

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
AT LUSAKA

2000/HP/EP/009

IN THE MATTER OF : THE ELECTORAL ACT CAP13  
SECTIONS 18, 19 AND 20 OF THE  
LAWS OF ZAMBIA  
AND IN THE MATTER OF : PARLIAMENTARY ELECTION  
FOR MP/K/A CENTRAL  
CONSTITUENCY HELD ON 27<sup>TH</sup>  
DECEMBER, 2001  
AND THE MATTER OF : AN ELECTION PETITION BY  
ANTHONY KUNDA KASOLO

**B E T W E E N:**

ANTHONY KUNDA KASOLO

Petitioner

And

MATEYO B. MWABA

Respondent

Before The Honourable Mr. Justice E. E. Chulu in Open Court on the  
21<sup>st</sup> Day of October 2002.

For the Petitioner: Dr. Mulwila of Messrs Ituna Partners

For the Respondent: In Person

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**J U D G M E N T**

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The Petitioner Anthony Kunda Kasolo filed his Petition in the Principal  
Registry, alleging the following:-

1. That Mulenga Supuni who is the District Administrator (DA) for Mpika District and the District Chairman for the Movement for Multiparty Democracy (MMD) at the material time, used Government vehicles to campaign for MMD candidates in the tripartite elections held on 27<sup>th</sup> December 2001.
2. That Mulenga Supuni, David Kapangalwendo, Mateyo Mwaba in the company of other MMD officials went round Mpika Central Constituency misinforming people that the Patriotic Front (PF) which had sponsored the Petitioner had dissolved and its members including the Petitioner, had gone back to MMD.
3. That Mulenga Supuni gave out money to voters in order to induce them to vote for MMD candidates. The Petitioner's prayer is that:
  - (a) the Court should determine that the Respondent herein was not duly elected or returned and that the election was void; and
  - (b) a scrutiny to be carried out by the High Court in such a manner as the Court may determine.

The Petitioner called six witnesses in support of his case. The Petitioner's own evidence in the main, is that the election of the Respondent as a Member of Parliament (MP) for Mpika Central Constituency was not held in a free and fair atmosphere because the MMD which sponsored the Respondent used State facilities to campaign for him, and also staged a misinformation campaign targeted at the PF which sponsored the Petitioner. According to the Petitioner, the DA for Mpika District, Mr Supuni and Mr Mubanga Kapangalwendo who was then a Minister, were seen using motor vehicles GRZ 292BP and Registration No. AAX 1438 belonging to the

office of the DA Kafue respectively, for the campaign. In addition, a MMD motor vehicle Registration No. ACG 651 was found parked at Mukonteka Polling Station within a radius of 200 metres of the Polling Station with an uncovered symbol. The Presiding Officer ignored the complaint by the Petitioner. A similar situation was also experienced at Mafushi Polling Station where a MMD motor vehicle was found parked within the 200 metres radius with an uncovered symbol.

With regard to the evidence of misinformation, the Petitioner testified that early on the morning of 27<sup>th</sup> December 2001 at Chumabati, a Returning Officer by the name of Luke Mukelabai inquired from him if he was aware that the PF had been dissolved and that its Presidential candidate together with the Petitioner had withdrawn from that Party. When he arrived at Chilonga, he received a similar report from one Chamatete that a MMD campaigner by the name of Katolika was going round telling people false information that the PF had been dissolved. On arrival at Chilonga Polling Station, a PF candidate for the election of a Ward Councillor by the name of Moses Lungu repeated the report about Katolika disseminating the false information about the demise on the PF Party. At Malashi Polling Station, the Petitioner found Mr Supuni Mubanga the DA for Mpika, campaigning for a MMD candidate within 400 metres radius which, he said, was contrary to electoral rules and, also in defiance of an Injunction Order which was then in force restraining DAs from campaigning. At the same Polling Station, he learned that Mr Supuni had given a voter Kashiwe K15,000.00 to induce him to vote for the MMD. The Petitioner adduced further evidence that K19.5 million was sent into Mr. Supuni's personal account at ZANACO Mpika Branch, which he withdrew on 26<sup>th</sup> December 2001 for the campaign.

He also told the Court that during the verification process on 17<sup>th</sup> January, 2002, discrepancies were discovered which included some ballot boxes without locks on them; no Ballot Return Forms for some Polling Stations and that there were more ballot papers than indicated on the Return Form.

George Katati (PW1) testified that he met Peter Mwila Katolika, a MMD candidate on 27<sup>th</sup> December, 2001 as he was going to Chilonga Polling Station stopping voters and telling them that Sata had abandoned his Party and gone back to MMD so that those wishing to vote for him should mark an 'X' on the clock. He also announced that his Parliamentary candidate Mr. Anthony Kasolo had changed his symbol and people wishing to vote for him should mark on the leaf. PW1 later reported this to Moses Lungu (PW2) who confirmed in his evidence receiving such report. The matter was reported to Sub-Inspector Mulonga who did not take any action.

Gerald Kunda (PW4) who was a National Christian Coalition (NCC) Polling Agent at Chilonga, testified that he attended a meeting at Multipurpose on 26<sup>th</sup> December, 2001 at 21.00 hours at which the Respondent addressed MMD cadres that Mr. Sata had dissolved his Party to rejoin MMD and that former President Chiluba had sent Mr. Kapangalwendo to convey the message. The Respondent told the people not to vote on the boat, but on the clock for Mr. Sata. The witness said that the announcement was by a megaphone using an MMD motor vehicle. Under cross-examination, the witness admitted that the PF won both Presidential and Parliamentary elections in Chinungwe and Chilonga Polling Stations.

Mr Newton Ng'uni (PW6) who was a FFD Parliamentary candidate for Mpika Central Constituency testified that he picked up a bitter quarrel with



the DA, Mulenga Supuni on the Polling day because of abuse of resources. He told the Court that the DA was using his GRZ motor vehicle Registration No. 292BP to conduct the campaigns, and that he had parked his motor vehicle at Matashi Polling Station 2 metres away from the Ballot Boxes. He was campaigning within 100 metres from the Polling Station which is prohibited during that time and he told voters that "mwendeshe, inshita yalapwa, tulingile ukukonka inkoloko"; meaning to say; "Hurry up, time is not with us, we have to go by the clock." Mr. Ng'uni said that a clock was an election symbol of MMD, and that Mr. Supuni's presence with the electoral process since he was not a candidate nor part of the officials assigned to monitor the elections.

Mr. Mpundu Charles alias Kashulwe's (PW7) evidence is that Mr. Mulenga Supuni gave him K15,000.00 on the election day as an inducement to cast his vote on the clock.

The Respondent denied that the DA for Mpika, the DA for Kafue and Mr Kapangalwendo campaigned for him. He told the Court that infact, the DA for Mpika didn't campaign for him because he was adopted late, and that he never campaigned with the DA for Mpika Mr Supuni using a megaphone because on that day he was sick in bed with swollen testacles after carrying a patient to the hospital on his back. He merely rose from his bed to go and cast his vote and later returned back to bed. The Respondent told the Court that Mr Kapanglwendo never lied at a meeting that the PF Party had been dissolved because, after all, the PF did extremely well at Chilonga, Kalambo and Chitulika where MMD flopped. He denied using Government motor vehicles during the campaign since he had 5 to 6 MMD vehicles at his

disposal. He also denied that he had anything to do with the confusion that was created by Katolika. The Respondent told the Court that it was not true that Moses Katebe (PW3) listened to what was said at the meeting addressed by Mr Kapangalwendo since his house is about half a kilometre away from the venue. Under cross-examination, the Respondent denied that he was in bed most of the time during the campaign. He also denied attending a meeting at Multipurpose at 21.00 hours on 26<sup>th</sup> December, 2001 as alleged by PW4 since he was sick in bed at the time. The Respondent told the Court that he never attended the meeting at Chitulika Village with Mr Supuni and Mr Kapangalwendo on 26<sup>th</sup> December, 2001.

As for Mr Michael Bwalya, (PW2) who was the DA for Kafue, his evidence is that he never campaigned for anybody nor give away his Government motor vehicle for that purpose. He told the Court that DAs were not allowed to use Government motor vehicles for campaign purposes although he was aware that some DAs used Government vehicles in the previous elections.

Mr David Kapangalwendo (PW3) testified that he sympathised with the PF candidate Mr. Sata for leaving MMD during his campaign, and pleaded with people to stick to MMD. Under cross-examination, the witness told the Court that on 26<sup>th</sup> December, 2001, he addressed two meetings. The first was at Tazara from 10.00 hours to 13.00 hours and that all the three MMD Parliamentary candidates were in attendance. The second meeting was at Chitulika Primary School from 14.30 hours to 17.00 hours and only the Respondent was in attendance. He denied telling people at that meeting that Mr. Sata had dissolved his PF Party to rejoin MMD. The witness told the Court that he never knew Moses Katebe (PW3), and that Katebe told lies to

the Court. He also said that he did not know that the Respondent was sick in bed on 26<sup>th</sup> December, 2001 with swollen testicles.

The last witness Mr James Supuni (PW4) who is the DA for Mpika District denied using his Government vehicle during the election campaign. He also denied seeing Mr Kapangalwendo and that he never knew the Respondent. It was also his evidence that although he was involved in organising election campaigns for MMD, he never went to Mpika Central Constituency because of change of candidates. He denied addressing a meeting at Chitulika Primary School, but did so at Kanchibiya and Msuwe. The witness stated that he was with the Respondent when going to the Bank at 15.30 hours on 26<sup>th</sup> December 2001, but that the Respondent never told him that he was with Mr Kapangalwendo at a meeting held the same day. Mr. Supuni admitted under cross-examination that he quarrelled with Mr. Ng'uni at Matashe Polling Station which is in Mpika Central Constituency, because he found him in a queue and that Mr. Ng'uni got annoyed after he kicked him. Although he admitted withdrawing K19.5 million which he distributed to the three MMD Parliamentary candidates, he denied giving anybody K15,000.00.

I have given careful consideration to the evidence and the submissions before me. I am grateful to both Dr. Mulwila and the Respondent for their submissions. Having said that, I wish to make the following findings of fact. I find as a fact that on the morning of the Polling day on 27<sup>th</sup> December, 2001, one Peter Mwila Katolika a MMD cadre was heard along the road about 200 metres away from Kalonga Polling Station falsely announcing to the people that Mr. Sata had abandoned his PF Party and rejoined MMD,

and that those desiring to vote for him should mark an 'X' on the symbol of a clock. Similarly, that his Parliamentary candidate Anthony Kasolo had changed his symbol so that people intending to vote for him should mark on the symbol of a leaf. I also find as a fact that at about 15.00 hours on 26<sup>th</sup> December, 2001 Mr Kapangalwendo and Mr Supuni held a meeting at Chitulika Secondary School which Moses Katebe attended and, that the two senior MMD officials told the audience false information not to vote for the PF because Mr. Sata had left his Party to rejoin MMD and had been given a post of Vice President. Another finding of fact is the testimony of Gerald Chanda that the Respondent addressed a MMD meeting on 26<sup>th</sup> December, 2001 at about 21.00 hours at Multipurpose where he told his audience that Mr Kapangalwendo had been sent by former President Chiluba to inform people that Mr. Sata had left his Party to rejoin MMD. He advised people not to vote where there is a symbol of a boat, but that they should vote on a symbol of a wall clock. That the whole PF Party had dissolved and everybody had left. There is also evidence that after that meeting the Respondent's Party cadres drove away in a MMD vehicle announcing the message through a megaphone.

I further wish to comment on the evidence of the Respondent, Mr Kapangalwendo and Mr Supuni. Whereas the Respondent testified that neither Kapangalwendo nor Mulenga Supuni campaigned for him; which was also their testimony, there is overwhelming evidence on record that they actively participated in doing so. The Respondent categorically denied attending any meeting with Mr Kapangalwendo and Mr Supuni, and yet Mr Kapangalwendo's own evidence in-chief is that he was in his company at the meetings which he addressed at Tazara and Chitulika Secondary School.

Although the Respondent has vehemently denied addressing a meeting at Multipurpose on 26<sup>th</sup> December, 2001 because he was allegedly sick in bed after carrying a patient to hospital on his back, this alibi has been disproved by the evidence of Gerald Chanda who actually attended that meeting and saw the Respondent. The alibi was also disproved by the evidence of Mr Kapangalwendo aforesaid who was with the Respondent on 26<sup>th</sup> December, 2001 for most of the day.

I have also considered the evidence regarding the misuse of resources and other misconduct. I find that there is scanty evidence of misuse of Government vehicles other than GRZ 292 BP by the Mpika DA, Mr Mulenga Supuni during the campaign period. Mr David Kapangalwendo and Mr Michael Bwalya denied that they used any official vehicles at the material time. As for the latter, he told the Court that he used his Nissan Patrol Registration No. AAP 6575. With regard to acts of misconduct the evidence of the Respondent that both at Mufubushi and Mukonteka Polling Stations he found an MMD motor vehicle parked within a radius of 200 metres of the Polling Stations with uncovered "MMD" symbol has not strongly been rebutted, and I am inclined to believe him. I equally wish to believe the testimony of Mr Ng'uni that on the Polling day, he found that Mr Supuni had parked his official car within 400 metres of Malashi Polling Station while campaigning. Mr Ng'uni testified that he picked up a bitter quarrel with Mr. Supuni when he inquired what he was doing there. Mr. Supuni admitted that he even kicked Mr. Ng'uni whom he equally accused of interfering with the electoral process. These may be offences deemed to have been committed pursuant to Regulation 62(1)(e) of the Electoral (General) Regulations. However, evidence must be adduced to prove that

someone either canvassed for votes, or solicited the vote of any person, or induced any person not to vote or induced any person not to vote for a particular candidate in order to find somebody guilty. I am not satisfied that such evidence has sufficiently been established. The Petitioner has also alleged bribery on the part of Mr Supuni. Although Mpundu Charles claimed that Mr Supuni gave him K15,000.00 on the polling day to induce him to vote on the wall clock, and that he showed the money to the Petitioner, the latter did not personally allude to that in his examination in-chief that is, that he saw the money. In fact nothing has been exhibited in Court at all as evidence. At any rate, Mr Supuni has denied ever bribing Mr Mpundu Charles or anybody at all with the K19.5 million which he received and later distributed equally to all the three MMD Parliamentary candidates. I am therefore not satisfied that money had changed hands as alleged.

Finally, the Petitioner has testified that the Presiding Officer refused to give him the count of results at Mukonteka Polling Station; that at Mufubushi Polling Station, polling agents were used instead of polling assistants and that he lodged a complaint with a police officer there. He also told the Court that during verification on 12 January 2002 at Mpika Council Chamber, some Ballot Boxes were found without locks and that there were no Ballot Return Forms for some polling stations and that more ballot papers were found than indicated on the Return Form. Since the Petitioner had expressed dissatisfaction with the results at Kambili, Mukonteka and Mufubushi Polling Stations, the Court granted his application for a scrutiny to be conducted.

Upon very careful consideration of the evidence before me, I find that there is overwhelming evidence adduced by the Petitioner's witnesses that, despite the false allegations that Mr Sata had dissolved his Party, none of them believed the story as true. Those that claim to have heard the allegation told the Court that they were never swayed to vote otherwise. There is no evidence at all to the effect that the majority of voters in the constituency were in any way prevented from electing a candidate of their own preference. In fact, in the affected polling districts such as Chitulika, Chilonga and Chinungwe where Mr Kapangalwendo and Mr Supuni alleged that the PF had been dissolved, the Petitioner's witnesses told the Court that the Respondent's Party MMD lost in both the Presidential and Parliamentary polls.

That having been said, the remaining question to be determined is; was any illegal practice connected with the election committed by or with the knowledge and consent or approval of the Respondent or his election agent or of his polling agents? There is overwhelming evidence, and I have found as a fact, that apart from being in attendance at meetings addressed by Mr Kapangalwendo and Mr Supuni, where a false statement was made with the full knowledge of the Respondent, that Mr Sata had dissolved the PF Party and rejoined MMD, and that he had been given the post of Vice-President, the Respondent personally published the same false statement when he addressed a meeting at Multipurpose on the eve of the election day at about 21.00 hours. There is also cogent evidence adduced by the Petitioner's witness Gerald Chanda (PW4) who attended the meeting that the Respondent told the people who had gathered not to vote on the boat, but on the clock for Mr Sata. This witness told the Court that the announcement



was made by use of a megaphone while using an MMD motor vehicle. Although the Respondent denied holding such a meeting and making the said false statement, I have no reason to doubt the evidence of PW4 who was in attendance. Conversely, I cannot believe the Respondent's alibi that he was sick in bed at the material time which has already been proven to be false.

An "illegal practice" has been defined in Section 2 of the Act to mean:

**"Any offence against this Act which is declared under this Act to be an illegal practice".**

And Regulation 56(1) of the Electoral (General) Regulations provides that:

**"56(1) Any person who, before or during an election, publishes a false statement of the illness, death or withdrawal from election of a candidate at that election for the purpose of promoting or procuring the election of another candidate, knowing that statement to be false or not believing it to be true, shall be guilty of an illegal practice."**

The conduct of the Respondent appropriately falls within the above provisions of the law and leaves no shadow of doubt in my mind that he knew that the statement which he made or repeated was utterly false in nature as Mr Sata had at no time before or during the election dissolved his PF Party.



On the totality of the evidence before me, I am therefore satisfied that the Respondent had committed an illegal practice as above established. I accordingly find that he was not duly elected or returned, and I declare his election null and void.

**Delivered in Open Court at Lusaka this 21<sup>st</sup> day of October 2002.**



**E E CHULU**  
**JUDGE**