

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Constitutional Jurisdiction)



2021/HP/EP/00052

IN THE MATTER OF:

A PARLIAMENTARY ELECTION PETITION  
FOR LUKASHYA CONSTITUENCY SITUATE IN  
THE NORTHERN PROVINCE OF THE  
REPUBLIC OF ZAMBIA HELD ON 12<sup>TH</sup>  
AUGUST, 2021

IN THE MATTER OF:

ARTICLE 73(1) OF THE CONSTITUTION  
CHAPTER 1 OF THE LAWS OF ZAMBIA AS  
READ WITH SECTION 98(1) OF THE  
ELECTORAL PROCESS ACT NUMBER 35 OF  
2016

IN THE MATTER OF:

SECTION 27, 69, 70, 83, AND 97 OF THE  
ELECTORAL PROCESS ACT NO. 35 OF 2016

IN THE MATTER OF:

THE ELECTORAL PETITION RULES  
STATUTORY INSTRUMENT NUMBER 426 OF  
1968 (AS AMENDED)

BETWEEN:

DAVIES MULENGA

PETITIONER

AND

GEORGE CHISANGA (MALE)

1<sup>ST</sup> RESPONDENT

THE ELECTORAL COMMISSION OF ZAMBIA

2<sup>ND</sup> RESPONDENT

*Before the Honourable Mr. Justice M. L. Zulu in Open Court on the*  
*23<sup>rd</sup> day of ... NOV ... 2021.*

*For the Petitioner: Mr. L. Kabaso with Ms. D. Hangwemu, Messrs. KBF &  
Partners*

*For the 1<sup>st</sup> Respondent: Mr. P. Songolo, Messrs. Philsong Songolo, &  
Partners*

*For the 2<sup>nd</sup> Respondent: Mr. A. Mbambara, holding a brief for Mr. S.  
Siwila, Messrs. Mambwe, Siwila, & Lisimba  
Advocates*

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## J U D G M E N T

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### Cases referred to:

1. Mubika Mubika v. Poniso Njeulu(SCZ Appeal No. 114 of 2007)
2. Mazoka v. Mwanawasa(2005) Z.R 138(S.C)
3. Mbolowa Sibulwa v.Kaliye Mandandi(Selected Judgment No. 25 of 2018)
4. Hebert Shabula v Greyford Monde( SCZ Appeal No. 13 of 2016)
5. Zulu v Kalima( SCZ Appeal No. 141 of 2012)
6. Akashambatwa Mbikusita Lewanika and 4 others vs Fredrick Jacob Titus Chiluba (1998) ZR 79
7. Abuid Kawanga v Elijah Muchima(CCZ Appeal No. 8 of 2017)
8. Steven Masumba v. Elliot Kamondo(CCZ Appeal No 53 of 2017)
9. Austin Liato v. Sitwala Sitwala( CCZ Appeal No. 3 of 2017)
10. Kamba Saleh Moses v. Namuyangu Jennifer-Election Petition Appeal No. 0027 of 2011
11. Siamunene v. Siabalo (Selected Judgement No. 58 of 2017)

### Legislation and Works referred to:

1. The Constitution of Zambia (Amendment) Act No. 2 of 2016
2. The Electoral Process Act No. 35 of 2016
3. The Electoral (Code of Conduct) Regulations, 2016.
4. The Electoral Process (General) Regulations, 2016
5. The Halsbury's Laws of England, 4<sup>th</sup> edition, Volume 15

## INTRODUCTION

Mulenga Davies(the Petitioner) presented this petition challenging the election of George Chisanga(1<sup>st</sup> Respondent) as Member of

Parliament (MP) for Lukashya Constituency. The petition was brought pursuant to Article 73(1) of the Constitution as read with Sections 98(c), 27, 69, 70, 83, 87, and 97 of the Electoral Process Act Number 35 of 2016(EPA) and the Electoral Petition Rules Statutory Instrument number 426 of 1968 as amended.

### **BACKGROUND**

The background to this petition is that Petitioner and the 1<sup>st</sup> Respondent were candidates in the just ended Parliamentary General Election for Lukashya Constituency held on 12<sup>th</sup> August, 2021. The Petitioner contested the election on the United Party for National Development (UPND) ticket, while the Respondent contested the election on the Patriotic Front (PF) ticket. At the end of the poll, the 1<sup>st</sup> Respondent was declared the winner with 27,437 votes, while the Petitioner polled 10, 303 votes.

Dissatisfied with the election results, the Petitioner petitioned the High Court on 27<sup>th</sup> August, 2021, seeking the nullification of the election of the 1<sup>st</sup> Respondent as the MP for Lukashya Constituency on the following grounds:

**GROUND 1: CONTRAVENTION OF SECTION 81 OF THE  
ELECTORAL PROCESS ACT.**

The Petitioner alleges that the 1<sup>st</sup> Respondent and Mathew Mumba used a Hilux and Rosa branded with the 1<sup>st</sup> Respondent as the MP for Lukashya Constituency for campaigns. He also alleged that Mathews Mumba was collecting voter's cards from electorates in exchange for foodstuff, fertilizer, and promises to deliver the preceding items.

**GROUND 2: CONTRAVENTION OF SECTION 27 OF THE  
ELECTORAL PROCESS ACT**

The Petitioner claims that contrary to the Electoral Commission of Zambia (ECZ) guidelines that banned rallies, the 1<sup>st</sup> Respondent, Geoffrey Bwalya Mwamba and his agents held rallies in Lukashya while the authorities stopped the Petitioner. The Petitioner alleges that public media: Zambia News and Information Services(ZANIS), and Zambia National Broadcasting Corporation only provided coverage to the 1<sup>st</sup> Respondent. He also states that the police blocked President Hichilema from entering Lukashya to support the Petitioner. The Petitioner alleges that the 1<sup>st</sup> Respondent's agents

beat up his agents for putting up posters and burnt one of the vehicles he donated.

**GROUND 3: CONTRAVENTION UNDER SECTION 83 OF THE ELECTORAL PROCESS ACT**

The Petitioner alleges that the 1<sup>st</sup> Respondent's agents assaulted several of his members in the 10 wards in Lukashya, which instilled fear in the electorates. The following were incidences of assault according to the wards in the Constituency: Damashuz Simpasa, Mayembe Christopher, Kennedy Mulenga, Lawrence Kabwe, Kangwa, Tamba, Tamba Berrice in Kupumaula ward; Haggai Musonda in Lusenga ward; Joseph in Mukanga ward; Kingsly in Chibundu ward; and Dorothy Chisanga, John Chisanga, and Michael Chisanga in Musowa ward.

An affidavit supported the petition. The Petitioner deposed that the electoral process was conducted in a manner non-compliant with the EPA resulting in the declaration of the 1<sup>st</sup> Respondent as the winner. He reiterated the grounds in the petition as the basis for seeking nullification of the 1<sup>st</sup> Respondent's election.

The 1<sup>st</sup> Respondent filed into Court an answer together with a supporting affidavit on 10<sup>th</sup> September, 2021. In summary, the 1<sup>st</sup> Respondent denies that his officials were collecting voter's cards in exchange for food and fertilizer. He states that the video showing members of his party returning voter's cards to the electorate does not relate to him or his election agent in Lukashya. The Respondent avers that his officials were only creating branch registers.

Concerning the allegation of holding rallies in breach of the Covid guidelines, the 1<sup>st</sup> Respondent avers that Geoffrey Mwamba was not his election agent or polling agent. He thus could not be answerable for any allegations on his behalf. He also deposed that he could not answer for the public media or the alleged police action blocking President Hichilema from entering Lukashya.

The 1<sup>st</sup> Respondent asserts that none of his agents, as defined by law, were involved in any alleged incidences of assault or the burning of the Petitioner's vehicle. He avers that the UPND petitioner in Malole claims that the candidate in Malole burnt the vehicle. He also asserts that neither he nor his election and polling agent was near the incidences. The 1<sup>st</sup> Respondent further avers

that he did not consent to or approve the perpetuation of any violence in Lukashya. He asserts that he was aware of a UPND cadre apprehended and taken to the police concerning removing his campaign posters.

The 1<sup>st</sup> Respondent asserts that Kings and Kalifa, identified as some of the perpetrators of the violence, were unknown to him and that he did not attend to the release of Kings from police custody. He further states that he withdrew from campaigns on 4<sup>th</sup> July, 2021, after testing positive for Covid 19, and only returned on 27<sup>th</sup> July, 2021. Pertaining to Michael Chisanga, the 1<sup>st</sup> Respondent asserts that the police only restrained the same from entering the polling station to witness vote counting because he was drunk. The 1<sup>st</sup> Respondent avers that Burton Bwalya was a councilor in the PF and would have identified the 1<sup>st</sup> Respondent's agents who allegedly attacked him. He denies the allegation of the assault of Dorothy Chisanga and John Chisanga at Moboshi polling station in Musowa and states that said polling station does not exist.

The 1<sup>st</sup> Respondent seeks the following orders:

- I. A declaration that the 1<sup>st</sup> Respondent was duly elected as the Member of Parliament for Lukashya Parliamentary Constituency;
- II. For a declaration that the said election was neither void nor a nullity and that the election results as presented by the 2<sup>nd</sup> Respondent be upheld as accurate;
- III. For an order that the Petitioner is not entitled to any of the reliefs sought; and
- IV. Costs of these proceedings.

The 2<sup>nd</sup> Respondent filed its answer into the court and supporting affidavit on 20<sup>th</sup> September, 2021, after being granted leave to file the answer out of time. The 2<sup>nd</sup> Respondent denied the allegations under paragraph 4 of the petition that the ballot boxes under streams 4 and 5 at Chisanga Market polling station contained 536 ballots instead of 450. The 2<sup>nd</sup> Respondent averred that under stream 4, 503 ballot papers were used while 534 ballots were used under stream 5. The 2<sup>nd</sup> Respondent put the Petitioner to strict proof.

#### EVIDENCE AT TRIAL

The petition was heard at Kasama High Court. The hearing commenced on 20<sup>th</sup> September, 2021, and concluded on 24<sup>th</sup>



September, 2021. A total of thirteen witnesses and the Petitioner testified in support of the petition. The 1<sup>st</sup> Respondent also testified and called six other witnesses.

The Petitioner, Davis Kabwe Mulenga, was the first witness, and he was PW1. He testified that he was a candidate for Lukashya Constituency, Kasama District, Northern Province, in the just-ended General elections under the UPND. He told the Court that Lukashya Constituency is the second biggest and one of the remotest places in Zambia. It shares boundaries with Malole, Kasama Central, and Lubansenshi Constituency. The Constituency has ten (10) wards: Kapongolo, Chibundu, Chumba, Kupumaula, Chirwa, Lubaluwa, Kapanda, Lusenga, Mukanga, and Musowa.

PW1 testified that the Constituency has 64, 000 registered voters; Kupumaula ward with over 19,000 registered voters, Chumba 11,000 plus registered voters, and Chibundu ward with over 7,000 accounting for half of the registered voters. PW1 testified that the Constituency is undeveloped with one police post and no hospitals. He explained that he was mobilizing for their Party President's visit of the Constituency on a date he could not recall. PW1 and some

youths from Lukashya traveled to Million Guest House in Kasama Central to meet their President, and after that, they proceeded on a campaign trail of Lukashya. PW1 was informed that a Noah belonging to their youth from Lukashya left to guard the guest house had been burnt. He told the Court that the Candidate for Malole hired the Hilux, but they would share vehicles as the opposition. PW1 testified that Chansa Mwelwa, the driver of the Hilux, joined him in Kasama to provide campaign support. He testified that Chansa informed him that some people wearing PF regalia followed him to his girlfriend's house and burnt his Hilux in Lualuo, a ward in Lukashya. The matter was reported to the police, and arrests were made.

PW1 testified that when he started campaigns, he saw cadres with 4 vehicles; 2 Toyota Hilux, a Rosa, and a Land Cruiser belonging to the 1<sup>st</sup> Respondent. The Land Cruiser and the Hilux were branded with the 1<sup>st</sup> Respondent's image. He testified that he saw the cadres, one of whom he identified as Jani, moving with mealie meal and cooking oil trying to woo people to vote for the 1<sup>st</sup> Respondent. The cadres were also buying voter's cards. PW1 told the Court that

the 1<sup>st</sup> Respondent's election agent Mathew Mumba led a group that went around asking people to surrender their voter's cards and National Registration Cards (NRC) for purposes of entering their details in a register marked GC219. They promised to give these people fertilizer and mealie meal if they voted for the 1<sup>st</sup> Respondent.

PW1 testified that when the ECZ issued the guidelines, it assured them of fair treatment by the Police, Zambia National Broadcasting Corporation (ZNBC), and Zambia News Information Services (ZANIS). However, these media houses only covered the 1<sup>st</sup> Respondent despite engaging them through his Provincial Information Publicity Secretary (IPS), Christopher Bwalya. PW1 testified that the police only protected the 1<sup>st</sup> Respondent. PW1 told the Court that he was not allowed to campaign freely in some areas; the police asked him to leave Kupumaula and Chiba because a group of people from the 1<sup>st</sup> Respondent wanted to attack him. He testified that the police also denied his Party President, who had traveled to offer him support access to Lukashya. It was his evidence that this affected him badly.

PW1 testified that the 1<sup>st</sup> Respondent's election agent, Mathews Mumba, and his team would remove his posters and beat up his supporters during the campaigns. PW1 explained that food distribution influenced the electorates in Lukashya to vote for the 1<sup>st</sup> Respondent while the violence intimidated them. He told the Court that these incidences contributed to his loss. PW1 explained that he expected fair play from the 1<sup>st</sup> Respondent and intervention from the 2<sup>nd</sup> Respondent as the institution in charge of the elections.

When cross-examined, PW1 confirmed that he filed his nomination on 17<sup>th</sup> May, 2021, and he registered one election agent, Stephen Sichilongo. He confirmed that Lukashya Constituency was vast. He confirmed that he allocated 3 vehicles to the campaign and his campaign team consisted of his election agent, campaign manager, and about 100 people. PW1 told the Court that the UPND had party structures at the Constituency, Ward, Branch, and Section level, but they did not campaign for him because they only existed for the interaction of members. PW1 confirmed that he and the party secretariat provided the funds to purchase food to feed his

campaign team and that there was nothing wrong with someone providing resources to feed his people.

PW1 told the Court that his party kept registers for their membership in the various party structures, and there was nothing wrong with this. He confirmed that he did not see Mathews Mumba bargaining with the electorates to surrender their voter's cards or distributing mealie meal. PW1 testified that he saw Mathews Mumba on a date he could not remember in August at Nkole Mfuma Market in Chibundu ward, giving the electorates money.

PW1 confirmed that ECZ issued an election timetable allocating campaign areas to the various political parties at any one given time to avoid confrontations. When asked how Mathews Mumba was in Chibundu when the timetable showed that the PF was in Kupumaula ward, PW1 maintained that the PF did not follow the timetable. PW1 insisted that he physically went to ECZ and to the police to complain about the failure by PF to follow the timetable. He confirmed that he had nothing in writing to confirm that he made such a complaint to ECZ.

PW1 confirmed that he was a member of PF until July, 2020. He denied that Mathews Mumba and his team were registering their members because the PF registered their members using membership cards, not by getting their voter's cards, NRCs, and giving them money. PW1 confirmed that he did not see 1<sup>st</sup> Respondent getting voter's cards, distributing money, mealie meal, and cooking oil. PW1 confirmed that GBM was not the 1<sup>st</sup> Respondent's agent. He confirmed that he did not see the 1<sup>st</sup> Respondent assault any of the people mentioned in his petition. He confirmed that he did not see Mathews Mumba distribute mealie meal, cooking oil, and fertilizer.

PW1 confirmed that ECZ canceled campaigns because of Covid, and as UPND, they organized road shows. It was PW1's evidence that Geoffrey Bwalya Mwaba was holding rallies in Kupumaula at Chisanga Market. PW1 confirmed that GBM was not the 1<sup>st</sup> Respondent's election agent. He confirmed that he did not write a letter to the Conflict Management Committee under ECZ to complain that the police stopped them from campaigning. He confirmed that he had no evidence showing that ZANIS or ZNBC

media houses covered the 1<sup>st</sup> Respondent only. PW1 told the Court that the police and not the 1<sup>st</sup> Respondent prevented the UPND Party President from entering Lukashya to support his campaign.

He confirmed that he did not know the people that beat up Button Bwalya. PW1 confirmed that according to the campaign timetable, the PF was not in Kupumaula ward when Simpasa was beaten. He maintained that the PF did not follow the timetable and that the perpetrators were Part of Mathew Mumba's team and were in police custody. He confirmed that he never saw Mathews Mumba beat up Simpasa, Christopher Mayempe, Kennedy Mulenga, his wife, Lawrence Kabwe, Tambatamba Berrice, Haggai Musonda, Joseph, and Dorothy Chisanga. PW1 could not confirm whether Kings Bwalya and Kalifa were the 1<sup>st</sup> Respondent's election agents. PW1 also confirmed that he had no medical or police report to show that Haggai Musonda, Joseph, Kingsley, Dorothy Chisanga, John Chisanga, and Michael Chisanga were beaten.

PW1 confirmed that he had predominantly withdrawn his case against the 2<sup>nd</sup> Respondent but insisted that he still had a complaint against them for failing to act on his verbal complaints.

He confirmed that there was nothing in writing to prove that he made any complaints. PW1 also confirmed that there was no averment in his Affidavit that he made any complaint to ECZ.

In re-examination, PW1 confirmed that the Parties did not follow the election timetable after the death of Dr. Kenneth Kaunda. He confirmed that he was withdrawing the case against ECZ for the Ballot papers.

Lawrence Kabwe, a businessman, aged 26, resident in Chisanga in Chief Mwaba village, was the Petitioner's second witness, and he testified as PW2. PW2 told the Court that on 11<sup>th</sup> June, 2021, Mathews Mumba, also known as Zame, King, Chimwemwe, Bedick, and other PF cadres who were clad in PF regalia, went to the Market where he was working. They removed the UPND posters he had stuck on the wall, broke the shops' doors, and destroyed the radio because he played UPND songs. PW1 testified that he was beaten up and left for dead. It was his evidence that he reported the incident to the police.

During cross-examination, PW2 confirmed that he was beaten on 11<sup>th</sup> June, 2021. It was his evidence that the medical report was not



signed because he had no medical fees. He confirmed that he was a member of the UPND tasked to ensure the growth of the party. He confirmed that he wanted the Petitioner to win. PW2 maintained that Kings beat him up while Mathew Mumba, Bedrick, Chimwemwe, and others surrounded him. PW1 confirmed that he was a registered voter at Chisanga Polling Station, Kupumaula ward. PW2 confirmed that according to the campaign timetable, between 11<sup>th</sup> and 15<sup>th</sup> June, 2021, the PF was in Chamba ward. He confirmed that the 1<sup>st</sup> Respondent was not there present when he was beaten. He confirmed that he was a UPND member, and he wanted the Petitioner to win.

The Petitioner's third Witness was Tamba Tamba Berrice Katongo, a small-scale farmer aged 52 resident of Chitamba Village in Chief Mwamba's Chiefdom, and he testified as PW3. He told the Court that he belonged to a group called Community Crimes Prevention. He testified that on 6<sup>th</sup> July, 2021 around 19 hours, while charging his phone at Mako Market in Chitamba village, he saw Kingsley Bwalya, a member of the PF of the same village. He testified that Kingsley told him that he and members of the UPND were foolish

and that PW3 would chase the young men he sent to sell Marijuana.

Kingsley and 8 others then dragged him behind the shops where he found Christopher Mayembe, whom they had also beaten. Kingsley picked a brick and hit him above his left eye. They then threatened him with a knife and told him they would kill him for belonging to the UPND. He reported the matter to Kasama Central Police, and the police gave him documents referring him to Kasama General Hospital. PW3 testified that he became afraid of taking part in the election. He testified that Mr. Chisanga was not present when they beat him up, but his agents were the ones who assaulted him. He identified the people who injured him as belonging to the PF because they accompanied the 1<sup>st</sup> Respondent on his campaigns.

During cross-examination, PW3 confirmed that he is a member of UPND. It was PW3's evidence that Kings was the 1<sup>st</sup> Respondent's agent because they were always together. PW3 confirmed that according to the ECZ timetable, the PF was campaigning in Chiba on 6<sup>th</sup> July, 2021, not Kupumaula, when he was beaten.

Christopher Mayembe, aged 42, a farmer resident in Senior Chief Chitamba's Village, was the Petitioner's fourth witness, and he testified as PW4. He told the Court that on 6<sup>th</sup> July, 2021, at 18:30 hours, while working as a member of the Crime and Prevention Unit, PF cadres beat him up at Mako Market. He identified Kingsley Bwalya as the group leader of the cadres. When he asked why he was beating him, he told him that it was because he was supporting UPND. He managed to escape but was bleeding from the mouth. The group started following him with machetes. He then walked all night to Kasama Police to report the incident. The police issued him with a medical report and referred him to the hospital. He testified that the hospital did not stamp the medical report because he did not have money to have it signed. He confirmed that the 1<sup>st</sup> Respondent and his agent were not present when he was attacked, but his group beat him up.

During cross-examination, PW4 confirmed that he was a member of UPND. He confirmed that the 1<sup>st</sup> Respondent was not present when he was attacked, but Kings and the group assaulted him. PW1 confirmed he was a polling agent for the UPND at Lualuo Ward. He

also confirmed that the 1<sup>st</sup> Respondent had 85 votes at Lualuo Ward, and the Petitioner also had votes despite being beaten. He maintained that the 1<sup>st</sup> Respondent knew Kingsley because he was the leader of the PF cadres. PW3 could not confirm whether Kingsley was the 1<sup>st</sup> Respondent's election agent.

The Petitioner's Fifth witness was Moses Mulenga, a teacher at Kabila Primary School, aged 40, of house number 1 Kabila Compound, in Munkonge Chiefdom Kasama District. He testified that on 11<sup>th</sup> August 2021, he asked for a lift from Webby Katoma, the Vice-Chairperson of the Parent Teachers' Committee and the Vice-Chairperson for the PF. He testified that among the people he saw, he identified Mathew Mumba, alias, Zami. He testified that the 1<sup>st</sup> Respondent was not present. He explained that when they reached Kapongolo, he found nine cows, three of which had been slaughtered. PW5 testified that Mathew Mumba gave them, i.e., the people of Lusenga ward, one cow, and they also collected 10 litres of cooking oil and chickens. After receiving these items, they went to Kabila, where the items were received by PF members under the Lukashya MP and shared according to polling stations. He testified

that the people were delighted, and they indicated that they would vote for those people.

In cross-examination, PW5 confirmed that Mathew Mumba was at Kapongolo on 11<sup>th</sup> August. PW5 confirmed that Lukashya Constituency was very big and that it was not possible for a candidate and one election agent to campaign the entire constituency. PW5 testified the people that received the food items were the party officials and villagers. He testified that Mr. and Mrs. Mwebo received the items in Lusenga Ward and started distributing them to the villagers.

PW5 confirmed that according to the ECZ campaign timetable, the PF was in Kupumaula on 11<sup>th</sup> August 2021. He maintained that there was a distance of 20 Kilometers between Kapongolo and Kupumaula, and Mathew Mumba could be in Kapongolo on that date. He also denied receiving any of the meat at Kabila or Lusenga Ward. PW5 insisted he only received a lift but denied getting in the car to attend a political meeting. He insisted that he only asked for transport from Kapongolo to Kabila, but he was from Lusenga Ward. PW5 testified that the party booked two vehicles to transport

party officials and voters to the polling stations. He maintained that he observed the food distribution according to polling stations within the minute he stood on the roadside. He testified that he did not know the number of people who benefited.

The Petitioner's sixth witness was Angela Mwanakatwe, a businesswoman aged 31, resident in Tazara, Kupumaula Ward, and she testified as PW6. She testified that sometime in August, she was home when the 1<sup>st</sup> Respondent and three others approached her; one of them had dreadlocks. The four asked her if she had an NRC and a voter's card. When she produced these documents, they entered the details in a book that they indicated was for members of the PF who would vote for them. They gave her a K100, and after a few days, the 1<sup>st</sup> Respondent and his companions delivered a bag of mealie meal, cooking oil, and meat to her house. PW6 told the Court that they told her to vote for the PF and that there would be cameras. It was her evidence that because of that, she was scared. PW6 testified that her neighbours witnessed when these incidences happened.

Under cross-examination, PW6 confirmed that she was a registered voter at Kapongolo in Kupumaula Ward. She stated that five people visited her house. PW6 testified that she could not identify the 15 neighbours who witnessed the 1<sup>st</sup> Respondent giving her the food items but for one called Mulenga's mother because she was new in the area and was usually at the Market. PW6 testified that she had no evidence to prove that she received foodstuff and money. In contradictory evidence, PW6 testified that she became a member of the PF after the visit but again testified that she was already PF because the 1<sup>st</sup> Respondent was in office. PW6 testified that she voted in the election.

In re-examination, PW6 testified that she became a member of the PF after her details were taken down.

Chrispin Kapinda, aged 32, a radio repairer, resident in Chiba Village, under Chief Mwaba, was the Petitioner's seventh witness, and he was PW7. He testified that he arrived at Modern Market on 9<sup>th</sup> August and found people gathered. People were submitting their NRC and voters cards, and a person noted down their details. The person then told him that he would be given mealie meal, cooking

oil, and money by GBM and the 1<sup>st</sup> Respondent if he submitted his NRC and voters card. PW7 testified that GBM and the 1<sup>st</sup> Respondent only showed up at the Market on Saturday. He told the Court that at the instruction of the former, the latter ordered his people to remove the Petitioner's posters, and in the process, the 1<sup>st</sup> Respondent's people broke his TV.

During cross-examination, PW7 confirmed that 9<sup>th</sup> August was a Monday. He disputed that Saturday was after the elections and maintained that the calendar was inaccurate. He denied that the information the PF was collecting was for compiling a branch register. PW7 testified that the people collecting the information were selective with whom to register, and they told him that they could not register him because he was UPND. He testified that even others who belong to other political parties were not recruited. He disputed that the 1<sup>st</sup> Respondent was conducting road shows in Kupumaula on 9<sup>th</sup> August. He testified that he was very bitter because of the Television they broke.

In re-examination, PW7 testified that he was unsure when GBM and the 1<sup>st</sup> Respondent visited the Market.



The Petitioner's eighth witness was Mutale Mathews, aged 19, a grade 8 pupil of Chitambo Village, and he testified as PW8. The testimony of PW8 was that he went to Chisanga Market to buy a sim card in August in the company of his three friends. He had with him his NRC and voter's card. It was PW1's testimony that the 1<sup>st</sup> Respondent and a man with dreadlocks approached them and inquired whether they had voter's cards. After PW8 responded in the affirmative, the 1<sup>st</sup> Respondent then gave him a 100 and told him to vote, or he would be beaten because there were cameras to watch him. PW8 told the Court that he did not vote because he was afraid.

During cross-examination, PW8 testified that he met the 1<sup>st</sup> Respondent around 3<sup>rd</sup> August at Chisanga Market in Kupumaula Ward. He refuted that the 1<sup>st</sup> Respondent was not in Kupumaula Ward on that date. He testified that the 1<sup>st</sup> Respondent told him to vote for the PF. He confirmed that there was no other evidence to prove that the 1<sup>st</sup> Respondent gave him money. He testified that he had stopped school in grade 1 because his sponsor died.

The Petitioner's ninth Witness was Sikazwe Shemu, aged 23, a businessman and a resident of Chikumanino residential area in Lupa Ward, Kasama Central. He testified as PW9. PW9 told the Court that on 11<sup>th</sup> August, 2021, around 11:00 to 13:00 hours, he went to a building behind Kasama District Civic Centre to photocopy his NRC. He found some people arranging voter's cards and NRCs but assumed they were polling agents for the accreditation exercise at the Civic Center during that week. He then heard a voice of a person he came to know as Patrick telling the people to vote for the 1<sup>st</sup> Respondent as a Member of Parliament Lukashya Constituency. He testified that the NRC and Voter's card numbers were noted down in a book titled "Alewelelapo PF."

PW9 testified that the people were told there would be cameras at the polling stations, and those who didn't vote for the 1<sup>st</sup> Respondent would not receive mealie meal anymore. He then reported the matter to the police station nearby. After that, he called his leaders, and they went back to the building and took two videos. They then went to the police and submitted the voter's cards and NRCs to the Chief Inspector's Office.

When cross-examined, PW9 testified that he took the video in a building in Kasama Central Constituency and not Lukashya Constituency. He confirmed that no one mentioned the 1<sup>st</sup> Respondent in the videos, and he could not confirm whether Patrick was the 1<sup>st</sup> Respondent's election agent. PW9 confirmed that Kasama District had two constituencies; Kasama Central and Lukashya District. He testified that the video was linked to Lukashya because Patrick was from Lukashya. PW9 insisted that some people in the video were from Lukashya, and the voter's cards could confirm this. PW1 confirmed that he did not share the complaint letter with the Kasama District Conflict Resolution Committee under ECZ.

PW9 testified that political parties may register their members when preparing for elections and ask for NRCs and voter's cards. He testified that he took issue with the distribution of mealie meal to those registering. He confirmed that in the videos, no one was distributing mealie meal. He confirmed that it was not wrong for a political party to give mealie meal to those campaigning for it in distant places. He confirmed that he was a leader in the UPND.

Detective Chief Inspector Enock Y. Mwenda, aged 49, based at Kasama Police Station, was the Petitioner's Subpoenaed witness, and he was PW10. PW10 confirmed receiving a report on 11<sup>th</sup> August 2021 from PW9. He testified that 21 NRCs and 20 Voter's cards were taken to the police. He opened an inquiry and returned the voter's cards to the owners. He testified that the matter was still under investigation. PW10 confirmed an operation blocking President Hichilema from entering Lukashya Constituency, but he was not there. PW10 told the Court that on 6<sup>th</sup> July, 2021, they received a report of an assault by suspected PF cadres from Christopher Mayembe and Tamba Tamba. He testified that the investigations concerning Tamba Tamba Berrice were ongoing.

PW10's evidence was not clear on where the Toyota Hilux and the Noah were burnt. He testified that a Toyota Noah and a Toyota Hilux were burnt; the Hilux in Central Town in Kasama Central, but he could not confirm whether the other was in New town or Lualuo. He was also not sure whether Lualuo was in Lukashya.

When cross-examined, PW10 confirmed that the Hilux was burnt in New Town, but he could not confirm with certainty whether that

was in Kasama Central or Lukashya, but the Noah was burnt in Kasama Central. He confirmed that the police have made an arrest concerning the Noah, but he did not know who was arrested.

Michael Chisanga, aged 53, a resident of Kabosha Village under Chief Nkole, was the Petitioner's 11<sup>th</sup> witness, and he testified as PW11. PW11 told the Court that he was Secretary for Mulobola Parish. PW11 testified that on 9<sup>th</sup> August, Joseph Chitembo, the ward councilor, and Jackson Kalama delivered two boats to Musowa ward on behalf of the 1<sup>st</sup> Respondent, who was unwell. The two told the people that the 1<sup>st</sup> Respondent had sent them and asked them to ask the people to vote for him. It was PW11's evidence that previously, the people used canoes to cross the river.

PW11 testified that PF members attacked him on the polling day for inquiring from the presiding officer and the police officer on the unstamped ballot papers discovered at Mbusa Polling station.

Under cross-examination, PW11 confirmed that he was a UPND Chairperson. He confirmed that neither the 1<sup>st</sup> Respondent nor his election agent Mathews Mumba were at the meeting on 9<sup>th</sup> August. He disputed that the boats from the Disaster Management Unit

because the people that took the boats told them the 1<sup>st</sup> Respondent sent them.

The Petitioner's twelfth witness was Justin Katongo, a farmer, aged 49, and a resident of Kapanda Village under Chief Munkonge in Kapanda Ward, and he testified as PW12. He told the Court that he was at Kapanda market, where the 1<sup>st</sup> Respondent addressed a meeting in the first week of August. The 1<sup>st</sup> Respondent promised those who would vote for him fertilizer and money through social cash transfer. PW12 testified that the people were happy. The councilor distributed mealie meal and meat to the villagers two days later on behalf of the 1<sup>st</sup> Respondent.

When cross-examined, he confirmed that Kapanda ward was about 100 kilometers from Kupumaula ward. He disputed that the 1<sup>st</sup> Respondent was in Kupumaula ward because the ECZ timetable was not followed. He confirmed that he did not have the timetable and never saw it to know whether it was followed or not. He maintained that the councilor brought meat and mealie meal which he distributed to the 1<sup>st</sup> Respondent's foot soldiers, who distributed the food to the villagers. He testified that about 200 bags of mealie

meal were delivered to the ward. He confirmed that the 1<sup>st</sup> Respondent was not present when the food was distributed.

The Petitioner's last witness was Marcel Mukuka, a gardener aged 28 of Kasonde Chisuma village in Lualuo ward, and he testified as PW13. He told the Court that on 12<sup>th</sup> August, Mathews Mumba went to Kasonde Chisuma with a Fuso and picked the voters who were going to vote.

When cross-examined, PW13 confirmed that he was a member of the UPND. He maintained that 1<sup>st</sup> Respondent was not only ferrying his members but the whole village. He testified that the canter belonged to Mathews Mumba, and he saw him that day. PW13 told the Court that about five people, including Mathews Mumba, forced them to get on the vehicle. He testified that they were not armed. He told the Court that many people got on the vehicle.

This marked the close of the Petitioner's case.

The 1<sup>st</sup> Respondent called seven witnesses in support of his answer.

The first witness was Felikings Sikeliya, aged 52, a carpenter

resident in Tazara, Kupumaula Ward, Lukashya Constituency. He testified as RW1.

He testified that he was a member of the PF in Lukashya, the IPS, the person in charge of food and campaign materials during the campaigns, and chairman of the campaign committee Kupumaula ward. He explained that he was part of a chairman of a committee of five people, elected from Lukashya in charge of logistics and distribution within that constituency. RW1 was the chairman, and he was assisted by Ignatius Musonda, the Vice Secretary Adolvista Chipasha, the women's treasurer, Jackson Kalama, Vice Secretary, Miselo Mwila, the youth treasurer.

RW1 told the Court that their focus was on the food that would be eaten during the campaign, transportation, and campaign materials. They identified a place where they kept the materials before distribution in Kupumaula ward at Kapolongo school. To service the ten wards, he chose three representatives from the constituency, district, and ward level, respectively. The representatives were tasked with setting up command posts, and he gave them food to carry with them to these posts. RW1 testified that



the 1<sup>st</sup> Respondent and the Mp for Kasama Central, Sibongile Mwamba bought ten cows, 200, 25 kg bags of mealie meal, ten buckets of cooking oil, salt, tomatoes, and onions on 10<sup>th</sup> August.

RW1 told the Court that he started distributing the food to the ten wards on 11<sup>th</sup> August and not Mathews Mumba, the Constituency Chairman. He gave each ward two bags of mealie meal, a bucket of cooking oil. Five cows were for Kasama Central, and the other five Lukashya and one cow was shared between two wards.

RW1 testified that he was in charge of organizing campaigns in Kupumaula for the 1<sup>st</sup> Respondent and Mathews Mumba, the chairman. He arranged door-to-door campaigns due to Covid, and from 9<sup>th</sup> to 11<sup>th</sup> August, road shows started around 14 to 15 hours and passed through markets. The people on the road show included the 1<sup>st</sup> Respondent, the Mayor, the councilor, and the chairperson. He testified that the 1<sup>st</sup> Respondent could not leave the road show where a group of people followed him to stop by Angela Mwanakatwe's house and give her a K100. He testified that the ward chairperson and branch chairperson were responsible for

registering people at polling stations and not Mathews Mumba, the Chairperson or the 1<sup>st</sup> Respondent who were very senior.

In cross-examination, RW1 testified that he sent three representatives to each ward three weeks before the election. The representatives would work with 24 ward officials and 24 branch chairmen. The last distribution of foodstuff to these representatives was on 11<sup>th</sup> August. In contradictory evidence, RW1 testified that he received 20 bags of mealie meal for Lukashya and not 200 bags as earlier stated. He told the Court that he distributed food to those working on 11<sup>th</sup> and 12<sup>th</sup> August. RW1 told the Court that campaigns ended on 11<sup>th</sup> August at 18:00. He confirmed that the distribution of the food was for the 1<sup>st</sup> Respondent's benefit.

RW1 confirmed that they undertook door-to-door campaigns to register members but insisted that the representatives at the ward and branch level were responsible for registering voters. He denied that the 1<sup>st</sup> Respondent visited Mwanakatwe's house because he was with him the last week of campaigns. He also refuted the allegation that the 1<sup>st</sup> Respondent gave George Chisanga K100. He confirmed that between 27<sup>th</sup> and 4<sup>th</sup> July, the PF was in Mukanga.

He confirmed that during this period, campaigns were suspended, but his officials remained in the ward.

Webster Katongo, aged 53, a resident of Kabila village under chief Munkonge, in Lusenga ward, and a farmer was the 1<sup>st</sup> Respondent's second witness, and he testified as RW2. He told the Court that he was the youth chairman in Lusenga ward, the PTA chairperson at Kabila Primary School, and was also in charge of the elections at Lusenga ward.

He testified that between the 10<sup>th</sup> and 12<sup>th</sup> of August, 2021, RW1 requested his presence in Kasama to collect food to distribute to the agents and people in the ward. He received a call from PW5 asking for transport. RW2 testified that before giving PW5 a lift, he proceeded to Kapolongo School, where he was given 2, 25 kg bags of mealie meal, half a cow to share with the neighbouring ward, and a 10-liter bucket of cooking oil. He testified that Mathews Mumba could not be present during the distribution of food because he was his boss.

After collecting the food, RW1 allocated him a vehicle, and he picked PW5 on his way back to Lusenga ward. He reached the

command post at Chanda Katebo at midnight. Consequently, they spent a night there. The following morning, 12<sup>th</sup> August, he distributed the relish and mealie meal to two polling stations. On his way to Kabila, he dropped off the foodstuff to the agents and foot soldiers at Twenty Polling Station. He then left the vehicle at Kabila Polling station after leaving PW5 at school and took food stuff to Lutanda on a bicycle. RW2 refuted the allegation that he distributed the foodstuff to the villagers at Kabila. RW2 testified that PW5 was a member of the PF.

When cross-examined, RW2 gave contradictory evidence on who the beneficiaries of the food were. He confirmed that Lusenga ward had five polling stations, and two agents were allowed per polling station. He testified that half a cow and 10 liters of cooking oil were for the 10 polling agents on further cross-examination. He testified that the food was meant for the polling agents, three people from the Constituency and Ward. He further testified that it was also for the foot soldiers after the voting as a celebration after the 1<sup>st</sup> Respondent won, about 2 days later. RW2 confirmed that the food was distributed on 12<sup>th</sup> August.

In re-examination, RW2 testified that the food was meant for agents who were two per polling station. He testified that before the polling day, they had foot soldiers.

Monday Bwembya, a businessman, aged 51, of plot number 2726, was the 1<sup>st</sup> Respondent's third witness, and he testified as RW3. He told the Court that he heard a knock on his window on 10<sup>th</sup> August, 2021 around 04:00 hours. When he peeped, he saw a vehicle next to his car but in his neighbor's yard with whom he shared a car park. RW3 told the Court that he saw a man standing next to a vehicle whose bonnet was on fire when he went outside. He later called the fire brigade, who put out the fire after their efforts proved futile.

RW3 testified that the driver told him that he was from Malole Mungwi District and had spent a night in the neighbouring house. He testified that he had gone to the bus station to drop off a lady but realized he had left his phone in the house. Upon returning to the house and going to the bathroom, he noticed that the vehicle was on fire. RW3 told the Court that the driver did not know what caused the fire, and he did not mention that anyone followed him.

RW3 testified that two weeks before trial, some people told him there was a case in Malole, and they needed him to testify. He confirmed that the winning candidate in Malole was accused of burning the vehicle in issue.

During cross-examination, RW3 confirmed that his house was in Kasama Central. He also confirmed that he was a member of the PF. He confirmed that he did not know what caused the fire.

Mathews Mumba, aged 40, a farmer and resident of Kasonde Chisuma village under chief Mwaba in Lualuo ward, Lukashya Constituency, was the 1<sup>st</sup> Respondent's fourth witness he testified as RW4. He testified that he was the Constituency Chairman under the PF in Lukashya and the 1<sup>st</sup> Respondent's election agent in Lukashya.

RW4 refuted the allegation that he had a team collecting voter's cards and promising people things. He testified that due to the Covid guidelines banning public meetings and campaigns, he called a meeting consisting of 24 PF officials at the Constituency level and 240 people from the 10 wards. They decided to add more people to help them campaign. RW4 testified that they requested for party

registers from their secretariat, which they distributed to their ward chairmen and embarked on forming branches from the communities. He testified that the registers were to identify the people they had who could vote for them.

RW4 testified that Lukashya was vast; hence, they gave the people they deployed to register members food to assist them. He testified that to ensure that the people they registered were genuine voters, they asked for cards, NRCs, and voters cards which they returned.

RW4 denied removing the Petitioner's posters and testified that it was the UPND who were removing posters. He denied beating Damashuz Simpasa at his barbershop and destroying some of his machines. RW4 further testified that the PF was not in Kupumaula ward on that day. RW4 also denied beating Mayembe Christopher. He testified that Mayembe knew him and would have identified him. RW4 testified that he did not know Kings Bwalya and Khalifa, and their names were not on the group he led. He, therefore, denied the allegations by Kennedy Mulenga. RW4 denied Lawrence Kabwe's allegation that he was present when the latter was beaten up. RW4 rejected the allegation by Tamba Tamba Berrice. He also testified

that his group was not in Kupumaula on that date. RW4 denied the allegation by Haggai and testified that he had never been to Lusenga ward. He told the Court that his grandmother passed on when he was supposed to be in Lusenga ward.

RW4 testified that he was not aware of the allegation concerning the beating of Joseph of Mukanga ward. He also denied beating Kingsley at Nkole Mfumu Market. He denied the allegation that he attacked Dorothy Chisanga and John Chisanga at Moboshi polling station. RW4 testified that no such polling station exists and that he had never been there. RW4 refuted Marcel Mukuka's allegation that he forced the latter on a vehicle to take them to vote. He testified that he was driving a corolla on the polling day, and he was in the company of his wife, who had a newborn baby, his mother-in-law, and his sister. He testified that he went to vote in the morning at 11:00 hours but failed due to the long queue. He left with his family and returned at 14:00 hours, and he found Marcel Mukuka at Kasonde Chisuma Polling station as an agent for the UPND.



During cross-examination, RW4 testified that he was working with 24 ward officials who were in turn working with branch officials. He confirmed he knew the 240 people he worked with because they had registers and phone numbers. RW4 confirmed that he gave the 240 people registers to register members who would vote for their party, which was part of the register produced before Court. He confirmed that between 6<sup>th</sup> and 11<sup>th</sup> August, 2021, the PF were in Kupumaula as per the ECZ timetable. He maintained that there was no political violence in Lukashya and wondered why they were only hearing of it after the elections.

RW4 confirmed that Jackson Kalama was his vice secretary. He testified that they did not deliver any boats during the campaigns. He confirmed that there were 108 and not 76 polling stations in Lukashya after the streams were changed to polling stations. He maintained that there was no polling station named Mabosha. He maintained that Kings Bwalya's name does not appear in their party registers.

The Respondent's fifth witness was Chileshe Amos Muselema, a teacher aged 43 years of Namulundu village, Buteko ward, Kasama District. He testified as RW5.

RW5 testified that he was a regional coordinator for the anti-voter apathy project (AVAP) and a civil rights activist. He told the Court that AVAP was involved in voter education and election monitoring. RW5 explained that they monitored the 2021 election and generated a report produced and marked ID1. It was his testimony that they deployed 25 trained monitors to Lukashya Constituency. He testified that there were no critical incidences in Lukashya that AVAP could flag off; voters, monitors, and international observers were not intimidated. He testified that AVAP concluded that the elections met the benchmark of credible elections, and the results were free and fair.

When cross-examined, RW5 confirmed that AVAP only dealt with 25 polling stations out of the 108 polling stations in Lukashya. He confirmed that he had prepared and signed the final report. He confirmed that the report was not prepared for court purposes and

that other reports leading up to the final reports were not before the Court.

Reserve Constable Jerry Bulanda, whose service number is 19117 aged 48, Mponda farms Lukashya Constituency Mulonga Ward, was the 1<sup>st</sup> Respondent's 6<sup>th</sup> subpoenaed witness. Concerning Michael Chisanga, RW6 told the Court that on 11<sup>th</sup> August, he was at Mbusa Polling Station around 20: 00 hours when votes were being counted. He was then called inside because a polling agent was disrupting the proceedings. He testified that the latter appeared drunk and he was hailing insults. The agent agreed to cooperate but later began disrupting the proceedings again. RW6 testified that he later learned that the agent was from the UPND. On the plea of the presiding officer and the team, RW6 removed the polling agent after establishing there was another agent from the UPND present.

In cross-examination, RW6 confirmed that he did not know what happened to the polling agent when he removed him. He confirmed that he did not administer a breathalyzer on the agent.

George Chisanga, the 1<sup>st</sup> Respondent, was the last witness, and he testified as RW7. He testified that Lukashya Constituency was not

primitive or backward. RW7 told the Court that the only vehicles he put in the campaign were a Toyota Land Cruiser pickup, a Toyota VX branded, and a Mazda Titan.

RW7 refuted the allegation that his election agent engaged in bargaining with electorates in Lukashya in which the former would surrender their voter's cards in exchange for a promise for fertilizer, mealie meal, cooking oil, and other favours. He testified that due to the Covid guidelines and the directive that there would be no rallies, the PF devised a strategy to create branches throughout the Constituency. The branch officials were tasked with conducting door-to-door campaigns targeted at registered voters. RW7 testified that they required only registered voters to form branches and that it was this exercise that gave rise to this allegation because they needed to ensure that they formed branches. He disputed the assertion that his officials retained voter's cards or promised to deliver food or fertilizer. RW1 testified that their branch officials were responsible for registering new members.

RW7 testified that neither his name nor his agent was mentioned in the videos produced by Shame, captured in Kasama Central. He

testified that Geoffrey Bwalya Mwamba was not his agent. On the issue that public broadcasters gave only RW7 media coverage, RW7 told the Court that he did not have the media in his campaign. He testified that he was not aware of any incident in which his Excellency Mr. Hakainde Hichilema was prevented from entering Lukashya. He told the Court that the only incident he was aware of involving the pulling down of posters involved UPND, who were apprehended and taken to Kasama Central Police. He testified that he advised his agent to undertake reconciliation, and the perpetrators were released in that vein. RW1 testified that Burton Bwalya was a councilor in the PF from 2016 to 2021, and if the 1<sup>st</sup> Respondent's agents had assaulted him, he would have identified them.

RW7 testified that he did not receive any complaint from the ECZ complaint Management committee of the police on the alleged assault of Damshuz, Mayembe, Kennedy Mulenga, and Lawrence Kabwe. He testified that if the incidences took place, they would have been reported to the ECZ and that if they did, they had no connection to the campaigns. RW7 told the Court that the named

attackers, Kalifa, and Kings, were not on his campaign team. He further testified that his agent or committee was not in Kupumaula in July based on the campaign timetable. RW7 told the Court that Lawrence Kabwe did not adduce medical evidence to support the claim. RW7 refuted Berrice Tamba Tamba's allegation and maintained that his team was not in Kupumaula at the time. RW7 denied the allegation that he tried to negotiate the release of Kings Bwalya from police custody.

RW7 disputed the allegations of violence in Lukashya and the assault of the named people by his agents. Regarding Haggai Musonda from Lusenga Ward, Mulenga of Mukanga Ward, and Kingsley of Chibundu Ward, RW7 testified that the alleged victims did not testify to allow the Court to test the integrity of their evidence. RW7 told the Court that if the incident happened, Dorothy Chisanga, a chair lady, must have been aware of the ECZ Conflict Management Committee and could have reported the incident on her behalf and that of John Chisanga. Regarding Michael Chisanga's assault allegation, RW7 explained that his agent was 80

kilometers voting from Lualuo Ward and could thus not have beaten Chisanga.

RW7 denied Angela Mwanakatwe's evidence that he visited her house and offered her K100. He testified that he only did two campaigns in the form of road shows in Kupumaula. He was surrounded by 35 youths providing security and a hold of residents, making it impossible for him to alight from the car and conduct door to door campaigns. RW7 testified that he only stopped at markets but even then, he addressed the people from the back of his vehicle. RW7 told the Court that the branch and ward chairmen and not constituency chairman were responsible for registering new members.

RW7 refuted PW7's evidence that he was at Modern Market with Geoffrey Bwalya on 9<sup>th</sup> August distributing foodstuff to those submitting their voter's cards and NRCs and instructed people to remove the Petitioner's posters. He testified that he was in Kupumaula on that day. On 14<sup>th</sup> August, he was at the Totaling Center in Lukashya while Mr. Bwalya was at the totaling center for

Kasama Central Parliamentary elections at Kasama Boys Secondary School.

RW7 denied holding a meeting in the first week of August, 2021 in Kapanda Ward where he allegedly threatened to remove those who did not vote for him from Social Cash Transfer and later sent agents to deliver mealie meal to that ward. He testified that he visited Kapanda between 3<sup>rd</sup> and 10<sup>th</sup> June, 2021. He did not hold a rally due to Covid 19 guidelines but only had a meeting with his ward officials. RW7 testified that they only delivered 2 bags of mealie meal to those they had deployed 3 weeks before the end of the campaigns.

RW7 testified that he was discharged from the Covid center between 27<sup>th</sup> and 30<sup>th</sup> July, and by 9<sup>th</sup> August, he was campaigning in Kupumaula with his campaign agents. He denied the allegation that he sent his agents to deliver boats to Musowa Ward in the first week of August. He testified that he only heard that boats were delivered to Musowa between the last week of May and the first two weeks of June by the Disaster Management Unit. RW7 denied PW8'S allegation that he engaged him to corruptly elicit a vote from him at



a price of K100. RW7 testified that he conducted road shows in Kupumaula, and many boys and girls of Mutale's stature followed him. RW7's testified that he could not imagine that Mutale could possess a voter's cards to prompt him to abandon the road show to elicit a corrupt vote.

During Cross-examination, RW7 confirmed that Mathews Mumba was his registered election agent and Daniel Bwalya was his campaign manager. He testified that his election agent would move with him, and he was responsible for introducing him to the electorate and other stakeholders during the campaign. He confirmed that he was in Lusenga Ward as per the campaign timetable between 19<sup>th</sup> and 26<sup>th</sup> June, 2021. He also confirmed that ECZ banned campaigns between 11<sup>th</sup> and 19<sup>th</sup> June, because of violent acts in Lusaka. RW7 testified that when Dr. Kenneth Kaunda died, individual parties suspended campaigns, and Kasama District Officials did so too, but he was withdrawn between 4<sup>th</sup> and 5<sup>th</sup> July after contracting Covid 19. He maintained that he did not participate in the door-to-door campaigns. He claimed that there was no polling station named Mubosha.

RW7 confirmed that half a cow was delivered to Lusenga Ward between 11<sup>th</sup> and 12<sup>th</sup> August. He confirmed that for counting and monitoring, each polling station allows two polling agents. RW7 confirmed that Lusenga only had 5 polling stations. He told the Court that the food was not only meant for polling agents but their foot soldiers. He testified that campaigns ended on 11<sup>th</sup> August, at 18:00 hours, and the food was delivered on 10<sup>th</sup> August in most wards except for a few far-flung places like Lusenga. He testified that he could not withdraw the food because they had no opportunity to do so. RW7 testified that he procured 20 bags of mealie meal for the last week of the campaigns.

RW7 denied the allegations of assault by Damashuzi Simpasa. He admitted that Lawrence Kabwe and Berrice Tamba Tamba were assaulted and attended to at the Hospital. He maintained that a doctor did not sign the medical report to show if they received medical attention. RW7 still maintained that there was no violence in Lukashya. RW7 testified that he wrote to DMMU as MP of Lukashya in March requesting four boats for Musowa and Chibundu. He told the court that he never received a response. He

confirmed that the boats were delivered after parliament had been dissolved. He confirmed that the Constituency has one Police Post at Nkole Mfumu and that if a person was assaulted in Musowa, they would have to report the matter to Kasama Police which is 90 Km away.

RW7 confirmed that he went to Mukanga during the funeral for the late Dr. Kenneth Kaunda but before the PF suspended Campaigns. He denied slaughtering the five cows for the electorate and that the same would not even be enough. RW7 testified that the registers were for their members but confirmed that the registers they produced were for the leaders. He testified that the Hilux was burnt in Mukulumpe in Kasama Central. He also told the Court that there was an area called Lualuo, which was not in Lualuo ward in Lukashya.

In re-examination, RW7 testified that there was no violence in Lukashya during the elections. The assaults evidenced by the medical reports on record were not connected to the PF's campaign.

This marked the close of the Respondent's case.

## **SUBMISSIONS**

### **Petitioner's Submissions**

Counsel for the Petitioner filed into Court their brief written submissions on 8<sup>th</sup> October, 2021. The crux of the Petitioner's submissions is that an election of a Member of Parliament will be declared null and void if it is shown that the wrongful conduct complained of was widespread and prevented or might have prevented the majority of the voters from electing the candidate of their choice. Counsel relied on **Mubika Mubika v. Poniso Njeulu<sup>1</sup>**. The Petitioner contends that the 1<sup>st</sup> Respondent engaged in corrupt practices in breach of **section 81 of the Electoral Process Act, No. 35 of 2016**. They submitted that the 1<sup>st</sup> Respondent and his election agent Mathews Mumba with his group engaged in distributing money, mealie meal, meat, cooking oil, and other foodstuffs, especially a day before the elections in various parts of the Constituency. Further, that the group also collected voter's cards and NRCs and entered the details in a register with a promise of fertilizer, money through social cash transfer fund, and food if they voted for the 1<sup>st</sup> Respondent. Counsel submitted that the 1<sup>st</sup> Respondent also distributed boats to Musowa Ward. Counsel relied

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on the evidence of PW1, PW5, PW6, PW8, PW9, PW10, and PW11 to support these allegations.

The Petitioner advanced that the RW1 confirmed that on 10<sup>th</sup> August, 2021, the 1<sup>st</sup> Respondent procured 10 cows, 200 bags of mealie meal, and 10 buckets of 10-liter cooking oil shared among the 10 Wards. Counsel also relied on the evidence of RW2, who confirmed that after collecting the food from RW1, they started the distribution at the various polling stations on 12<sup>th</sup> August, 2021. Counsel argued that RW2 confirmed that the food was in excess and that distributing food to the foot soldiers was ongoing. Counsel submits that the distribution of food during campaigns is not allowed. The Petitioner submits that the act can change the voters' perception and that it prevented or might have prevented them from electing the candidate of their choice.

The Petitioner contends that the witnesses before the Court came from poor communities and would easily be enticed by food. He also argues that the 1<sup>st</sup> Respondent's foot soldiers came from the same wards they were campaigning from; there was no justification for

providing them with food. It was argued that the distribution of food occurred in all 10 Wards and was thus widespread.

On the alleged breach of section 29 of the EPA, relying on the evidence of PW1, Counsel contends that the police did not allow the Petitioner to campaign freely in Chiba and Kupumaula Ward. They submitted that the police blocked President Hichilema from entering the Constituency to support the Petitioner, as confirmed by PW10. The Petitioner claims he was also denied public media coverage, and the 1<sup>st</sup> Respondent instructed people to remove his posters at Modern Market as verified by PW7.

Lastly, the Petitioner alleges widespread violence in Lukashya, especially Kupumaula ward, accounting for about 19,000 voters in the Constituency, in breach of section 83 of the EPA. Counsel relied on the evidence of PW1, PW2, PW3, PW4, and PW10.

### **1<sup>ST</sup> RESPONDENT'S WRITTEN SUBMISSIONS**

Counsel for the 1<sup>st</sup> Respondent filed into Court their written submission on 21<sup>st</sup> October, 2021. The gist of the 1<sup>st</sup> Respondent's submissions is that to succeed in an election petition, a Petitioner must prove his case to a standard higher than the balance of

probabilities. The Petitioner must establish the issues raised to a fairly high degree of convincing clarity as held in *inter alia*, **Mazoka, and others v. Mwanawasa and others**<sup>2</sup>.

Counsel submits that in terms of nullification of elections, section 97 of the EPA requires that a candidate or their agent committed the alleged malpractice or misconduct or they had knowledge, or consented, or approved the commission of the malpractice or misconduct. The 1<sup>st</sup> Respondent submits that the agent must be appointed under Regulations 50 and 51 of the Electoral (General) Regulations, 2006. I must hasten to state that these Regulations have since been repealed by the Electoral Process (Regulations) SI 63 of 2016. Counsel, therefore, submits that the Petitioner must establish the preceding to prove the alleged breaches under sections 81, 29, and 83. The Petitioner must further prove that the majority of the voters in Lukashya were or may have been prevented from electing a candidate of their choice.

On the allegation of bribery under section 83 of the EPA, the 1<sup>st</sup> Respondent contends that the Petitioner did not witness the 1<sup>st</sup> Respondent or his agent bribing people. The 1<sup>st</sup> Respondent

challenged the evidence of PW5, PW6 PW7, PW8, PW9, and PW11 as untruthful. Counsel argued that PW5 could not have seen RW4 distributing food to branch officials for their foot soldiers because RW1 was in charge of that task. Also, that RW4 was not in Kapongolo on the material date based on the campaign timetable. He argued that there was no way the 1<sup>st</sup> Respondent could have visited PW6's house or stopped to give PW8, who did not look like he had attained the voting age a K100 during a roadshow.

Regarding the evidence of PW11 and PW12, Counsel submits that the 1<sup>st</sup> Respondent was not at the scene based on the campaign timetable. He argued that the 1<sup>st</sup> Respondent was at the totaling center when PW7 allegedly saw him distributing food. Counsel argued that PW9's evidence was not linked to Lukashya, and Patrick was not the 1<sup>st</sup> Respondent's election agent.

The 1<sup>st</sup> Respondent contends that the Petitioner's witnesses came from 5 wards of 10 wards in Lukashya Constituency. The witnesses led no evidence on how the alleged bribes affected the majority of voters in Lukashya. They also failed to give the number of people present at the meetings where bribery allegedly took place, which



was critical as guided by the Constitutional Court in the case of **Mbololwa v. Mandandi**<sup>3</sup>. Counsel contends that PW6 and PW8 were allegedly bribed when they were alone, and they led no evidence to show how this affected the majority of voters in Lukashya.

Addressing the allegation of undue influence, contrary to section 83 of the EPA, Counsel submitted that the 1<sup>st</sup> Respondent and his agent were not in Kupumaula ward when PW2, PW3, and PW4 were beaten at Modern Market or when PW7 allegedly witnessed the 1<sup>st</sup> Respondent order the removal of the Petitioner's posters. They also failed to show that Kings and Kalifa, who allegedly beat them up, were the 1<sup>st</sup> Respondent's election agents. Counsel submits that PW11 was not beaten by the 1<sup>st</sup> Respondent's agents but removed from the polling station for disorderly conduct. Counsel submitted that RW4 also denied PW13's evidence on the basis that he was elsewhere with his family on the date he allegedly forced PW13 to board a Fuso.

The 1<sup>st</sup> Respondent submits that the Petitioner's witnesses failed to show they could not vote or were prevented from voting for their

preferred candidate due to undue influence. It is further advanced that the Petitioner was unable to show the people who witnessed the alleged beating of PW2, PW3, and PW4 and how these incidences in 3 wards affected the majority of voters in Lukashya.

On the breach of section 29, Counsel contends that there is no evidence to show that the Petitioner complained to ECZ Conflict Management Committee or the Police that he was not allowed to campaign freely or that the police did not provide him with protection during campaigns. He advanced that the Petitioner also failed to prove that the police prevented President Hichilema from campaigning for the Petitioner in Lukashya or that the media did not give him coverage. Counsel submits that the ECZ campaign timetable shows that ECZ afforded political parties equal campaign time. Counsel submits that the allegation that the Parties did not follow the timetable was not pleaded and was an afterthought.

In summation, the 1<sup>st</sup> Respondent contends that the Petitioner failed to call evidence that would corroborate the evidence of his witnesses who were UPND cadres or members of his campaign team on all the three allegations. Counsel relied on **Mbololwa v.**

**Mandandi**<sup>3</sup>, where the Constitutional Court stated the requirement of corroboration for witnesses belonging to a candidate's political party or his team. The 1<sup>st</sup> Respondent also submitted that the Petitioner failed to show that the alleged breaches were widespread and affected the majority of the voters. Counsel submits that the Petitioner needed to prove electoral malpractice in at least the majority of wards or on a large scale. Counsel adverted to **Mbololwa v. Mandandi**<sup>3</sup> and **Herbert Shabula v. Greyford Monde**<sup>4</sup>. Counsel argued that the Petitioner only called evidence from 5 wards on the allegation of bribery, 7 witnesses from 4 wards on the allegation of undue influence, and 2 witnesses to support the claim under section 23. The 1<sup>st</sup> Respondent, therefore, claims that the Petitioner failed to discharge the burden of proof.

#### CONSIDERATIONS BY THIS COURT

I have considered the petition, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's Answer, the Affidavits, the evidence on record, and Counsel's submissions.

Before I delve into a determination of the merits of the petition, I must hasten to state that before trial proceeded, I granted the Petitioner leave to withdraw ground four of his petition.

Consequently, after considering the Petitioner's evidence presented at the close of his case, I granted the 2<sup>nd</sup> Respondent its application to be removed from the proceedings. I was of the view that the Petitioner had substantially withdrawn its case against the 2<sup>nd</sup> Respondent.

### **FINDINGS OF FACT ON THE UNDISPUTED EVIDENCE**

The undisputed facts are that the Petitioner and the 1<sup>st</sup> Respondent contested the Parliamentary Election for Lukashya Constituency held on 12<sup>th</sup> August, 2021. The former stood under the United Party for National Development (UPND) and the latter under the Patriotic Front (PF). The other contestants were Bwalya Frank, an independent candidate, Bukisa Mary of the Socialist Party, Chileshe Paul of the National Democratic Congress Party, Musonda Kelvin of the Democratic Party, and Chisanga Mukuka of the Progressive Empowerment Party. After the poll, the 1<sup>st</sup> Respondent had 27, 437 votes while the Petitioner had 10,303 votes. The results for the other contestants were as follows: Bwalya Frank, 1735, Bukisa Mary, 597, Chileshe Paul, 491, Musonda Kelvin 233, and Chisanga

Mukuka, 232. The Returning Officer declared the 1<sup>st</sup> Respondent the duly elected MP for Lukashya Constituency.

It is also not in dispute that Lukashya Constituency has 10 Wards and 108 polling stations. It is also not contested that the Petitioner's registered election agent was Stephen Sichilongo while the 1<sup>st</sup> Respondent's election agent was Mathews Mumba, RW4. The ECZ published a campaign timetable that stipulated where each political party was to campaign at any given time.

#### **ISSUE(S) FOR DETERMINATION**

1. The issue for determination is whether the election of the 1<sup>st</sup> Respondent as Member of Parliament for Lukashya Constituency was invalid and thus warrant nullification.

#### **THE LAW AND APPLICATION OF THE LAW TO THE FACTS**

The Petitioner alleges that the 1<sup>st</sup> Respondent was not duly elected as Member of Parliament for Lukashya because the poll was conducted in a manner that was in contravention of the EPA, 2016. The Petitioners alleges bribery under section 81, Undue influence under section 83, and disobedience of campaign guidelines, lack of

public media coverage, and removal of their posters in contravention of section 29.

In the case of **Saul Zulu v. Victoria Kalima**<sup>5</sup>, the Supreme Court, citing the case of **Akashambatwa Mbikusita Lewanika and 4 Others v. Fredrick Chiluba**<sup>6</sup>, pronounced itself on the burden of and standard of proof in the election petitions. The Supreme Court ruled as follows:

An election petition is like any other civil claim that depends on the pleadings and the burden of proof is on the challenger to that election to prove, "to a standard higher than on a mere balance of probability. Issues raised are required to be established to a fairly high degree of convincing clarity."

In **Abuid Kawanga v. Elijah Muchima**<sup>7</sup>, the Constitutional Court observed that although the standard is higher than that required in civil matters, it is lower than the standard of beyond a reasonable doubt required in criminal cases.

The Court may nullify the election of a person as a Member of Parliament only in certain specified circumstances. The Law on the

nullification of a parliamentary election can be found in Section 97 of the EPA, 2016. For purposes of this petition, the relevant part of section 97 provides 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 (2) 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 provisions 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)...

The Supreme Court has interpreted the above provision in a plethora of cases, including *Steven Masumba v. Eliot Kamando*<sup>8</sup>, where they stated the following:

The requirement in the current Law for nullifying an election of a member of parliament is that a petitioner must not only prove that the Respondent has committed a corrupt or illegal act or other misconduct or that the illegal act or misconduct complained of was committed by the Respondent's election agent or polling agent or with the Respondent's knowledge, consent or approval but that he/she must also prove that as a consequence of the corrupt or illegal act or misconduct committed, the majority of the voters in the constituency were or may have been prevented from electing a candidate whom they preferred.

Thus, to succeed with this petition, the Petitioner must prove the following to the requisite standard:

- (i) That the alleged corrupt practice, illegal practice, or misconduct were committed in connection with the



parliamentary election for Lukashya Constituency held on 12<sup>th</sup> August, 2021.

- (ii) That the 1<sup>st</sup> Respondent or his polling or election agent committed the corrupt practice, illegal practice or misconduct, or with the 1<sup>st</sup> Respondent's or his election or polling agent's knowledge, consent or approval; and
- (iii) That the majority of voters in Lukashya Constituency were or may have been prevented from electing their preferred candidate; or
- (iv) The election was not conducted in accordance with the Act or the Law and that as a result of the non-compliance, the results were affected; or
- (v) The candidate was at the time of the election a person not qualified to stand elections.

A candidate's election and polling agents are those appointed according to Regulation 55 and 56 of the Electoral Process (General) Regulations 2016. I shall now consider the grounds advanced by the Petitioner for nullification of the 1<sup>st</sup> Respondent's election in the order in which they have been presented.

## **1. CONTRAVENTION OF SECTION 81 OF THE ELECTORAL PROCESS ACT**

### **a) Bribery**

The Petitioner claims that Mathews Mumba led a team collecting voter's cards from electorates in Lukashya Constituency in exchange for mealie meal, meat, cooking oil, money, fertilizer, meals, and other favours or promises to deliver foodstuff, fertilizer, and money.

Bribery is one of the election offences listed under Part VIII of the EPA. Relevant to this case is section 81(1) (c) and (d), which state:

**81(1)A person shall not either directly or indirectly, by oneself or with any 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 to endeavour to procure the return of any candidate at any election or the vote or any voter at any election;**

**(d)upon or in consequence of any gift, loan, offer, promise, procurement or agreement to or for the**

**benefit of any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote or any voter at any election;**

According to section 2 of the EPA, corrupt practice is any conduct declared as such under section 81. Section 81 categorizes the offence of bribery as a corrupt practice. It is, therefore, one of the offences which may warrant the nullification of an election. In the case of **Austin Liato v. Sitwala Sitwala**<sup>9</sup>, the Constitutional Court observed that in dealing with the alleged breaches, the lower Court restricted itself to the provisions of the EPA. However, the Constitutional Court guided that the lower court should have also looked at the Electoral Code of Conduct, which is a schedule to the Electoral Process Act and forms an integral part. The Court pointed out that **Regulation 15(1)(c)** was misconduct under **section 97 of the Electoral Process Act**, the breach of which could nullify an election.

Looking at the allegations in the petition, and although the Petitioner did not refer to the Regulations, guided by the above case,

I will nonetheless refer to them. The pertinent portion of **Regulation 15(1) (h)** provides:

**A person shall not-**

**Offer any inducement, reward or bribe to any person in consideration of such person-**

- I. Joining or not joining any political party;**
  - II. Voting or not voting;**
  - III. Surrendering a voters card or national registration card or both;**
- i) Bargaining with electorates to surrender voter's cards and National Registration Cards**

It is not in contention that the 1<sup>st</sup> Respondent's election agent was Mathews Mumba. At trial, the Petitioner, PW1, testified that he saw Jani moving with mealie meal and cooking oil, trying to woo people, and buying voter's cards. He confirmed that he did not see the 1<sup>st</sup> Respondent or his agent Mathews Mumba bargaining with the electorates to surrender voter's cards or distributing mealie meal. Chrispin Kapinda, PW7, testified that on 9<sup>th</sup> August, he found people collecting voter's cards and NRCs at Modern Market, and they were telling people that the 1<sup>st</sup> Respondent and GBM would

give them mealie meal and cooking oil. He maintained that the 1<sup>st</sup> Respondent and GBM went to the Market the following Saturday.

However, PW7 gave contradictory evidence on when the 1<sup>st</sup> Respondent and GBM allegedly went to the Market during cross-examination. He challenged the calendar showing that the next Saturday after 9<sup>th</sup> August was after the elections. I was not impressed with the truthfulness of PW7. Also, PW7 did not dispute that he was not registered because he was a member of the UPND.

Shemu, PW9 testified that he found Patrick arranging voter's cards and NRCs and entering the information in a book titled "Alebwelelapo PF." He testified that Patrick told the people that those who did not vote for the 1<sup>st</sup> Respondent would not receive mealie meal anymore. However, having watched the video produced by PW9 evidencing the incident, there is nothing in the video that linked the activities therein to Lukashya Constituency. PW9 also confirmed that no one mentioned the 1<sup>st</sup> Respondent in the video, contrary to his earlier evidence. He could also not confirm if Patrick was the 1<sup>st</sup> Respondent's election agent.

Detective Chief Inspector Enock Mwenda, PW10, testified that he received voter's cards and NRCs, which he returned to the owners, and the matter was under investigation.

The 1<sup>st</sup> Respondent in paragraphs 11, 12, 13, 14, and 15 of his Affidavit in Support of his answers denies bargaining with electorates to surrender voter's cards. Similarly, he denies that his election agent and polling agent were involved in this act. The 1<sup>st</sup> Respondent denied the existence of the video captured by PW9. He avers that if it did exist, then it depicted his officials when creating branch registers. RW1 testified that due to Covid 19 restrictions, they introduced branch registers to register their members. He confirmed that they undertook registration of voters at polling stations through their ward chairpersons and branch chairpersons.

RW4, Mathews Mumba denied that he had a team collecting voter's cards and promising people things. He confirmed that they requested voter's cards and NRCs to know that the members had these documents. He told the court that they returned the documents to the owners. The 1<sup>st</sup> Respondent, RW7, also confirmed RW4's evidence. However, the registers produced are for the leaders

in the PF in different branches and not members of the community. In cross-examination, RW7 testified that members were leaders and vice versa, but I don't find that explanation truthful.

On the evidence before me, I note that all the witnesses who testified on the allegation that the 1<sup>st</sup> Respondent was collecting voter's cards and NRCs in exchange for promises of money or food were partisan witnesses except Detective Chief Inspector Enock Mwenda, who was PW10. In **Steven Masumba v. Elliot Kamondo**<sup>8</sup>, the Constitutional Court persuaded by the case of **Kamba Saleh Moses v. Hon. Namyangu Jennifer**<sup>10</sup> pronounced itself on how evidence from partisan witnesses should be treated. The Court observed that witnesses from a candidate's party or his team are likely to exaggerate their evidence to tilt the balance of proof favoring the candidate they support. The Court needs evidence of a non-partisan and independent witness to corroborate the evidence of that witness and that it was the duty of the Petitioner to present that evidence. I, accordingly, warn myself.

On the evidence before me, the testimony of PW1 and PW7 was not corroborated by any independent evidence. PW10, who I considered

a non-partisan and independent witness corroborated the evidence of PW9. However, PW10 did not confirm who the people collecting the voter's cards and NRCs were and to which party they belonged. There is, therefore, no evidence to prove that the 1<sup>st</sup> Respondent and his election agent RW4 were asking electorates to surrender their voter's cards in exchange for mealie meal, fertilizer, or money. The Petitioner failed to link the 1<sup>st</sup> Respondent to the video produced by PW9 or that the 1<sup>st</sup> Respondent and his election agent consented, approved, or had knowledge of the said activity.

Therefore, the Petitioner has failed to show with a high degree of clarity that the 1<sup>st</sup> Respondent and his agent were engaged in bargaining with electorates to surrender their NRCs and voters cards in exchange for mealie meal and cooking oil. Or that they had knowledge or consented or approved such act by a third party.

**ii) Distribution of food, money, and boats**

PW1 told the Court that he saw Mathews Mumba once at Nkole Mfumu market in Chibundu ward, giving the electorate money though he could not recall the date. Also PW8 testified that around 3<sup>rd</sup> August, 2021, the 1<sup>st</sup> Respondent while campaigning at



Chisanga Market in Kupumaula ward, approached him and gave him K100 and told him to vote for him. PW6 testified that the 1<sup>st</sup> Respondent and his agent visited her house in Kupumaula ward and gave her K100 and a bag of mealie meal. RW7 denied the allegations. He testified that he was conducting roadshows and could not have approached either PW8 or PW6.

I have considered the evidence on these allegations, and I am not satisfied that the Petitioner has discharged the burden of proof placed on him, which is higher than a balance of probabilities. Firstly, PW1's evidence was not corroborated by independent evidence. PW6 testified that she was non-partisan but later stated that she became a member of the PF after being registered. I am therefore, not satisfied with her credibility and cannot treat her as an independent witness. There was no evidence to show that PW8 was a member of the UPND. His evidence did not need corroboration. However, both PW8 and PW6 testified that the alleged incidences occurred in the presence of other people. They, however, did not call any of the people around to support their testimony. Given the standard of proof required in election

petitions, I find their evidence weak. Further, although some of the Petitioner's witnesses disputed that the 1<sup>st</sup> Respondent was campaigning in the areas indicated in the ECZ timetable on the dates of some of the alleged incidences, the Petitioner did not raise this allegation in their petition. Further, there is no evidence that the Petitioner lodged any complaint to ECZ to that effect.

In another incident, PW11 testified that Joseph Chilembo, a ward Councilor, and Jackson Kalama delivered boats to Musowa ward and told the villagers that the 1<sup>st</sup> Respondent had asked them to tell the people to vote for him. This was hearsay evidence. RW7 disputed this allegation. He testified that he requested four boats while still a Member of Parliament in March, but two boats were only delivered by DMMU end of May or early June after Parliament was dissolved. PW11 confirmed that the 1<sup>st</sup> Respondent was not present at the meeting where the boats were handed over, and he did not place the 1<sup>st</sup> Respondent's agent at the meeting. Therefore, the Petitioner has not established the allegation against the 1<sup>st</sup> Respondent and his agent to the requisite standard.

Further, PW12 testified that in the first week of August, the 1<sup>st</sup> Respondent addressed a meeting at a market in Kapanda ward where he promised those who voted for him fertilizer and social cash transfer. He testified that two days later, the Councilor distributed mealie meal and meat to the villagers on behalf of the 1<sup>st</sup> Respondent. He confirmed that the 1<sup>st</sup> Respondent was not present when the foodstuff was distributed. RW7 testified that he visited Kapanda between 3<sup>rd</sup> and 10<sup>th</sup> June based on the ECZ campaign timetable. PW12 testified that the timetable was not followed. He, however, confirmed that he had never seen the timetable to know whether it was followed. PW12 failed to show that the 1<sup>st</sup> Respondent was in Kapanda on the alleged date.

The next allegation is that the 1<sup>st</sup> Respondent and his agents distributed meat and food to villagers on 12<sup>th</sup> August 2021. PW5 testified that on 11<sup>th</sup> August, he found 9 cows had been slaughtered at Kapongolo. Mathews Mumba Alias Zami gave the people of Lusenga Ward 10 liters of cooking oil and one cow. They also collected chickens which were later distributed to the polling

stations and the villagers. The latter were overjoyed and intimated they would vote for the PF.

RW2 confirmed that he gave PW5 a lift from Kasama to Kabila in Lusenga ward. RW1 and RW2 both confirmed that RW1 distributed meat, mealie meal, cooking oil, and other foodstuffs to the 10 wards in Lukashya Constituency. RW1 and RW2 testified that the food was for their campaign team. They denied that they distributed food to villagers. It is not in contention that RW1 and RW2 were not the 1<sup>st</sup> Respondent's election or polling agents. The learned authors of Halsbury's laws of England, Volume 15, 4<sup>th</sup> Edition (Reissue) at paragraph 697 state that:

**"Where refreshments are a mere incident of a political meeting, there's no offence, but if persons are gathered together merely to gratify their appetites and so influence their votes, then it is corrupt treating. It is not necessarily corrupt, however, to attract people to meetings by offering refreshments of a moderate kind. The giving of refreshments to persons employed at the election, if done honestly and in good faith, is not illegal"**

Therefore, I am of the view that the provision of food of moderate kind to party officials engaged in campaigns not done in bad faith is

not illegal. Moreover, both the Petitioner and the Respondent admitted providing food for their foot soldiers.

Reverting to the facts before me, I must reiterate that the Petitioner bears the burden to prove that the 1<sup>st</sup> Respondent distributed food to the villagers to induce them to vote for him. I must state that I find the evidence of PW5 unchallenged and confirmed by RW1 and RW2 in material aspects. RW2 confirmed that he distributed the food to the 5 polling stations in Lusenga Ward on 12<sup>th</sup> August, 2021. He testified that they were given half a cow and 10 liters of cooking oil, among others as Lusenga ward.

RW1 also testified that he distributed 200 bags of mealie meal to Lusenga ward. When cross-examined, he testified that he had made a mistake and insisted he only had 20 bags and distributed 2 to each ward. Both RW1 and RW2 gave contradictory evidence on the intended recipients of the food. RW2 testified that the food was for the officials at constituency, ward, and branch levels. On further cross-examination and after it was pointed out that the food was distributed after campaigns had closed, RW2 testified that the half

cow and 10-liter bucket cooking oil was for 10 polling agents and celebrations for the foot soldiers after the 1<sup>st</sup> Respondent won.

Having listened and examined the demeanor of the witnesses, I am inclined to accept the evidence of PW5 that the food was not only for the polling agents but also distributed to the villagers in Lusenga ward. Further, RW1 and RW2 also confirmed that the distribution was done for and on behalf of RW1. RW1 did not challenge this evidence. I find that the 1<sup>st</sup> Respondent consented or approved the distribution of the food to the villagers in Lusenga ward as inducement for them to vote for him.

The next issue is whether the said act was widespread that it prevented the majority electorates from selecting a candidate of their choice. In the case of **Siamunene v. Sialubalo**<sup>11</sup>, the Constitutional Court held that the mere proof of misconduct without proof of the effect on the majority of voters in a constituency is not enough to constitute nullification of elections. In the case of **Mbololwa v. Mandandi**<sup>3</sup> cited by Counsel for the 1<sup>st</sup> Respondent, the Constitutional Court adopted the holding in **Mazoka v. Mwanawasa**<sup>2</sup> that the Petitioner needed to prove

electoral malpractice or violations of the electoral laws in atleast the majority of constituencies. The Court also referred to **Zulu v. Kalima**<sup>5</sup> where the Consideration was whether the distribution of chitenge materials and bicycles was on a large scale. In the **Mbololwa case**<sup>3</sup>, the Constitutional Court observed that no one testified on the number of people who attended the campaign meetings at which the Respondent uttered the inflammatory words. Evidence that there were a lot of people was relative. In the **Siamunene case**<sup>11</sup>, the Constitutional Court upheld the finding of the lower court *inter alia* that the number of those who said they did not vote because of the violence was not representative of the majority of voters, given the number of voters in the constituency. The Court observed that there was no sufficient evidence to prove that the majority were or could have been influenced.

In the case before me, PW5 could not confirm how many villagers received the meat and other foodstuffs in Lusenga Ward. Moreover, looking at the total votes polled by the candidates and the total votes in the constituency as shown on exhibit marked "DM8" affidavit in support of the petition. I am of the view that 9 or 10

cows as the case may be, 10 buckets of cooking oil and 200 bags of mealie meal could only cater for a fraction of the electorates in the constituency. Therefore, I am not satisfied that this act prevented the majority of the electorates from voting for the candidate of their choice.

## **2. CONTRAVENTION OF SECTION 29 OF THE ELECTORAL PROCESS ACT**

The Petitioner has made four allegations in ground two of his petition. The allegations are anchored on section 29 of the Electoral Process Act. Having looked at the allegations, I am of the view that the same can be categorized under misconduct and non-compliance with the Electoral Process Act. The allegations are as follows:

### **a) Disobedience of ECZ campaign guidelines.**

The Petitioner claims that Geoffrey Mwamba Bwalya, the 1<sup>st</sup> Respondent's agent continued holding rallies when ECZ banned rallies and only allowed roadshows. However, PW1 confirmed that Geoffrey Mwamba Bwalya was not the 1<sup>st</sup> Respondent's agent. PW7 testified that the 1<sup>st</sup> Respondent and GBM were distributing mealie



meal and cooking oil at modern market the Saturday after 9<sup>th</sup> August. However, during cross-examination, when it was pointed out that Saturday fell after the campaigns, PW7 insisted that the calendar was inaccurate. In re-examination, PW7 testified that he was not sure about the date. RW7 testified that he was at the totaling center on 14<sup>th</sup> August. I was therefore, not impressed with the truthfulness of PW7 because he was insistent on placing the 1<sup>st</sup> Respondent at modern market prior to the polling date even if according to his evidence, the Saturday after 9<sup>th</sup> August, 2021 fell on 14<sup>th</sup> August, 2021 after the elections. The Petitioner therefore, failed to prove this allegation to the requisite standard of clarity.

**b) Lack of media coverage**

The Petitioner alleges that the public media: ZANIS and ZNBC only provided media coverage to the 1<sup>st</sup> Respondent. Section 29 of the Electoral Process guarantees the right of a candidate and political party to have their campaign message reported in public media in a fair and balanced manner. I must hasten to say that this allegation is directed at ECZ as the institution with the conduct of elections. However, PW1 confirmed that he had not produced evidence to

support this allegation. On this premise and the abandonment of ground four of the petition, ECZ was removed from the proceedings. This allegation falls away.

**c) Blocking the President of the UPND from entering  
Lukashya**

PW1 testified that the police denied President Hichilema entry into Lukashya Constituency to support the Petitioner. PW1 testified that this affected him badly. PW10 confirmed an operation in which the police blocked President Hichilema though he was not part of it. An election may be nullified where there has been non compliance with the EPA. Section 97(2) (b) of the EPA provides that:

**subject to the provisions of subsection (2) 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 provisions and that such non-compliance affected the result of the election; or**

While PW10 confirmed an operation blocking President Hichilema access to Lukashya and PW1 testified that it affected him badly, I am of the view that PW1 has not shown how this affected the election result to the requisite standard. It was not sufficient for

PW1 to merely allege that it affected him, but he needed to produce convincing evidence to prove this. This allegation equally fails.

**d) Removal of campaign posters and burning of Petitioner's vehicle**

In ground 2 paragraph 4, the Petitioner alleges that the 1<sup>st</sup> Respondent's agents beat up his agents who were putting up campaign posters and removed his posters. The Petitioner alleges that this led to the burning of one of his campaign vehicles. **Regulation 15(1)(g) of the Code of Conduct** proscribes defacing, removal, or destruction of political campaign materials of any person or political party or publication of the Commission.

At trial, PW1 testified that a Noah left in Kasama Central belonging to one of the youths left to guard where their President Hichilema lodged was burnt. PW1 also testified that Chansa, driving a Hilux hired by the Malole candidate but providing the Petitioner with campaign support, told him that the vehicle was burnt in Lualuo in Lukashya by people wearing PF regalia. This evidence was hearsay evidence, and it also needed to be corroborated. However, PW10, a subpoenaed witness who could have corroborated PW1's evidence,

testified that the Hilux referred to by PW1 was burnt in New Town. Still, he was not sure whether it was in Lukashya or Kasama Central. He confirmed that the Noah was burnt in Kasama Central. He confirmed that an arrest was made concerning the Noah, but he did not know who was arrested.

RW7 testified that he stays in the neighbouring house from where the Hilux was burnt. He told the court that his home was in Kasama Central. He testified that the driver of the vehicle told him that he did not know the cause of the fire. I note that RW7 testified that he was a PF member, and as such, his evidence must be corroborated by some other evidence.

I have considered the evidence before me. I find that the Petitioner has failed to prove that the two vehicles were burnt by the 1<sup>st</sup> Respondent or his election or polling agent or with their knowledge, approval, or consent. PW10 did not know who was arrested concerning the burning of the Noah, and there is no evidence on who burnt the Hilux. There is further no proof that the burning of the vehicles was linked to Lukashya constituency. It is not disputed

that the Noah was burnt in Kasama Central. PW10 failed to confirm whether the Hilux was burnt in Lukashya or Kasama Central.

On the issue of the destruction of posters, PW2 testified that the 1<sup>st</sup> Respondent's agent RW4 was present when he was beaten, and posters stuck to the wall to signify that they belonged to the UPND removed. RW4 denied the allegation. PW7 also testified that the 1<sup>st</sup> Respondent ordered people to remove posters at the instruction of GBM at a rally held at Modern Market. RW7 testified that he was in Kupumaula at the material time alleged, and on 14<sup>th</sup> August, he was at the totaling center. I was not satisfied with the truthfulness of the PW7's testimony and its accuracy based on the contradictions on when the 1<sup>st</sup> Respondent and GBM allegedly hosted the said rally, as found above. Further, the evidence of PW2 was not corroborated by any independent evidence, having accepted he was a UPND supporter.

After analyzing the evidence under this ground, I find that the Petitioner failed to prove all the allegations to the requisite standard of proof but for the allegation that the police blocked President Hichilema from entering Lukashya. However, the Petitioner failed to

show how the former incident affected his election to warrant this Court nullifying the election on that basis.

### 3. CONTRAVENTION UNDER SECTION 83 OF THE ELECTORAL PROCESS ACT

#### Violence and intimidation

In ground 3 of his petition, the Petitioner alleges that the 1<sup>st</sup> Respondent's agents beat up the Petitioner's supporters in all 10 wards of Lukashya Constituency.

Section 83 of the Electoral Process Act classifies violence as an electoral offence. The relevant portion states that:

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

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

(b) 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.”

Further, Regulation 15(1) of the Code of Conduct also proscribes causing violence or use of language or engaging in conduct likely to cause violence during an election campaign or elections.

At trial, PW2, PW3, and PW4 produced police reports showing that they made reports to the police of various injuries. PW3 was even issued with a medical report to show a medical doctor attended to him. PW2 testified that the 1<sup>st</sup> Respondent's agent Mathews Mumba RW4 watched while Kings beat him up. RW4 denied the allegation and testified that he did not know Kings. He also testified he was not in Kupumaula ward during that period. PW3 and PW4 testified that Kingsley attacked them. PW11 also testified that he was beaten at Mbusha polling station, but he led no evidence on the perpetrators of the alleged violence. PW2, PW3, and PW4 confirmed that neither the 1<sup>st</sup> Respondent nor his agent RW4 was present when they were beaten.

I note that PW2, PW3, PW4, and PW11 testified that they were UPND members. PW2, PW3, and PW4 confirmed that they would be happy with a by-election. Their testimony, therefore, needed to be corroborated as they were partisan witnesses. Detective Chief

Inspector Mwenda, PW10, confirmed that he received a report from PW3. He testified that the case was ongoing. He, however, did not give details of who the perpetrators of the attack were. PW2, PW3, and PW4, therefore, failed to corroborate their allegations with independent evidence. They were unable to show that the 1<sup>st</sup> Respondent or his agent perpetrated the alleged violence. The witnesses also failed to establish that Kingsley was a PF cadre and that the 1<sup>st</sup> Respondent and his agent RW4 had knowledge of, approved, or consented to the alleged attacks.

Further, PW10 did not provide evidence of how many cases of violence were reported in Lukashya during the campaigns and elections and whether the 1<sup>st</sup> Respondent or his election or polling agent was involved. Therefore, there is no evidence that there was widespread violence in Lukashya constituency, which prevented or might have prevented the majority of voters from electing a candidate of their choice. Further, only PW3 testified that he was afraid to vote because of the alleged violence.

PW13 testified that on the polling day, RW4 forced them to get on a Fuso that RW4 provided to take them to the polling station to vote.



However, PW13 testified that RW4 was not armed, and he also testified that many villagers were forced to get on the Fuso. He also testified that RW4 and his team were about 5 in number. I am therefore, reluctant to accept PW13's evidence that he was forced to get on a Fuso. In any event, PW13 did not provide the number of people allegedly forced to get on the Fuso to help this court assess whether this act affected the majority of voters in Lukashya and might have prevented them from electing a candidate of their choice. Further, RW4 testified that he was with his family voting that day. He testified that he met PW13 at Kasonde polling station, where he was a polling agent under the UPND, and this evidence was not challenged.

I note that the Petitioner had also made several other allegations of UPND supporters as being the 1<sup>st</sup> Respondent's agents. Further, the Petitioner did not call the alleged victims to testify. These claims are therefore, not supported by any evidence.

RW5, the Regional Coordinator for AVAP, testified that they monitored the August 2021 elections. He testified that based on their observations, there were no major incidences in Lukashya

during the 2021 elections, and there was no intimidation of voters. However, I find that the report was not representative of all the 108 polling stations in Lukashya as it was based only on the findings made from 25 polling stations out of 108 polling stations. Also, the report appeared to have been in the realm of expert evidence. Therefore, the procedure for adducing expert evidence should have been followed. Consequently, I did not consider this report in my findings.

On the totality of the evidence, I find that the Petitioner has been unable to show with a high degree of clarity that the 1<sup>st</sup> Respondent and his agent, RW4, directly or indirectly caused the beating of PW2, PW3, PW4, or any of the Petitioner's supporters as alleged or exerted undue influence on any of the Petitioner's supporters. In any event, the Petitioner has failed to prove that there was violence or undue influence directly or indirectly perpetrated by the 1<sup>st</sup> Respondent or his agent in the majority of the wards in Lukashya. In any event, the Petitioner also failed to show that the alleged violence prevented or may have prevented the majority of voters

from choosing a candidate of their choice, as only PW3 testified that he was afraid to vote.

### CONCLUSION

I find that the Petitioner has failed to prove to the requisite standard the allegations in his petition to warrant this Court nullifying the election of the 1<sup>st</sup> Respondent as Member of Parliament for Lukashya Constituency. I have determined that Mr. George Chisanga was duly elected Member of Parliament for Lukashya Constituency. I accordingly dismiss the Petitioner's petition.

On the issue of costs, given the serious issues raised and being an Election Petition, I order that the parties bear their respective cost. I accordingly order.

Leave to appeal is granted.

Delivered at Kasama this <sup>23<sup>rd</sup></sup>.....day of November, 2021.



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**MATHEW L. ZULU**  
**HIGH COURT JUDGE**