not done in a transparent manner in that the PF submitted a list of cadres and their relatives to be included on the said list. PW26 added that the civil servants who attended the PF meeting on 14<sup>th</sup> July, 2021, such as one Annette Mulenga and one Bernard Bwalya, ended up becoming presiding officers, and RW1 became the Returning Officer. At this point I will state that contrary to the allegation that RW1 was in attendance at the said meeting of civil servants on 14<sup>th</sup> July, 2021, the document at pages 31 to 33 of the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioner's bundle of documents did not show RW1's name on the attendance list. It was also alleged that the two wives

to James Kapilila (RW4), were also selected as presiding officers but I do not find that to be an anomaly, as they qualified to be presiding officers as testified by RW4, and indeed RW1.

I note RW1's response in relation to the selection of all poll staff. RW1 explained that an advert for vacant positions was made to the public, a shortlisting panel consisting of the clergy from the three mother church bodies, DEC, among others, was constituted, the poll staff were subjected to written and practical assessments and the results thereof assisted in the selection of poll staff. RW1 testified that NRC numbers as opposed to names were used during the assessment of the poll staff for the sake of confidentiality since results were also displayed thereon as shown by the document produced and marked "BM14" at page 90 of the 2<sup>nd</sup> Respondents bundle of documents.

This evidence was shaken during cross-examination. PW15 however conceded in cross-examination that in the selection of poll staff, first priority is given to those who have work experience or those with the minimum qualification of a grade 12 school certificate, but insisted that the NRCs on the notice board should have had names of the poll staff displayed thereon. This was confirmed by PW26, also in cross-examination, who added that the

best place to pick presiding officers from, was among those already in formal employment, as they are presumed to be qualified.

There is a mechanism that is followed to select election staff, which includes a shortlisting panel from various organisations, as testified by RW1. The petitioners should have shown that the selection process was flawed or not followed in employing some poll staff who they alleged to be affiliated to the PF such as the Returning Officer (RW1) and the wives to RW4. The petitioners did not do so and therefore failed to prove the allegation.

I am of the considered view that the petitioners have failed to prove the allegation that the selection of presiding officers was not correctly done because the process of selection of poll staff was explained not only by RW1 but by the petitioner's themselves. They have not brought evidence to show that some of the poll staff chosen, did not go through the process required, as explained by RW1. The petitioners also did not bring evidence to show that some presiding officers were related to the 1<sup>st</sup> Respondent (RW8), who vehemently denied the allegation. It is for these reasons that this allegation also fails.

In relation to the allegation that the list of poll staff was not stuck on the notice board on time to allow for vetting of the poll staff

selected, PW15 told the Court that the list of presiding officers and polling agents was only stuck on the notice board two days before polling day, leaving the public with no opportunity to raise issues on the people selected. RW1 however, explained that there was a distinction between the list of selected poll staff and the list of deployment. It was RW1's evidence that the list of shortlisted poll staff for 2021, was stuck on the Council notice board way before elections and it has been produced and marked "BM14" at page 90 of the 2<sup>nd</sup> Respondent's bundle of documents. RW1 testified that the reason why the list only contained NRC numbers and results was for the sake of confidentiality. Under cross-examination however, RW1 denied the allegations that some poll staff were affiliated to the PF and stated that when the names were vetted to the public, people should have written to the Conflict Management Committee if they found that there was any bias in the selection of the said poll staff.

I however, find that a perusal of the list said to have been posted way before election day as testified by RW1, indeed only shows NRC numbers of the selected poll staff. I find this to be ironic in the sense that it is impossible for the shortlisted staff to be vetted because the names are not shown on the notice board. I therefore



fail to appreciate how the 2<sup>nd</sup> Respondent expected people to raise concerns on the poll staff when their names were not revealed thereby making it impossible for them to know which poll staff were selected due to the fact that only NRC numbers were displayed on the notice board.

The Constitution has squarely placed the mandate of conducting elections on the 2<sup>nd</sup> Respondent (ECZ) and it is therefore imperative that ECZ fulfils its mandate by ensuring that the requirements of the EPA are respected and observed as held by the Constitutional Court in the case of Giles Chomba Yamba Yamba v. Kapembwa Simbao Supra. I thus find the 2<sup>nd</sup> Respondent wanting in this respect. I am of the considered view that the ECZ could have done better in this respect but I however do not find this anomaly by ECZ, the 2<sup>nd</sup> Respondent herein, to have substantially affected the election so as to annul it.

There was another allegation that the presiding officer at Chishikishi polling station was helping illiterate people vote for candidates other than their preferred ones. It was PW27's evidence that he was a polling agent and on polling day, he went to Chishikishi polling station and was allowed access inside the polling station where he found the presiding officer with a young

lady who was arguing that the presiding officer put an 'X' on "boat" (which is the PF symbol) instead of on the 'fish' as she wished.

In cross-examination, PW27 testified that he did not have any evidence in form of a video to substantiate this allegation. When challenged further on how he managed to access the polling station without an accreditation card, PW24 testified that he used a form and stated that he did not know that the 2<sup>nd</sup> Respondent gave out cards as opposed to forms to election agents. PW24 testified that when he got to Chishikishi polling station, he heard that the presiding officer was assisting people who could not read or write, to vote for the PF despite them having their preferred candidates. I find this to be hearsay evidence and therefore inadmissible. In cross-examination, PW24 conceded that he was outside the polling station and therefore did not see the presiding officer aiding people to vote for candidates they did not want to vote for. PW26 also testified that he took a video of the confusion from afar. I had occasion to view the video produced by the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners in Court and found that the said presiding officer is not seen therein. I find this allegation to be misplaced and unfounded, more so that PW27, who claimed to have seen what had happened, was not given an identification card by ECZ

especially that he claimed to be an election agent who, was listed on the nomination paper.

There was another allegation made by PW1 that the wife to the 1<sup>st</sup> Respondent was distributing face masks at Mulisha polling station on polling day. PW4, the DP Provincial Campaign Manager, in relation to the allegation testified that the wife to the 1<sup>st</sup> Respondent was giving out face masks to the voters on the queue.

I note that both PW1 and PW4 were partisan witnesses belonging to the DP. Furthermore, PW19 testified that he saw the 1<sup>st</sup> Respondent's wife distributing face masks and hand sanitizers in the company of the 2<sup>nd</sup> Respondent's officials at Chinanda polling station. PW19 produced a video marked "NM9" to corroborate his evidence. Even though PW19 was an independent witness, his video evidence did not corroborate PW1 and PW4's evidence because when I viewed the said video, it did not show any person distributing face masks or hand sanitizers. It showed a woman driving a vehicle Registration No. BAE 301 and people shouting in the background asking whether it was an appropriate day for face masks to be distributed. Further, there was no proof that the said woman in the vehicle was the 1<sup>st</sup> Respondent's wife.

I therefore find that the evidence of PW1, PW4 and PW19 does not prove the allegation that the 1<sup>st</sup> Respondent's wife was distributing face masks on polling day in the presence of the 2<sup>nd</sup> Respondent's officials, to the required standard.

In relation to the allegations against the Conflict Management Committee, PW4 testified that he wrote a letter to the Conflict Management Committee as shown on page 25 of the 1<sup>st</sup> Petitioner's bundle of documents, complaining about the beating of PW1 and PW2, as well as the smashing of their motor vehicle plus the removal of the DP campaign materials. PW4 testified that despite the letter being sent to the Conflict Management Committee, the Conflict Management Committee did not acknowledge receipt of the said letter nor did the Conflict Management Committee call the DP for a hearing. PW4 however conceded that he did not have any proof to show that the letter was ever received by the Conflict Management Committee.

RW2 on the other hand, testified that as Secretary of the Conflict Management Committee, one of her duties was to receive complaints. RW2 testified that when letters were received, the Conflict Management Committee, through herself as Secretary of the Committee, acknowledged receipt by appending her signature

and date stamp thereon. RW2 further testified that she did not receive any complaint from the DP as shown in the report produced as "GM15" at pages 1-4 of the 2<sup>nd</sup> Respondent's bundle of documents.

A perusal of the said report does not show any complaint received or resolved in favour of the DP. Further, I also note that the witness testified that the letter was left at the registry of Samfya District Council, and not with the Secretary of the Conflict Management Committee, hence it not having been received by the Conflict Management Committee. It is on this basis that this allegation also fails.

I also find that RW4 sat on the Conflict Management Committee as testified by RW2 and this was conceded by RW1 and RW4 himself in cross examination. I find that there was a conflict of interest in that RW4 was a candidate in the 2021, general elections as he was vying for the position of Council Chairperson of the Samfya District Council. The Conflict Management Committee reports to ECZ on minor electoral disputes. As such, I find RW4's membership to the Conflict Management Committee was unprocedural and a conflict of interest more so that he belonged to the party in power namely, PF. The ECZ or 2<sup>nd</sup> Respondent herein, must instil confidence in

the electorate that the electoral process is conducted in a free and fair manner and in compliance with the law.

I would like to echo the sentiments made by the Supreme court in the case of Akashambatwa Mbikusita Lewanika and Others v. Fredrick Jacob Titus Chiluba, Supra, in which the Court stated that:

***"The flaws of all types which we have said were established, of course did not reflect well on those managing the electorate process. Many of them can and should be addressed in order to enhance our democratic profile and in order to engender greater confidence in the electoral process."***

I am of the considered view that it does not instil confidence in the electoral process to post the list of nominated electoral agents on the notice board of Samfya District Council with only their NRC's showing and no names, thereby denying the interested parties from expressing their concerns on the people chosen as election agents, as it was alleged some of them were related to the 1<sup>st</sup> Respondent, who was the parliamentary candidate under PF ticket, even though that allegation was not proved by the petitioners. I further find that it is a breach of duty by the 2<sup>nd</sup> Respondent's officers to have allowed RW4 to sit on the Conflict Management Committee when it was public knowledge that he was

ying for the position of Council Chairman for Samfya District Council in the 2021 General Elections.

The Petitioner's' complaint of non-compliance was therefore proved in those areas. Notwithstanding the non-compliance with the provisions of the EPA, I find and hold that the election was so conducted as to be substantially in accordance with the provisions of the Act, and that such act or omission did not affect the result of the election in Bangweulu Constituency.

There were other allegations levelled against the 2<sup>nd</sup> Respondent as testified by PW26 that voters stopped voting at Makasa polling station because the polling station had run out of ink. In cross-examination he conceded that he did not have any evidence to prove that allegation. As such, in the absence of evidence the allegation cannot be sustained.

There was another issue mentioned by PW22 in his testimony in Court stated that a decision was made by the election officer from the 2<sup>nd</sup> Respondent to close the polling station at Mufimba, on polling day, to allow them go on lunch break. RW1, the Returning Officer, however, testified that he did not get any complaints pertaining to that allegation, and it therefore fails, as PW22's evidence was not corroborated by any independent evidence.

### **Allegations that GGOZA was affiliated to the PF**

On allegations that GOZA was affiliated to the PF, PW15 testified that the Vice District Coordinator of GGOZA, RW6, informed him that GGOZA was a branch of the PF which was put in place to help the PF win the 2021, general elections. PW15 produced audios marked "DC7" and "DC8" to corroborate his evidence. PW16 also testified that he was a member of GGOZA and his main job was to gather people and instruct them to vote for the PF. PW22 also testified that GGOZA and the PF used to work hand in hand.

On the other hand, RW6 denied the allegation that PF and GGOZA were working hand in hand and stated that GGOZA was in fact affiliated to CARITAS Zambia. RW6 testified that GGOZA's role was to educate people on voter apathy. RW6 however conceded that PW15 had complained to him that GGOZA seemed to be working with the PF and also complained about the distribution of mealie meal to the electorate in the Constituency.

I had occasion to listen to the audio produced in Court as evidence marked "DC7" and "DC8". In that evidence "DC7" and "DC8", RW6 maintained that GGOZA and the PF used to work independently although he testified that those people whose names were captured by GGOZA personnel, were to be rewarded when the PF won the



elections. Furthermore, in the same recordings, RW6 was heard explaining that the interest of the organisation was for the people in the Constituency to vote for the PF presidential candidate and that the organisation did not concern itself with the MP or Mayoral candidates as that was being handled by the PF party itself. I note that this is in contradiction to what RW6 testified in Court when he said that the role of GGOZA was to educate people on voter apathy. In fact, nowhere in the recording is RW6 heard stating that educating people on voter apathy was the role of GGOZA.

In the case of **Abiud Kawangu** supra, the Court stated as follows:

**“....The Respondent himself gave contradictory evidence and assigning his remaining testimony less weight. The said contradictions could not have formed the basis for the lower court to disbelieve or totally discard the testimony of the Respondent or his witnesses given the principle in *Ndongo v Moses Mulyango* and Another wherein, the Supreme Court declined to do away with evidence of a Respondent even after finding contradictions in his evidence as it was able to find other evidence from the Appellant’s own evidence to support the fact in issue.”**

Further in the case of **Steven Masumba v Elliot Kamondo** supra, the Constitutional Court stated as follows:

**“...once a witness is found to be untruthful in material respects, his or her evidence carries very little weight as this goes to the credibility of such a witness.”**

In view of the above cases, I find that the evidence tendered by RW6 carries less weight. Further, RW6, in cross-examination testified that GGOZA distributed mealie meal and GGOZA regalia in form of t-shirts, chitenges and caps in all 10 wards in the Constituency. This evidence was corroborated by the audio evidence "DC7" and "DC8" in which RW6 stated clearly therein that all 10 wards received mealie meal. RW6 also mentioned names where food stuff was given to people to be cooked for voters on polling day. RW6 stated, in the said audio, that GGOZA appeared as though it was being run by the Catholic Church when in fact not.

In the recordings marked "DC7" and "DC8", RW6 also stated that the 1<sup>st</sup> Respondent was never affiliated to GGOZA as he was never involved in the meetings. RW6 re-iterated in the said recordings that GGOZA's main role was to ensure that the PF presidential candidate won the election. The recording was cut short when RW6 was responding to the question whether the fact that they were "campaigning" for the PF presidential candidate to win the election, did not have a trickle-down effect in the sense that they were then indirectly "campaigning" for all other PF candidates. RW6 did not

completely answer the question due to the recording being cut short.

Further, in the same recordings marked "DC7" and "DC8", RW6 said that the 1<sup>st</sup> Respondent called him on his mobile phone requesting to meet him. RW6 further testified that the 1<sup>st</sup> Respondent asked him and the other GGOZA members to help him win the election.

In view of the audio evidence produced, I am of the considered view that GGOZA was affiliated to the PF and that the audio evidence confirms the allegations made by PW15, PW16 and PW22 because RW6 stated, in the said recording, that their role was to ensure that the PF presidential candidate wins the 2021, elections. In ensuring that the PF President wins, RW6 stated that they distributed mealie meal and cooked on polling day in all wards among other things.

In the case of **Sunday Chitungu Maluba v Rodgers Mwewa and Another Appeal No. 4 of 2017<sup>29</sup>**, the Constitutional Court stated at J45 that:

**"Under the EPA, 2016 an allegation of misconduct is proved only where it is shown that it was done by the candidate or their election or polling agent or by someone**

**else but with the candidate or their agent's knowledge and consent or approval."**

In the case of **Akashambatwa Mbikusita Lewanika and Others v Fredrick Titus Jacob Chiluba (1998) Z.R 79**, which case has been cited with approval by the Constitutional Court in the case of **Poniso Njeulu v Mubika Mubika Appeal NO.9 of 2017<sup>30</sup>**, the Supreme Court stated that:

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

In view of the above cited cases, it is clear that GGOZA was affiliated to the PF although their main aim was for the PF presidential candidate to win the election. RW6 clearly stated that they were not concerned with who would win the parliamentary or local seats. I am therefore of the considered view that even though there is proof that GGOZA distributed mealie meal three days before elections and cooked meals on polling day in all 10 wards, which in turn would prove that there were widespread malpractices which prevented or may have prevented the majority of voters in the constituency from electing the candidate whom they preferred, there was no proof that the said malpractices by GGOZA were linked to the 1<sup>st</sup> Respondent or to his agents. There

was no proof that GGOZA was an agent of the 1<sup>st</sup> Respondent. Since RW6 categorically stated that they were not concerned with the parliamentary candidate, I am of the considered opinion that GGOZA did not work with the knowledge and consent or approval of the 1<sup>st</sup> Respondent or his agents. It is in light of the above that this allegation also fails.

I however wish to reiterate that the timing of the activities of GGOZA in giving out mealie meal and cooking meals on poll day in all 10 wards was illegal even though I find such malpractices were not committed by the 1<sup>st</sup> Respondent directly or indirectly.

In conclusion, I will re-iterate the case of **Changano Kakoma Charles v Kundoti Mulonda**<sup>22</sup>, where the Constitutional Court stated at J30 that:


**"In election petitions, the burden of proof lies on a petitioner and where the trial court finds his evidence unconvincing or where his evidence does not prove the allegation to the required high standard, it matters not the evidence proffered by the other party, the case will fail."**

I accordingly determine that the 1<sup>st</sup> Respondent was **DULY ELECTED** as member of Parliament for Bangweulu Constituency in the election held on 12<sup>th</sup> August, 2021.

The Petition is unsuccessful and is dismissed. I am however of the considered view that the challenge to the election of the 1<sup>st</sup> Respondent was not frivolous as the petitioners raised pertinent issues in connection with the electoral process. It is only fair therefore, that each of the parties bear their own costs.

Leave to appeal is granted.

Delivered this 24<sup>th</sup> day of November, 2021, at Lusaka

  
.....  
**Elita Phiri Mwikisa**  
**JUDGE**

