(1975)

IN THE CONSTITUTIONAL COURT OF ZAMBIA — APPEAL NO. 2/2017
AT THE CONSTITUTIONAL COURT REGISTRY — 2016/CC/A033
HOLDEN AT LUSAKA — SELECTED JUDGMENT NO 57 OF 2017
(CONSTITUTIONAL JURISDICTION)

IN THE MATTER OF: THE PARLIAMENTARY PETITION RELATING TO THE PARLIAMENTARY ELECTION HELD ON 11TH AUGUST, 2016

AND

IN THE MATTER OF: THE CONSTITUTION OF ZAMBIA, THE CONSTITUTION OF ZAMBIA ACT, CHAPTER 1, VOLUME 1 OF THE LAWS OF ZAMBIA

AND

IN THE MATTER OF: SECTIONS 96, 97, 98, 99, 100, 106, 107 AND 108 OF THE ELECTORAL PROCESS ACT (ELECTORAL CODE OF CONDUCT) NO. 35 OF 2016 OF THE LAWS OF ZAMBIA

AND

IN THE MATTER OF: THE ELECTORAL CODE OF CONDUCT 2016

BETWEEN:

SIBONGILE MWAMBA — APPELLANT

AND

KELVIN M. SAMPA — 1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA — 2ND RESPONDENT

CORUM: Sitali, Mulenga, Mulembe, Mulonda, Munalula, JJC on 26th June, 2017 and on 17th November, 2017

For the Appellant : Mr. V. Michelo of VMN and Partners
Mr. C. Sianondo of Malambo and Company
For the 1st Respondent : Mr. K.F. Bwalya of KBF and Partners
For the 2nd Respondent: Mrs M.N. Mulenga, In House Counsel

J U D G M E N T

Mulenga, JC delivered the Judgment of the Court

(1976)

Cases referred to:

1. **Brelsford James Gondwe v Catherine Namugala SCZ Judgment no. 2 of 2013**
2. **Michael Mabenga v Sikota Wina and Others SCZ Judgment no.15 of 2003**
3. **Justin Chansa v Lusaka City Council (2007) Z.R. 256**
4. **Phillip Mhango v Dorothy Ngulube and others (1983) Z.R. 61**
5. **Anderson Kambela Mazoka and Others v Patrick Levy Mwanawasa and Others (2005) Z.R. 138**
6. **Mike Kaira v Catherine Namugala and Electoral Commission of Zambia SCZ Appeal no. 131/2002**
7. **Leonard Banda v Dora Siliya SCZ Appeal No. 95 of 2012**
8. **Examinations Council of Zambia v Reliance Technology Limited SCZ Judgment No. 46 of 2014**
9. **Attorney General v Kakoma (1975) Z.R. 212 (SC) Webster Chipili v David Nyirenda SCZ Appeal No.35 of 2003**
10. **Webster Chipili v David Nyirenda SCZ Appeal No.35 of 2003**
11. **Gastove Kapata v The People (1984) Z.R. 47**
12. **Reynolds v Llanelly Associated Tin - Plate Company Limited [1948] 1 All E.R.140**
13. **Hubert Sankombe v The People (1977) Z.R. 127**
14. **GDC Hauliers (Z) Limited v Trans-Carriers Limited SCZ Judgment No. 7 of 2001**
15. **Morgan and Others v Simpson and Another [1974] 3 All E.R. 722**

Legislation Referred to:

1. **The Constitution of Zambia Chapter 1 of the Laws of Zambia**
2. **The Electoral Process Act number 35 of 2016**

Works Referred to:

1. **Halsbury's Laws of England, Fourth Edition, Volume 15, paragraphs 652, 653 and 658**

This is an appeal against the decision of the High Court in an election petition commenced by the Appellant after her loss in the

August 2011 General Elections. The Appellant vied for the Kasama Central Parliamentary seat under the United Party for National Development (UPND) and the 1st Respondent was sponsored by the Patriotic Front (PF). The 1st Respondent emerged as winner after polling 25, 427 votes against the Appellant's 9, 359 votes. Being dissatisfied with the election results, the Appellant filed a petition seeking a declaration that the 1st Respondent was not validly elected, an order for recount, verification and scrutiny of the votes cast in the parliamentary elections for Kasama Central Constituency and consequently, a declaration that the Appellant was the candidate validly elected.

In her petition, the Appellant alleged that there was violence, intimidation, assault and injury of innocent UPND officials and supporters by the PF supporters and the Zambia Police, who also imposed an illegal curfew. The other allegation was that the Appellant's family home was raided several times by the Police. The Appellant also alleged corrupt and illegal practices on the part of the 1st Respondent relating to distribution of alcohol at a polling station and during the campaign period and donating of shoes during the campaign period. It was further alleged that PF party officials were spreading defamatory messages against the UPND presidential

candidate and other UPND candidates at rallies, on radio, and using flyers and that they destroyed her campaign posters.

In relation to the 2nd Respondent, the Appellant alleged that the 2nd Respondent recruited PF cadres as polling staff who blocked UPND accredited representatives from entering polling stations and did not provide GEN 12 forms nor signed forms and that the results on form ECZ 19 did not tally.

During the trial, the Appellant testified as PW1 and called seven (7) other witnesses to attest to the illegal practices alleged. In rebuttal, the 1st Respondent testified as 1RW1 and called six (6) witnesses while the 2nd Respondents called nine (9) witnesses. We must at this point state that the numbering of the witnesses for the 1st and 2nd Respondents was not properly done. What the lower Court ought to have done was to number the witnesses sequentially without putting the number 1 or 2 in front. However, for the purposes of this Judgment, we shall refer to the witnesses as they were numbered by the lower Court.

After considering the evidence and submissions made by the respective parties, the lower Court narrowed down the issues for

determination to three interrogative statements stated as follows:

1. Whether or not the 1st Respondent engaged in corrupt and illegal practices or other misconduct during the campaign period and election day;
2. whether such conduct prevented the majority of voters in Kasama Central Constituency from electing a candidate whom they preferred; and
2. Whether there was non-compliance in the conduct of the elections that affected the result to warrant voiding the election.

Addressing the allegations under the 1st and 2nd heads, the lower Court observed that it was apparent from case law that satisfactory proof of any one corrupt practice or illegal practice or misconduct in an election is sufficient to nullify an election. She relied on the case of **Brelsford James Gondwe v Catherine Namugala**[1] and re-affirmed the principle laid down in **Michael Mabenga v Sikota Wina and Others**[2] that-

> **"Satisfactory proof of any one corrupt or illegal practice or misconduct in an election is sufficient to nullify an election."**

The lower Court proceeded to consider the allegation of the violence perpetrated against twenty eight (28) of the Appellant's

supporters, and found that there was no dispute that there was a police raid at the Appellant's home which was carried out during the campaign period. However, the Court stated that there was no evidence on record to show that the Police were acting on instructions from the 1st Respondent or the President of the Republic of Zambia or that the act was meant to stifle the Appellant's campaign. That there was evidence that the 28 persons were charged with the criminal offence of conduct likely to cause a breach of peace and they appeared in the Subordinate Court, although a *nolle prosequi* was later entered on 30th September, 2016. The lower Court stated that the mere fact that the Appellant was deprived of 28 members of her campaign team did not mean that the Police were using their office to oppress the Appellant, the UPND and its supporters so as to affect the outcome of the election. Further, that there was no evidence showing that the majority of the voters were so affected by the police raid such that they were or may have been prevented from voting for their preferred candidate.

The lower Court thus found that the Appellant had failed to show with convincing clarity that the police raid was orchestrated by the 1st Respondent or his agents and that as a result of the raid, the

majority of voters were prevented from electing the candidate whom they preferred.

On allegations of unfair, defamatory and character assassination statements, the lower Court considered the evidence regarding the banner against the UPND presidential aspirant displayed at the Kasama Airport, the flyers alleged to have been distributed and the radio broadcasts of hate speech. The lower Court found that it was not in dispute that there was a banner at the Kasama Airport displaying the message that the UPND Presidential candidate, Hakainde Hichilema, was a satanist and that the said banner was displayed by PF supporters. The Court stated that such statements coupled with the distribution of flyers could have affected the Appellant's campaign and were capable of affecting the majority of voters by preventing them from voting for a candidate of their own choosing. However, the lower Court found that there was no evidence that the banner, flyers and hate speech were orchestrated by the 1st Respondent or his agents and further that there was no evidence of any person having been affected by the banner at the Airport, the flyers or the radio broadcasts to the point that they could not vote for a candidate of their choice.

Based on the findings, the lower Court declined to hold the 1st Respondent answerable in the absence of cogent evidence that the banner, the flyers or hate speeches were orchestrated by the 1st Respondent or his agents and that, as a result, anyone was prevented from choosing a candidate of their choice. The lower Court went on to state that the allegations, even though capable of affecting the majority of voters, were not proved by the Appellant to a fairly high degree of convincing clarity.

On the alleged corrupt and illegal practices of donating shoes to Kalundumya children, the lower Court found that there was no dispute that the shoes had formally been donated at Kalundumya and then distributed at Misengo. The only issue in contention was the date and period of the donation. The Appellant's evidence through PW8 was that the donation was made in the month of July during the campaign period while the 1st Respondent's evidence through 1RW1 and 1RW4 was that the donation was made sometime in April before the campaign period. Faced with conflicting evidence, the lower Court accepted the 1st Respondent's position that the donation was made in April, 2016 on the ground that PW8's statement that he had heard about Tasila Lungu's April visit to the area corroborated the evidence of the Respondent and 1RW4. The lower Court also took judicial

notice that when a high profile individual visits a rural community, they usually go with donations and that most of the rural roads were in a bad state during and immediately after the rainy season. The lower Court thus found that the allegation that the 1st Respondent donated shoes to Kalundumya during the campaign period to induce voters to vote for him was not proved.

On the illegal practices of vote buying and distributing alcohol during the campaign period, the lower Court found that the Appellant had failed to prove the allegations to the requisite standard.

The lower Court further held that the import of section 97 of the Electoral Process Act No. 35 of 2016 (the Act) was that an illegal or corrupt practice or misconduct has to be established under subsection (2) and in the event that it does not affect the majority of voters, then subsection (3) comes into play. Where the Court finds that there was an illegal or corrupt act but the candidate and his agents took steps to prevent it and the election was in all other respects free from corrupt or illegal practice, the election should not be declared void. However, that this did not imply that the illegal practice would go unpunished as section 108 (6), (7) and (8) of the Act mandates the Court to prepare a report stating the evidence of the illegal practice or corrupt practice with the names of the persons who

committed the offence for purposes of submission to the Electoral Commission of Zambia and ultimately to the Director of Public Prosecutions for prosecution.

In respect of the 3rd head alleging serious omissions by officers or agents of the Electoral Commission of Zambia, the lower Court considered the evidence of 2RW9 and the GEN12 forms produced in the Bundle of Documents. It found that five (5) GEN 12 forms were irregular in that they lacked the names of the polling stations, presiding officers and their signatures despite being signed by the polling agents at the back. That due to insufficient evidence on whether the GEN 12 forms were in respect of a polling stream or an entire polling station, it was difficult to ascertain the extent of the impact of the irregularity. The lower Court went on to state that even if the forms were in respect of a polling station, the percentage impact did not affect the results to warrant the voiding of the election.

The lower Court further found that the Appellant had neither proved that the absence of her polling agents at the time of opening of the polling stations affected her nor that the rejected ballots were added to the 1st Respondent's votes. The lower Court equally found that the Appellant failed to adduce evidence over the allegations of the 2nd Respondent recruiting PF members as election officers and that

the presiding officers or any other officer had acted outside the provisions of the Act.

The lower Court went on to hold that taking into account the facts, the law, the authorities cited and the evidence presented, the Appellant failed to establish to a fairly high degree of convincing clarity that both the 1st and 2nd Respondents and their agents were involved in corrupt practices, illegal practices or other misconduct such that the majority of the electorate were prevented from choosing a candidate of their choice. Further, that she was satisfied that the elections were conducted as to be substantially in accordance with the provisions of the Electoral Process Act. The trial Judge therefore dismissed the Petition and declared that the 1st Respondent, Kelvin Mutale Sampa, was duly elected as Member of Parliament for the Kasama Central Constituency.

The Appellant being dissatisfied with the decision of the lower Court advanced the following grounds of appeal:

1. **The learned trial Judge misdirected herself when she dismissed all of the allegations put forward in the Petition on the strength of various findings of fact made by her without having proper regard to the law and to the totality of the evidence before her.**
2. **The learned trial Judge fell into grave error in arriving at her decision to dismiss the allegations of unfair, discriminatory and political assassination statements when, having earlier misdirected herself as to the import of section 97 of the Electoral Process Act no. 35 of 2016 ("the Act") and the evidence before her, she considered that in order to nullify the election the alleged violations had to have been orchestrated by the 1st Respondent.**

3. **The learned trial Judge misdirected herself when she held that the provisions of section 97 (3) of the Act only come into play after any one of the grounds set out in subsection 2 of section 97 has been established.**
4. **The Court below erred when it failed to consider the established principles of law relating to how a lower Court must determine matters in dispute before it when faced with conflicting evidence.**
5. **The Court below fell into grave error when it took Judicial Notice in the manner that it did and despite having cogent evidence before it upon which it could have resolved the issue as to when and by whom the donation of shoes to the residents of Kalundumya village was done.**
6. **The trial Judge misdirected herself when she failed to consider that a matter in dispute can be proved on the evidence of a single witness and consequently when she opined that the evidence of PW8 on the allegation of donation of shoes at Kalundumya village required corroboration.**
7. **The learned trial Judge misdirected herself when, despite being on terra firma as to the import of section 97 (3) of the Act, she nonetheless went on to opine that the Appellant's submissions regarding the same were flawed.**
8. **The Court below erred in law and in fact when it absolved the 2nd Respondent of all wrongdoing contrary to the law and the facts before it.**
9. **The Court below erred in law and fact when it held that the election was conducted so as to be substantially in accordance with the provisions of the Act and when it consequently declared the 1st Respondent as duly elected member of Parliament for Kasama Central Constituency.**

The Appellant filed heads of argument on 6th January, 2017. It was argued that in reference to grounds one and two, the lower Court misdirected itself by taking an exceptionally narrow view of the import of section 97 that for an election to be nullified, any non-compliance with the Act had to be attributed to the 1st Respondent and that it had to have prevented the majority of voters in the constituency from choosing a candidate of their choice.

It was further argued that section 97(2) (b) of the Act is open ended and does not specify that the non- compliance in issue had to have been committed by the 1st Respondent. That the trial Judge failed to consider that an act of corruption or illegal practice or indeed an act of misconduct itself amounts to an act of non- compliance with the Act relating to the conduct of an election and which is capable of affecting the result of the election within the meaning of section 97(2) (b).

That the wording of section 97(2) (b) is such that it refers only to the result of the election being affected without any qualification and indeed without requiring that the majority of voters should be involved or that there should be a multiplicity of incidents. It was added that, unlike in other jurisdictions that have similar provisions in their laws, the Act makes no mention of the extent to which the result should be affected, the only requirement being that it should be affected, whether substantially or otherwise.

It was contended that under section 97(2) (b) of the Act even one incidence of non-compliance with the Act is sufficient to trigger nullification if it relates to the conduct of an election and if it affects the result of that election. And that this was the only test prescribed under the otherwise clear provisions of section 97 (2) (b) of the Act.

Failure to highlight this fact in the trial Judge's reasoning and limiting herself to the provisions of section 97(2) (a) of the Act was a clear misdirection on her part which rendered the Judgment erroneous. As a consequence of that error, the learned trial Judge completely ignored the evidence before her which showed that, in point of fact, there were clear violations of the Act and its attendant code of conduct in the form of unfair, defamatory and character assassinating statements complained of which violated, *inter alia*, the spirit and letter of the Act and Regulations 2 and 15 (c), (m) and (n) of the Code of Conduct.

The Appellant's further contention was that section 97(2) (b) of the Act when closely examined reveals its simplicity and clarity and ought to be construed in its pure and natural form using the literal rule of interpretation. It is to be construed in its own terms and not conjunctively with 97 (2) (a). That subsection (4) only applies where the non-compliance in issue is alleged to have been committed by an election officer in breach of that officer's official duty.

It was advanced that the provision does not require non-compliance to be attributed to any particular persons or class of persons. Had the converse been the intention, Parliament would have specifically stated, for instance, that such non-compliance should be

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proceedings, the lower Court ought to have reached the conclusion that the offending flyers were, as a matter of fact, distributed throughout the constituency as alleged by the Appellant.

On the allegations of the hate speech broadcast on Radio Mano, this Court was invited to review the testimony of RW5. It was submitted that RW5's testimony corroborated the Appellant's allegation that the hate speech was broadcast and the lower Court ought to have accepted the Appellant's evidence on the point in the absence of any question as to the Appellant's credibility as a witness. And more so when due regard was had to the fact that the absence of the recording of the programme was cogently explained by the Appellant. Based on this position, it was advanced that the allegations relating to distribution of flyers and the hate speech by Chishimba Kambwili were on the totality of the evidence proved to the requisite standard of cogency and to a high degree of convincing clarity.

With regard to the banner displayed at Kasama Airport which declared that the UPND President was a satanist, the Appellant argued that the lower Court erred by finding that there was no evidence of the broadcast of the banner by Zambia National Broadcasting Corporation (ZNBC) especially in the light of the 1st

Respondent's testimony. That the unchallenged evidence of the Appellant that she lost members on account of being perceived as coming from a blood party was conclusive as to the effect of the statements on her campaign and as such on the conduct of the election within the ambit required under section 97(2) (b) of the Act.

That given the effect of section 97(2)(b) of the Act, it is immaterial that the violations in issue were not directly attributable to the 1st Respondent, the key consideration being that the elections were conducted in an atmosphere where voters were made to believe that the Appellant was associated with satanism, which atmosphere created an undue advantage in favour of the 1st Respondent.

The Appellant thus prayed that this appeal should succeed on these two grounds and that this Court should find that the conduct of the election was not in accordance with the principles laid down in the Act, in keeping with section 97(2)(b) of the Act, in view of the unfair, defamatory and character assassination statements made against the Appellant's party president.

The Appellant also contends that by failing to take into consideration the provisions of section 97(3) of the Act when she dismissed all of the subject allegations, the trial Judge fell into grave error.

On the aspect of distribution of alcohol in Kalundumya village during the campaign period, the Appellant contends that the finding of the lower Court was flawed in that it disregarded the testimony of PW3 that the Republican President was in Kasama Central on 21st July, 2016 which went unchallenged. That the said date was of central importance because the defence put forward by the 1st Respondent that the Republican President was in Kasama on 7th or 8th August, was bound to collapse.

That the trial Court's acceptance of RW3's testimony over that of PW8 on the basis of corroboration was applying double standards as RW3's testimony was equally uncorroborated. Relying on **Justin Chansa v Lusaka City Council**[3], it was submitted that this Court ought to set aside the lower Court's holding to the effect that RW3 could not have distributed alcohol in the constituency on the dates stated by PW8 and instead hold that alcohol was distributed in Kalundumya village with the 1st Respondent's knowledge contrary to section 81 (c) of the Act. That based on this misconduct, the election was rendered a nullity.

It was also submitted, in reference to the alleged omissions by officers of the 2nd Respondent, that irregularities of the nature

observed were indicative of an endemic problem with the system of tallying results which rendered the whole system unreliable. The irregularities therefore affected the result in the manner envisaged under the Act thereby warranting the nullification of the election.

In arguing grounds three and seven, the Appellant submitted that by reason of the use of the word "despite" at the commencement of section 97 (3) of the Act, it is intended that the provisions of subsection (2) be excluded when applying subsection (3). That by repeatedly using the singular, "a corrupt practice or illegal practice" the subsection recognises the possibility of the High Court finding that a singular such act had been committed by the Respondent.

It was added that in a case where a candidate has committed electoral malpractice and cannot avail himself of the defences set out in paragraphs (a) to (c) of section 97 (3), the Court is left with no discretion but to nullify the election despite what subsection (2) may state even where the majority of the voters have not been prevented from electing a candidate of their choice or where the incident is a single one. That the drafters of subsection (3) could not have intended otherwise because any other interpretation would entail that there would have been no need to include the provision as section 97 deals comprehensively with all other aspects of what the Court can or

cannot do when faced with such a violation. Section 97 (3) thus preserves the power of the Court to punish the candidate by declaring the election void in appropriate circumstances where a candidate is found to have committed wrong doing which is personally attributable to that candidate. If section 97 (3) is not construed in the manner suggested, then a lacuna will exist which would allow a candidate to engage in any single or multiple acts of corrupt or illegal practices without sanction provided that such acts do not affect the majority of voters.

Hence, it was submitted that the lower Court fell into grave error when it failed to apply section 97 (3) of the Act to the extent required. The Appellant thus prayed that this Court adopts her interpretation and accordingly find that the learned trial Judge was not on firm ground when she failed to give the full effect of the subject provision of the law.

On grounds four, five and six, the Appellant submitted that due to the inconsistencies in the testimonies of the 1st Respondent and RW3, the lower Court erred by accepting their evidence over that of PW8 thereby defying the principle set in **Phillip Mhango v Dorothy Ngulube and others**[4]. It was further submitted that by taking judicial notice of matters which were in dispute, the lower Court stepped into

the arena and therefore caused great injustice. That the proper course which the trial Judge should have taken was to accept PW8's testimony as there was no basis upon which she rejected it.

It was thus contended that the allegation that the 1st Respondent donated shoes at Kalundumya village was proved and as such, the election ought to have been nullified in terms of section 97 (3) of the Act.

Under grounds eight and nine, the Appellant submitted that the 1st Respondent was not duly elected because the election was not conducted in substantial conformity with the Act thus rendering the Judgment in the Court below amenable to reversal. It was the Appellant's prayer that the appeal was meritorious and ought to be upheld in its entirety.

At the hearing, counsel for the Appellant, Mr. Michelo, augmented the Appellant's heads of argument with respect to grounds two and eight.

Concerning ground two, Mr Michelo submitted that the banner displayed at the airport which read *"Northern Province rejects HH the Satanist"* was capable of affecting the Appellant as confirmed by the 1st Respondent. The case of **Leonard Banda v Dora Siliya**[7] was cited as holding that in a general election, bad publicity of one candidate in

a tripartite election transcends one to affect everyone. He added that the banner was televised and this affected the whole of Kasama. It was counsel's further submission that it was also shown that Radio Mano and Lutanda had wide coverage of the whole Kasama and therefore the character assassination swayed the voters to a large extent against the Appellant.

On ground eight in relation to section 97(2) (b), counsel submitted that officers from the Electoral Commission of Zambia (ECZ) did not properly conduct the elections as provided for under the law. He argued that Davies Sikazwe, the Returning Officer, admitted that the GEN 12 forms for 6 out of the 60 polling stations had no names of the polling stations, as well as names of the returning officers and also confirmed that this was a serious anomaly. Counsel then argued that it was wrong for the lower Court to state that the anomaly affected both parties because 6 polling stations out of 60 was a big number and therefore the true results for Kasama Central Constituency will never be known thereby requiring the voiding of the election. Further, that the issue of substantiality does not come into play because of the omission.

The 1st Respondent did not file any heads of argument. The 2nd Respondent addressed grounds eight and nine in the heads of

argument filed in response to the Appellant's arguments. It contended that there was no evidence on record to show that the election results were not accurate or that voters did not choose their preferred candidate. That in fact, the Appellant during her testimony before the lower Court did not dispute the results. Relying on **Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Others**[5] and **Mike Kaira v Catherine Namugala and Electoral Commission of Zambia**[6], it was contended that the irregularities did not affect the election result.

Further, that the Appellant had not furnished any evidence against the 2nd Respondent to prove that it did not conform to the laws regarding the conduct of elections. It was argued that the 2nd Respondent complied with all electoral procedures relating to the conduct of elections in Kasama Central Constituency and the results that were announced were a reflection of the free choice and will of the people of Kasama Central Constituency.

It was thus submitted that the grounds against the 2nd Respondent be dismissed with costs.

At the hearing, the 2nd Respondent's counsel, Mrs Mulenga, responded to the oral submissions by counsel for the Appellant. She submitted that a perusal of the record of appeal indicates that there

was no dispute in relation to the actual results that the candidates obtained in the subject election. Further, that page 354 of the record of appeal shows that the Appellant's agents in fact signed for the overall results. That in the premise, the argument that the results could not or will never be known was not tenable as the results were clearly indicated.

Mrs Mulenga further submitted that the trial Judge's interpretation of section 97 (2) (b) and (4) of the Act were the true reflection of how the law should be interpreted. She concluded that the appeal should be dismissed.

In reply, Mr Michelo stated that the 2nd Respondent's arguments were based on form ECZ 19 which is generated from form GEN 12. He maintained that the six (6) GEN 12 forms were null and void and thus the results may never be known.

We have carefully considered the grounds of appeal, the Judgment of the Court below, the evidence on record and the submissions made by the respective parties.

It appears to us that the appeal is anchored on the findings of fact and the interpretation of section 97 of the Act as well as its application to the facts by the lower Court. We will address the specific grounds of appeal as they were argued by the parties.

Under grounds one and two, the Appellant impugns various findings of fact of the lower Court and further argues that the lower Court erred by not considering that the acts of corruption, illegality and misconduct could also fall under section 97 (2) (b) of the Act. Therefore, the two central issues for consideration are; firstly, whether the lower Court misdirected itself as regards the findings of fact on the allegations of unfair, discriminatory and character assassination statements and corrupt and illegal practices; and secondly whether, after finding that the allegations of corrupt and illegal practices had not been proved under section 97 (2) (a) of the Act, the lower Court should have gone further to nullify the election under subsection (b) based on the fact that the corrupt or illegal practices affected the result of the election.

In considering the first issue of whether the trial Court misdirected itself in arriving at the findings of fact on the specified allegations, we wish to state that the case of **Examinations Council of Zambia v. Reliance Technology Limited**[8] is instructive that an appellate Court will not lightly interfere with findings of fact of the trial Judge that had the benefit of seeing and evaluating the witnesses unless it is shown that the findings of fact were either perverse or

made in the absence of any relevant evidence or on a misapprehension of the facts.

The allegations of corrupt and illegal practices in the lower Court were the distribution of alcoholic beverages during the campaign period and at a polling station, and unfair, discriminatory and character assassination statements. We shall address each of these allegations in line with the dictates of section 97 (2) (a) of the Act.

We shall first consider the alleged distribution of alcoholic beverages during the campaign period. The evidence on this aspect was tendered by the Appellant's witnesses, namely PW2, PW7 and PW8 who testified that the alcohol was distributed at Kalundumya village during the campaign period and that the 1st Respondent distributed the alcohol at Mubanga Chipoya polling station on the day of the elections. As to the distribution of alcohol in Kalundumya village, the lower Court stated that the evidence of PW8 was not corroborated as to when the alcohol was distributed, which he alleged was 7th or 8th August, and that PW7's evidence was scanty as he only said that he saw alcohol being decanted from a canter into drums in PF branded vehicles on 3rd August and did not know where it was taken. The lower Court believed the evidence in rebuttal by the 1st Respondent and 1RW3 who testified that alcoholic beverages were

purchased after the elections in celebration of the victory and produced receipts to that effect. The lower Court further found that at the time alleged by PW8, the Republican President was in the province in line with 1RW3's evidence.

The Appellant's Counsel argued that the lower Court disregarded the unchallenged testimony of PW3 that the Republican President was in Kasama on 21st July, 2016 and that this date was central in countering the dates given by the 1st Respondent of 7th or 8th August, 2016. The Appellant's argument that PW3 stated that the President was in Kasama on 21st July, 2016 is based on her statement on page 566 of the record of appeal that *"according to my presumption, I took it that since President Lungu was in Kasama, they (police) were just here to maintain peace."* We have examined the record of appeal which shows that PW3 mentioned 21st July, as the date on which the police raid took place and the inference from her statement was that the Republican President was in Kasama on the date of the raid. This date was at variance with the Appellant's testimony on when the raid occurred. The Appellant stated that it was shortly before the elections in August. It follows that the trial Judge was on firm ground when she evaluated the evidence from all the witnesses and found, based on the testimony of the 1st

Respondent and 1RW3 that the Republican President was in Kasama during the period of 7th or 8th August, 2016 and not July which was alluded to in passing by PW3. We wish to emphasise that in election petitions, the party alleging must prove the allegations to a higher standard of convincing clarity and not the balance of probabilities. The trial Judge thus rightly found that the allegation of distribution of alcohol at Kalundumya village on 7th or 8th August was not proved to the required standard and further that PW8's evidence was not corroborated.

In resolving the conflicting evidence regarding the alcohol distribution at the polling station, the lower Court relied on the testimony of 2RW2, the presiding officer at Mubanga Chipoya polling station who testified that he neither saw any distribution of alcohol at the polling station on the day of elections nor was there a report to him over the said issue. This evidence of 2RW2 was supported by that of 1RW5. We are alive to and endorse the principle enunciated in **Attorney General v Kakoma**[9], that:

> **"A Court is entitled to make findings of fact where the parties advance directly conflicting stories and the Court must make those findings on the evidence before it having seen and heard the witnesses giving that evidence"**

In the present case, the Appellant did little to establish the fact that the 1st Respondent distributed alcohol during the campaign

period and on the day of elections or that it was distributed with his knowledge and approval or that of his election agent. We thus cannot fault the finding of the trial Judge that the Appellant failed to prove this allegation as there is nothing on the record to suggest otherwise.

The second allegation is the distribution of flyers and the display of a banner containing disparaging remarks about the UPND presidential aspirant. The Appellant seeks to have the lower Court's findings that the allegations were not proved reversed. The display of the banner was not disputed by the 1st Respondent save that upon seeing it he immediately ordered its removal and that it was not sanctioned by him. As regards the distribution of flyers, the 1st Respondent stated that he did not sanction their production nor was he aware of who was responsible for their production. Further, that neither himself nor his agent came across the flyers. The lower Court found that the Appellant did not tender evidence as to who dropped or distributed the flyers or of anyone else who saw the flyers. As regards the banner, the lower Court stated that there was no evidence from the Appellant that the banner was broadcast by Zambia National Broadcasting Corporation (ZNBC).

The Appellant has argued that the 1st Respondent under cross examination at pages 761 and 767 of the record of appeal asserted

that ZNBC broadcast the banner in issue and therefore, it was seen by the majority of voters in the constituency. We have perused the record of appeal including pages 761 and 767 where the 1st Respondent's responses in cross examination were only to the effect that the ZNBC crew was present at the airport but was not broadcasting live. Therefore, the testimony by the 1st Respondent does not assert or acknowledge that ZNBC broadcast the banner on television.

The trial Judge also rightly noted that not even the Appellant herself stated that she saw the banner broadcast on television. It is therefore clear that the arguments by the Appellant lack merit in that they are at variance with the evidence on record. Thus, we cannot fault the lower Court's finding that the Appellant equally failed to prove this allegation.

The third complaint concerned the alleged broadcast of the hate speech propagated by Chishimba Kambwili on Radio Mano. On this allegation, we were invited by the Appellant to examine the evidence of 1RW5 and we have done so. The testimony of 1RW5, a volunteer worker with Radio Mano, was that some PF rallies were aired live on Radio Mano but that she did not listen to Chishimba Kambwili's rally broadcast as she was in the field at the time.

It was not in dispute that the said rally was broadcast. However, the Appellant did not specify what comprised the alleged hate speech apart from merely stating that there was hate speech. The 1st Respondent denied that there was any hate speech. The trial Judge found that the Appellant had not proved the allegation as she failed to specify the contents or what comprised the hate speech. This finding by the trial Judge cannot be faulted. The onus of proof was on the Appellant to prove her allegation to the required standard, which she failed to do.

The Appellant has further argued that the lower Court should have found in her favour as regards the distribution of flyers and the radio broadcast of hate speech based on the testimony of a single witness. We wish to state that the testimony of a single witness can ordinarily prove an allegation provided that the trial Judge finds such a witness credible. In this case it is apparent that the lower Court was justified to treat the Appellant's evidence with caution given her interest in the matter and therefore, the lower Court was on firm ground to require corroboration on this aspect especially on the contents of the alleged hate speech. The said corroboration could easily have been a recording of the broadcast from the Radio station. The explanation given by the Appellant for the absence of the

recording that she was not given a copy by Radio Mano was rightly not accepted by the trial Judge as she could have applied to Court for the recording to be availed by way of subpoena *duces tecum.* The failure by the Appellant to avail this recording to the Court or to call another witness to attest to the actual words of the alleged hate speech left a gap in her evidence on this issue and underscores the trial Judge's finding that the Appellant had failed to prove this allegation to the required standard.

Having determined that the lower Court was on firm ground in its findings of fact that the Appellant had failed to prove the allegations raised to the required standard, we now turn to the second issue.

The second issue is whether after holding that the allegations on corrupt or illegal practices had not been proved under section 97 (2) (a) of the Act, the lower Court should have proceeded to nullify the election under section 97 (2) (b) on the basis that the corrupt or illegal practices had affected the result.

Section 97 (2) (a) and (b), of the Act provides as follows:

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

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

(i) by a candidate; or

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

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

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

Section 97 (2) stipulates the grounds under which an election can be rendered void. Paragraph (a) relates to corrupt practice, illegal practice or other misconduct on the part of the candidate or with the candidate's knowledge and consent or approval or with the knowledge and consent or approval of the candidate's election or polling agent. The said corrupt practice, illegal practice or misconduct must have prevented or have been capable of preventing the majority of voters from electing a candidate of their choice.

Therefore, for an allegation to succeed under this paragraph, both aspects must be proved to the required standard, that is, a fairly high degree of convincing clarity.

Section 97 (2) (b) addresses acts of non-compliance with the provisions of the Act in the conduct of elections which has an effect

on the results of the election. It is worth noting that this provision specifically relates to the conduct of elections. Article 229 (2) (b) of the Constitution as amended by Act number 2 of 2016 vests the power to conduct elections in the Electoral Commission of Zambia, the 2nd Respondent. That being the case it follows that section 97 (2) (b) relates to the discharge of the 2nd Respondent's functions during an election. This position is made clear by the fact that section 97 (2) (b) is subject to subsection (4) which provides that an election will not be declared void due to an act or omission by an election officer in breach of his official duties in relation to the conduct of the election.

This provision is not novel but is a re-enactment of section 93 (2) (b) and 4 of the repealed Electoral Act No. 12 of 2006 which provision was construed by the Supreme Court in the case of **Webster Chipili v David Nyirenda**[10] as follows:

> **"The subjection of paragraph (b) means that once evidence of non-compliance with the Electoral Act by election officers in the conduct of an election is established to the satisfaction of the High Court, which evidence is capable of affecting the result of an election, the lower Court is obliged to invoke sub-section (4) of section 93 as a matter of course. This is done to enable the lower Court review the acts or omissions of the election officers in the conduct of the election in order to determine whether the election was so conducted as to be substantially in accordance with the provisions of the Act and whether such acts or omissions did affect the result of the election."**

In this case, the Appellant concedes that her allegations were not proved to the required standard under section 97 (2) (a) but

argues that the lower Court should have nevertheless nullified the election under section 97 (2) (b) based on the same unproven allegations.

Section 97 (2) (b) of the Act as outlined above relates to non-compliance with the provisions of the Act in the conduct of elections and our considered opinion is that the Appellant's argument that the failed allegations of corrupt or illegal practices or misconduct under section 97 (2) (a) of the Act should have been the basis for nullifying an election under section 97 (2) (b), is not tenable and is misconceived. There is a specific ground which covers allegations of corrupt practices, illegal practices and misconduct being section 97 (2) (a) and for allegations to be proved thereunder, all the ingredients of the ground have to be satisfied. To accede to the Appellant's argument would result into a muddled state of affairs where the distinction between the grounds for nullification under section 97 of the Act would be eroded and the Act would lose an essential element of predictability. In any event, the Appellant did not show how any of the unproved allegations affected the result of the election. Grounds one and two both lack merit and accordingly fail.

In respect of the third and seventh grounds of appeal, the Appellant argued that section 97 (3) of the Act is a separate ground

upon which the lower Court ought to have nullified the election on proof of a single corrupt practice or illegal practice. And that subsection (3) does not require proof of the majority of the electorate being prevented from electing a candidate of their choice. It was the Appellant's further argument that the use of the word "despite" in subsection (3) is intended to exclude the provisions of subsection (2).

The main issue for consideration is whether based on the word "despite", section 97 (3) constitutes another ground upon which an election can be nullified exclusive of subsection (2). Section 97 (3) provides as follows:

> **(3) Despite the provisions of subsection 2, where upon the trial of an election petition, the High Court or a tribunal finds that a corrupt practice or illegal practice has been committed by, or with the knowledge and consent or approval of, any agent of the candidate whose election is the subject of such election petition, and the High Court or a tribunal further finds that such candidate has proved that –**
>
> ***(a)*** **a corrupt practice or illegal practice was not committed by the candidate personally or by that candidate's selection agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent;**
>
> ***(b)*** **such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and**
>
> ***(c)*** **in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent; the High Court or a tribunal shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void. (emphasis ours)**

This provision has been imported into the current Act from the repealed Electoral Act of 2006 with the exception of the word "notwithstanding" which has been replaced with the word "despite". The section, in its previous form was interpreted in **Brelsford James Gondwe v Catherine Namugala**[1] as follows:

> **"It is our understanding that subsection 3 will only come into question after any one of the grounds set out in subsection 2 has been established. It is not mandatory that in every election petition the High Court must call upon the person whose election is being challenged to establish that no corrupt practice or illegal practice was committed by him or her personally or by that person's election agent, or with the knowledge and consent or approval of such person or that person's election agent; or that such person and that person's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election. It is our considered view that the High Court will only be duty bound to do so in the event that the Petitioner establishes any one of the grounds aforementioned to the requisite standard in election petitions."**

We endorse that interpretation. We also hasten to point out that section 97 (3) does not constitute yet another ground upon which an election can be nullified as suggested by the Appellant. Rather, it permits a situation where at the trial of an election petition brought under section 97 (2), and in particular paragraph (a), where the trial Judge finds that a petitioner has established or proved to the required standard that a corrupt practice or illegal practice was committed by the candidate or any agent of the candidate or with his knowledge and approval or consent or that of his agent, the Court can nullify the

election if the candidate does not prove any of the defences provided in subsection (3). Thus the provision of section 97 (3) only comes in when there has been proof to the required standard of a corrupt or illegal practice under subsection (2) (a). To hold otherwise would be absurd and would be in direct conflict with the clear provisions of subsection (2) of section 97 of the Act as regards the grounds upon which an election may be nullified. The lower Court was therefore on firm ground when it refused to accept that subsection (3) was a separate ground upon which an election can be nullified. We thus agree with the trial Judge that the Appellant's arguments were flawed on this aspect. The third and seventh grounds accordingly fail.

Grounds four, five and six essentially challenge the principles used by the lower Court in evaluating or assessing the conflicting evidence adduced by the parties and in particular, as regards the allegation of donation of shoes at Kalundumya village. The conflicting evidence on this issue related to the timing of the donation.

The evidence of PW8 was that the donation was made sometime in July during the campaign period, by the 1st Respondent while the 1st Respondent's evidence and that of 1RW3 and 1RW4 was that the donation was made before the campaign period commenced and that the 1st Respondent just accompanied Tasila Lungu on a programme

under her charitable organisation, known as Ubulayo. The 1st Respondent and 1RW4 stated the date as 26th April. In resolving the conflicting evidence adduced by the contending parties, the lower Court addressed the credibility of the witnesses and further took judicial notice of the fact that it was a trend in this country that when a high profile individual visited a rural community, they usually went with donations and that most of the rural roads were in a bad state during and immediately after the rainy season. The lower Court evaluated the evidence and highlighted that PW8 stated that the 1st Respondent donated the shoes sometime in July but in cross examination, he stated that the pictures with Tasila Lungu depict a season between January and April, going by the vegetation. PW8 also acknowledged hearing about Tasila Lungu's visit in April. The date of 26th April was mentioned by both the 1st Respondent and 1RW4 who worked as a volunteer under Ubulayo. 1RW3 stated that the shoes were donated on 26th May.

Based on the above and having analysed the credibility of the witnesses, the trial Judge found that the 1st Respondent's version of the donation having been made outside the campaign period was corroborated by 1RW4 and PW8 as regards the date of Tasila Lungu's visit. The learned trial Judge thus found that the Appellant had failed

to discharge the burden of proof as regards the period of the donation.

The Appellant has argued that the election should have been nullified based on the inconsistency in the testimony of the 1st Respondent and 1RW3 on the date of the donation, on whether the vehicle that carried the shoes was a truck or a van and the reason for the vehicle not reaching Kalundumya village with one attributing it to the bad road and the other to the driver getting lost. We note that apart from the issue of the date, which was properly resolved by the lower Court, the learned trial Judge considered the issue of the reason for the vehicle not reaching Kalundumya at pages 101 and 102 of the record of appeal as follows:

> **"Thus there is conflicting evidence and the Court has to determine based on the credibility of the witnesses. It was evident that PW8 and 1RW3 came with a confrontation stance to defend their positions. Additionally, 1RW3 was inconsistent in relation to the reason the vehicle carrying the shoes did not reach Kalundumya in that she said it was due to the driver getting lost and then stating that one of the persons in the vehicle knew the place and they did not reach due to the bad state of the road. The 1st Respondent stated that it was because of the state of the road and that the vehicle could not reach but there was no explanation from PW8 as to why the shoes were left at Misengo instead of Kalundumya when the 1st Respondent went there to donate them"**

It is apparent that the trial Judge resolved the issue of inconsistent testimony based on the credibility of witnesses whereby

she discredited PW8 and 1RW3 on some aspects and believed the 1st Respondent and 1RW4. PW8 also said he was the one who drove the canter truck that went to collect the shoes from the other vehicle at Misengo but did not mention the type of vehicle it was or why it could not reach Kalundumya. The inconsistency was minor and did not go to the root of the evidence of this allegation. The trial Judge was therefore on firm ground when she found that the allegation was not proved to the required standard that the 1st Respondent donated shoes during the campaign period.

We wish to address the issue of judicial notice taken by the lower Court which has been challenged by the Appellant. In **Gustove Kapata v The People**[11], the Supreme Court examined the principle of judicial notice and stated that:

> **"It is trite law that judicial notice is the cognisance taken by the Court itself of certain matters which are so notorious, or clearly so established, that the need to adduce evidence of their existence is deemed unnecessary. This is simply a common sense device by which the Court's time and the litigant's expenses are saved. It is important, however, that, in taking judicial notice of (notorious) facts, Courts should proceed with caution. Thus, if there is room for doubt as to whether a fact is truly notorious, judicial notice should not be taken of it.**
>
> **Insofar as the utilisation of personal knowledge is concerned, the general rule is that a judge may, in arriving at his decision in a particular case, act on his personal knowledge of facts of a general nature, that is, notorious facts relevant to the case."**

In so holding, the Supreme Court adopted the holding in the English case of **Reynolds v Llanelly Associated Tin - Plate Company Limited**[12] where the Court of Appeal in England held that although the County Court Judge was entitled, within limits, to take into account his own knowledge of general conditions in the neighbourhood, he had gone too far in making use of his personal knowledge of the prospects of a workman of a particular age and skill.

We equally call in aid the case of **Hubert Sankombe v The People**[13] where the Supreme Court held that:

> **"The extent to which a judge may use his personal knowledge of general matters has not been clearly defined. As Cross on Evidence, 4th edition, puts it at page 141 - within reasonable and proper limits a judge may make use of his personal knowledge of general matters . . . no formula has yet been evolved for describing those limits."**

We note that the trial Judge was entitled to apply her personal knowledge on certain facts. However, the question we ask ourselves is whether the trial Judge remained within reasonable and proper limits in using her personal knowledge of the state of the roads in rural areas as well as in noting that public figures donate items on their rural area visitations. We are of the view that the lower Court exceeded the reasonable limits when she ventured into stating that public figures make donations when visiting rural areas and that most rural roads were in a bad state during and immediately after the

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Going by the evidence on record, it is not in dispute that the shoes were taken and donated to Kalundumya school Children, and Tasila Lungu was in the area sometime in April, the question is when was the donation made and by whom?....

In addition, 1RW1 and 1RW4 stated that Tasila Lungu's visit was in April, 2016 which in my view is corroborated by PW8 when he stated that he has heard about Tasila Lungu's visit in April, 2016, though he did not attend the meeting....

Taking into account the above facts and in the absence of proof of the actual period of the donation, which burden was on the petitioner, I am inclined to believe that the shoes were donated during Tasila Lungu's visit which was before the campaign period started."

Therefore, the trial Judge clearly resolved the credibility issue in favour of the 1st Respondent as stated. We, as an appellate Court, cannot fault this finding of credibility of witnesses as we did not see or hear the witnesses first hand as stated in the case of **GDC Hauliers (Z) Limited v. Trans-Carriers Limited**[14]. Indeed, the record of appeal also shows that the lower Court was on firm ground in holding that the Appellant did not adduce evidence to the required standard to prove her allegation that the 1st Respondent distributed shoes in July 2016. Grounds four, five and six fail.

In terms of grounds eight and nine, the issue for determination is whether the 2nd Respondent conducted the election in substantial conformity with the Act. The Appellant's contention that there was non-compliance centres around six (6) GEN 12 forms that were not

signed by presiding officers who also did not indicate their names and those of polling stations.

Upon the lower Court's finding that five (5) GEN 12 forms were irregular in that they lacked the names of the polling stations, presiding officers and signatures despite being signed by polling agents at the back, it went on to hold that the said irregularities which affected all the candidates, did not affect the results to warrant the voiding of the election.

We have perused the record of appeal which reveals that it was not five but six (6) GEN 12 forms at pages 214, 226, 246, 288, 296 and 302 that were signed by both the Presiding Officers and the polling agents but did not indicate the names of the presiding officers and of the polling stations. Of these, the GEN 12 form at 288 also had the name of the polling station. The polling agents of the Appellant and 1st Respondent also signed form ECZ 19 which was the consolidation of the results as well as form GEN 14 being the declaration of the results form.

It is clear from section 97 (2) (b) and (4) that for these two grounds of appeal to succeed, the Appellant was required to prove to the required standard that the election was not conducted or not

signed by presiding officers who also did not indicate their names and those of polling stations.

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Further, **Halsbury's Laws of England** at paragraph 658 states that failure to comply with provisions regarding the forwarding of documents after the close of the poll is not sufficient to avoid the election. Paragraphs 652 and 653 of **Halsbury's Laws of England** highlight examples of such failures to include the failure to date the forms or ballot paper accounts and the failure to indicate names of the constituency or electoral area, as the case may be.

In the instant case, the irregularity concerns 6 out of 60 GEN 12 forms. The Appellant's argument is that the 6 forms established that there was substantial non-compliance with the law or that the irregularity in the conduct of the election was deep rooted. We do not agree. Six (6) out of 60 polling stations does not prove that the irregularity was deep rooted or that there was substantial non-compliance with the law.

The Appellant's other argument that the six (6) GEN 12 forms that had irregularities affected the result is not tenable in the absence of actual proof that the results were affected. For the defect to be said to have affected the result, the Appellant ought to have shown that it actually changed the results. This was not so in this case and hence the consolidation of results form ECZ 19 and the declaration of results form GEN 14 were signed by the Appellants' polling agent.

The burden was on the Appellant to show to the required standard that the election results were actually affected by the irregularity. It is not sufficient to merely state in broad terms and it is not for the trial Court to speculate, that the results were affected. As the trial Judge rightly observed, the irregular forms also affected all the other candidates but their effect on the result was not shown. Further, the signing of the six (6) forms by the polling agents of the concerned parties showed that there was no dispute as regards the results reflected thereon and this was acknowledged by the Appellant in her evidence.

In the instant case, the lower Court therefore rightly considered this issue and found that there was no proof that the results were affected or that the results which were recorded in the six (6) GEN 12 forms in issue were wrong. We accede to the principle set out in **Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Electoral Commission of Zambia**[5] that the effect of the irregularities have to result in the election being so flawed that the defects actually and significantly affected the result which could no longer reasonably be said to represent the true free choice and will of the majority of voters.

The evidence of the irregularities alleged on the part of the 2nd Respondent fell short of satisfying section 97 (2) (b) of the Act as they did not affect the election result and there was no proof that the election was not substantially conducted in compliance with the Act. Grounds eight and nine also fail.

All the grounds of appeal having failed, we find no merit in this appeal and accordingly dismiss it.

Each party shall bear their own costs.

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A.M. SITALI

CONSTITUTIONAL COURT JUDGE

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M.S. MULENGA

CONSTITUTIONAL COURT JUDGE

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E. MULEMBE

CONSTITUTIONAL COURT JUDGE

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P. MULONDA

CONSTITUTIONAL COURT JUDGE

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M.M. MUNALULA

CONSTITUTIONAL COURT JUDGE