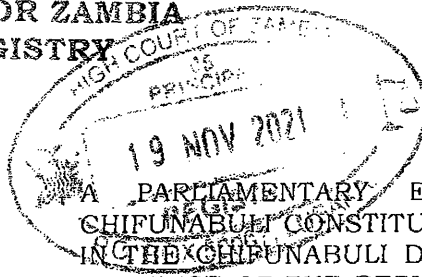


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT MANSA**  
(Constitutional Jurisdiction)

**2021/HP/EP/050**



**IN THE MATTER OF:**

**A PARLIAMENTARY ELECTION PETITION FOR  
CHIFUNABULI CONSTITUENCY NUMBER 70 SITUATE  
IN THE CHIFUNABULI DISTRICT, OF THE LUAPULA  
PROVINCE OF THE REPUBLIC OF ZAMBIA HELD ON  
THURSDAY, 12<sup>TH</sup> AUGUST, 2021**

**AND**

**IN THE MATTER OF:**

**SECTION 81 AND 83 OF THE ELECTORAL PROCESS  
ACT NO. 35 OF 2016**

**AND**

**IN THE MATTER OF:**

**SECTION 97 OF THE ELECTORAL PROCESS ACT NO.  
35 OF 2016**

**AND**

**IN THE MATTER OF:**

**SECTION 98 AND 99 OF THE ELECTORAL PROCESS  
ACT NO. 35 OF 2016**

**AND**

**IN THE MATTER OF:**

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

**AND**

**IN THE MATTER OF:**

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

**AND**

**IN THE MATTER OF:**

**THE ELECTORAL COMMISSION OF ZAMBIA ACT NO.  
25 OF 2016**

**BETWEEN:**

**JUSTINE NKONGE (MALE)**

**PETITIONER**

**AND**

**JULIEN NYEMBA (FEMALE)**

**RESPONDENT**

**BEFORE HON. MRS. JUSTICE G.C. CHAWATAMA  
ON 19<sup>TH</sup> NOVEMBER, 2021 - IN OPEN COURT**

For the Petitioner : Mr. E. Mwitwa – Messrs. Mwenye and Mwitwa Advocates.  
For the Respondent : Mrs. L. S. Chirwa & Ms. K. Parshotam – Messrs. Andrew  
& Partners

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## JUDGMENT

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### CASES REFERRED TO:

1. *Abuid Kawangu v Elijah Muchima*, Appeal No. 8 of 2017 at page J41
2. *Lewanika and Others v Chiluba* (1998) ZR 79
3. *Wilson Masauso Zulu v Avondale Housing Project Limited* (1982) ZR 172
4. *Steven Musumba v Elliot Kamondo*, Selected Judgement No. 53 of 2017
5. *Armagas Limited v Mundogas SA (The Ocean Frost)* (1986) AC 717
6. *Subramanian v The Public Prosecutor* (1956) 1 WLR 956
7. *Jonathan Kapaipi v Newton Samakayi, CCZ*, Appeal No.13 of 2017
8. *Nkandu Luo and the Electoral Commission of Zambia v Doreen Sefuke Mvumba and the Attorney General*, Selected Judgment No. 51 of 2018
9. *Giles Chomba Yamba Yamba v Kapembwa Simbao, Electoral Commission of Zambia and The Attorney General* Appeal No. 12 of 2018 Selected judgment No. 6 of 2018
10. *Sikota Wina, Mafo Wallace Mafiyo, George Samulela and Michael Mabenga SCZNO*. 15 of 2003 which restated the case of *Akashambatwa Mbikusita Lewanika and Others v Frederick Jacob Titus Chiluba* (1998) ZR 79
11. *Christopher Kalenga v Annie Munshya and two others* 2011/HK/EP/03
12. *Khalid Mohamed v The Attorney General* (1982) ZR 49
13. *Mubika V Poniso Njeulu*
14. *Austin Liato v Sitwala Sitwala*, Selected Judgment No. 3 of 2018
15. *Sunday Chitungu Maluba v Rodgers Mwewa and Attorney General CCZ* Appeal No. 4 of 2017
16. *Anderson Kambela Mazoka and Others V Levy Patrick Mwanawasa & Others* (2005) ZR 138
17. *Akashambatwa Mbikusita Lewanika and Others V Fredrick Titus Jacob Chiluba* (1998) ZR

### LEGISLATION & OTHER WORKS REFERRED TO:

1. Article 45(2)(b), 73(1) of the Constitution of Zambia (Amendment) Act No. 2 of 2016 and Section 96(1) of the Electoral Process Act No. 35 of 2016
2. sections 8 (1)(a), 83, 83(1)(c), 97, 97(2)(a), 97(2)(b), 98 and 99 of the Electoral Process Act No. 35 of 2016 (hereinafter "the Act"); the schedule to Act as well as the Electoral (Code of Conduct) regulations, 2011, Statutory Instrument No. 52 of 2011.
3. paragraphs 14 and 15, 15(1) of the Electoral Code of Conduct
4. Phipson on Evidence, 18<sup>th</sup> Edition, in paragraph 6.06 at page 162

This is an election petition filed on 27<sup>th</sup> August, 2021 by Mr. Justine Nkonge. The petition is brought under Article 73(1) of the

*Constitution of Zambia (Amendment) Act No. 2 of 2016 and Section 96(1) of the Electoral Process Act No. 35 of 2016* in which he stated that he was a candidate in the Parliamentary General Elections for the Chifunabuli Constituency, having duly filed his nomination on the 17<sup>th</sup> day of May, 2021.

A Parliamentary Election was held in Chifunabuli Constituency during the tripartite General Elections on the 12<sup>th</sup> day of August, 2021. Chifunabuli Constituency has a population of 41,504 registered voters. The election was contested by Julien Nyemba (Female) of the Patriotic Front (PF) who polled 18,020 votes; the Petitioner Mr. Justine Nkonge of Democratic Party (hereinafter referred to as DP) who polled 7,786; Bruce Musunga of the United Party for National Development (UPND) who polled 2,080 votes; Mwewa Mirriam of the Socialist Party (SP) who polled 644 votes and The National Democratic Party (NDC) whose candidate was Kaluba William who polled 378 votes.

The petition reveals that the Chifunabuli Parliamentary Constituency consists of thirteen (13) wards, with eighty-nine (89) polling stations.

The petitioner has petitioned this court to declare the election null and void ab initio, alleging that the election was characterized by vote buying and undue influence by members of the Patriotic Front (hereinafter referred to as PF) and traditional leaders respectively. He stated that the said acts of vote buying and undue influence resulted in several people voting for the Patriotic Front (PF) to the

detriment of other candidates and the details of the said acts are as hereunder set out:

- a) *The respondent's agent and Campaign Manager by the name of Vincent Mweni and the Mansa Central Member of Parliament, Mr. Chitalu Chilufya, were seen on divers dates but during the campaign period giving out money in Kasaba, Mwansakombe, Mwewa and Lubwe wards.*
- b) *The respondent was on the 11<sup>th</sup> day of August, 2021 seen distributing money to marketeers at Lubwe market in Lubwe ward.*
- c) *The respondent through her agents organized transport in form of canters to ferry people from fishing camps to polling centers.*
- d) *The respondent's agent and Campaign Manager Vincent Mweni was seen on 12<sup>th</sup> August, 2021 giving money to the electorates at Lubwe harbor and other members of the PF ferried them to the polling centers.*
- e) *The respondent's agent and Campaign Manager Vincent Mweni and Mansa Central Member of Parliament Chitalu Chilufya were seen on divers dates but during the campaign period lining up people and giving out money in Kasaba, Mwansakombe, Lubwe and Mwewa wards.*
- f) *At Mwansakombe polling station there was deliberately no Zambia Police security deployed at the station but instead the Chief Retainer to Senior Chief Mwansakombe Danny Katonya was the one manning the polling station.*

- g) *The Presiding Officer for Mwansakombe polling station Michael Chola was restrictive in terms of time for monitoring by the opposition candidates insisting that he would only allow few minutes for the candidates to monitor the vote counting.*
- h) *Similarly, at Nsengaila polling station the Presiding Officer Memory Chizema was restricting the time opposition candidates could enter the polling stations and monitor the counting of the ballot papers insisting that she would only allow few minutes for the candidates to monitor the vote counting.*

The petitioner further stated that the respondent's political party members created an organization called Good Governance Zambia abbreviated as "GOZA", which he said was meant to defraud the electoral process. The said organization would go round all polling stations registering people with their National Registration Card (NRC) numbers and voter's card numbers and distributing bicycles and food stuffs to would be voters whilst urging them to vote for PF candidates.

Furthermore, it was stated that GOZA was being spearheaded by the following civil servants who were also deployed as Presiding Officers at some polling stations:

- i. *Chisha Chabala who is General Inspector of Exams at Chifunabuli District Education Board.*

- ii. *Chishinge Elias who is the Head teacher at Mwewa School in Chifunabuli District.*
- iii. *Katobaula Isaac who is a teacher at Kamponda School in Chifunabuli District.*
- iv. *Brian Musonda who is a teacher at Lubwe Girls Secondary School.*
- v. *Kabungo John a teacher at Kasuba Primary School and was also the Presiding Officer at Kasuba polling station.*
- vi. *Mwila Chisanga, male nurse at Lubwe Mission Hospital*
- vii. *James Chisala a male nurse at Lubwe Mission Hospital*

The petitioner took GOZA to the Electoral Commission of Zambia's Conflict Management Committee (CMC) chaired by Fr Mupanga and attended by the Council Secretary and representatives of the petitioner's party, the DP, where it was declared that the said GOZA was not known by the Council Township and was doing the exercise of registering voters with their NRCs and voters card numbers illegally.

That despite the above, GOZA deployed monitors throughout the constituency and its members were seen distributing mealie meal, cooking oil and other food stuffs to the electorates during the campaign period.

The Petitioner also witnessed a GOZA agent working as a Polling Assistant at Mwansakombe polling station and was seen physically counting the ballot papers alongside other polling staff and the said polling station was presided over by a GOZA agent Mumba Sydney.

The petitioner further witnessed the District Commissioner (DC) Hendrix Mwaba on the 12<sup>th</sup> August, 2021 going round polling stations and was seen at Kasuba polling station engaging in discussions with the Presiding Officer John Kabungo.

In sum the petitioner stated that there was widespread non-compliance both of the Electoral Act and the Electoral Code of Conduct as the respondent and her sponsoring party the PF engaged in vote buying and voter intimidation.

The petitioner stated that on Friday, the 13<sup>th</sup> day of August, 2021 the Returning Officer declared the respondent Julien Nyemba as duly elected and returned MP for the Chifunabuli Parliamentary Constituency.

The election results were as follows:

- i. Justine Nkonge of the DP received 7,786 votes;
- ii. Julien Nyemba of the PF received 18,020 votes;
- iii. Musunga Bruce of the UPND received 2,080;
- iv. Miriam Muewa of the SP received 644 votes;
- v. William Kuluba of the NDW received 378;

- vi. 780 votes were rejected;*
- vii. Total number of votes cast were 29,688; registered voters were 41,504; and*
- viii. Percentage voter turnout was 73.41%*

The Petitioner prayed for the following reliefs:

- a) A declaration that the election was NULL AND VOID AB INITIO;*
- b) Such declaration and Orders as this Honourable Court may deem fit; and*
- c) Costs of and incidental to this petition.*

Upon reading the petition of Mr. Justine Nkonge filed before this court on 27<sup>th</sup> August, 2021 and served on the respondent's advocates, the respondent filed an Answer supported by an affidavit verifying the facts.

She stated that Chifunabuli Constituency in the Luapula Province consists of thirteen (13) wards, with eighty-nine polling stations as listed in paragraph 3 of the petition. That the Electoral Commission of Zambia (ECZ) declared the results for the Chifunabuli Parliamentary Elections as follows:

- i. Justine Nkonge of the Democratic Party (DP) received 7,786 votes;*
- ii. Julien Nyemba of the Patriotic Front (PF) received 18,020.*

Accordingly, the Returning Officer from the ECZ in exercise of the power vested in him declared the respondent as duly elected Member of Parliament for the Chifunabuli Constituency. The said election was conducted by the ECZ, established, pursuant to the provisions of Article 229 of the Constitution of Zambia Act no. 2 of 2016.

The respondent stated that the petitioner Justine Nkonge was a losing Parliamentary candidate in the just ended elections.

The respondent stated that she would aver at trial that she is not aware of any vote buying, bribery and corruption by the ruling party that characterized the campaign period through to voting day. She averred that no money handouts were made by her agents and further that the named Vincent Mweni was not the respondent's Campaign Manager.

She averred that on the 11<sup>th</sup> of August, 2021 she was campaigning in Mbalala and Chishi islands on Lake Bangweulu together with the campaign team from about 04:00 hours in the morning to about 21:00 hours in the evening.

The respondent reiterated that the named Vincent Mweni was not her campaign Manager and that he was in Kasongole, Chifunabuli, Mubansenshi and Lubwe wards on the 12<sup>th</sup> August, 2021 and not Lubwe harbor.

The respondent averred that she was not aware that Mwansakombe polling station had no security from Zambia police considering that the duty to ensure the polling stations are manned by Police officers is the preserve of the ECZ and not the respondent. The respondent also averred that to her knowledge there was one police officer by the name of Inspector Chongo.

The respondent further averred that she was not aware that the time for the opposition candidates was restricted to monitor the vote counting considering that this is a duty which is the preserve of the ECZ. Further that to her knowledge, due to the current Covid-19 pandemic and the guidelines issued by the Ministry of Health, the officers at the polling stations would at any given time ensure only one representative from each party would monitor the vote counting, while others would wait outside as opposed to having a crowd gathered.

She was not aware of an organization called GOZA nor is she aware of it's membership. She further denied having knowledge of the acts of registering people with their NRC numbers and voters' cards numbers as well as distributing bicycles and food stuffs to would be voters urging them to vote for the PF candidates by the said GOZA. To the knowledge of the respondent, the Presiding Officers are employed by the ECZ.

The respondent averred that to her knowledge the District Commissioner (DC) Hendrix Mwaba is a civil servant who was at liberty to engage and talk to anyone and that the respondent was

not privy to the conversations between the said Hendrix Mwaba and John Kabungo.

In view of the foregoing, it was the respondent's prayer that the petition be dismissed with costs as it lacks merit and that it be declared that the respondent was duly and legally elected as Member of Parliament for Chifunabuli Constituency.

The petitioner gave evidence on his own behalf and called sixteen (16) witnesses.

The petitioner was *PW1*. He presented his petition and affidavit verifying the petition as part of his evidence in chief.

His grievance against the election in which he participated as a candidate of the Democratic Party (DP) was that it was not free and fair. It was characterized with malpractices in almost all the 89 wards of Chifunabuli Constituency. The malpractices included vote buying through bribery which happened through distribution of money and food stuffs. There was intimidation of voters through registration of their names, NRCs and voters cards numbers prior to election date and promised them money and food after voting.

The practices complained of were undertaken by the respondent's party through an organization called GOZA. He testified that the act of vote buying happened on divers dates and in different places of the constituency. The respondent's agents, a member of the PF and a member of Central Committee of the party, Dr. Chitalo

Chilufya, frequented the constituency and distributed money in the open in Kasaba, Kasaba Ward. He also distributed money in the open in a football pitch at Mwewa Secondary School, this is Chinkutila ward. He also distributed money in the open by lining them up and gave each person who attended a K20, including young ones. The same happened at Mwansa Kombe School and K20 was given to each and everyone, who attended the meeting. As well as Lubwe ward, where the people were lined up by the respondent and the respondent's agent when they were being given chitenge material and a K25 each. They were put in groups, where the village headmen were being given K50 each. The general populace who were lined up according to age and gender were given K20 each.

Another incidence happened on 18<sup>th</sup> July, 2021 at Lubwe Catholic Church where different groups including the women's league and other groups in the church were given money by the respondent's agent Dr. Chitalu Chilufya in the presence of the respondent and other members. The message as they were giving them was that they should vote for the respondent and the President of the respondent's political party, as well as the other candidates who stood for Councilor and Mayor of the PF party. The respondent identified herself as the one they should vote for in exchange of the money they had received. On that day, two groups were given money, which would be made clear by other witnesses.

The following week, Dr. Chitalu Chilufya landed with a chopper at Lubwe Secondary School and proceeded to the same Catholic

Church and gave all the organizations of the church that remained, money, including different singing groups at the church. The same agent a senior member of PF and agent of the respondent went and distributed more money to a lot of other people that he would come across and meet on that trip. The distribution of the money was always accompanied with a message of soliciting for votes for the respondent and all other candidates who stood on the PF ticket.

Concerning malpractices, the petitioner testified that an organization was created by the respondent party to defraud the electoral process in Chifunabuli constituency. On 22<sup>nd</sup> July, 2021, he received a call from Mr. William Sebyo, who was his campaign manager. He informed him of the activities of the organization called GOZA. He was told that people were going round in the constituency in all wards, writing the names of the voters, their particulars which were NRC numbers and voters card's numbers. He was given the name of Chisha Chabala who he said was a Civil Servant at the District Education Board Secretary (DEBS) office as the person who was co-ordinating the activity of writing the names of the electorate across the constituency. He called Mr. Chisha to inquire about the activity and Mr. Chisha accepted and said it was an exercise of voter sensitization. When quizzed as to why he was writing down the people's NRC numbers and voter's numbers, he did not give an coordinated answer. He then asked his campaign manager to make a formal complaint to the Conflict Management Committee (hereinafter referred to as CMC).

The CMC sat and from the proceedings in the minutes and the report he received from his campaign manager through a text message, Mr. Chisha was asked to stop the illegal activities. The Council Secretary did not know of the organization in her jurisdiction and was therefore illegal and was not recognized. The report he got from his agents pointed out how defiant Mr. Chisha was in the meeting, Mr. Chisha even said the committee was lucky that he attended the meeting, he was not remorseful to an extent where he told the meeting that next time he would not go.

The CMC was under the chairmanship of the then Parish Priest, Father Charles Chali Mupanga who was based at Lubwe Catholic.

Mr. Chisha never stopped the exercise but continued together with other civil servants such as teachers from various schools, nurses, mostly male nurses of Lubwe Mission Hospital. The electorate were being recorded in batches of 50 people per batch. He asked his agent, the campaign manager to go report to the same CMC but the Council Secretary to the astonishment of the chair person brushed off the report and was told that they would not entertain this kind of report again.

The petitioner asked the Chairperson why he succumbed to brushing off the report he said he could only push so far as his powers were limited. That he was answerable to the Council Secretary. They were left vulnerable as a party and the task continued up to election day. He informed the court that his task was to identify and demonstrate that the organization called GOZA

was working with the respondent's party. All their activities were aimed at influencing the voters to vote for PF who he said were the sponsors.

On 1<sup>st</sup> August, 2021, he received a report from his agents, that there was a meeting that was called at Chitembo Primary School by Fr. Moscs Mwansa, a Priest of the Catholic Church, based at Mwewa Parish. The Priest was accompanied by a Mr. Brian Musonda who is a teacher of Lubwe Girls School, and other people. They called for a meeting at Chitembo School and called other civil servants and teachers, some from Mundubi School. There were other notable people from the Chitembo area near the Chitembo Chiefdom in the meeting. In the meeting Fr. Moscs in his introductory remarks mentioned that they were from GOZA. That they were there to support the PF and all its candidates and as people appointed to be in charge of GOZA had gone to recruit them so that they could be their representative in Chifunabuli ward. Fr. Mwansa went on to explain what activities the people he was recruiting would be doing. He asked them to register voters in 50s. When they registered them, they would be given money, as well as food stuffs and other benefits. What they needed to do as leaders was that, on the day of voting, to go with those that they had registered to vote. Before and after voting, food would be provided. What resulted from the meeting was that most of the civil servants he was aware of, that had been called refused to be recruited and said they were civil servants and could not be cornered to be actively involved in this unfair practice. GOZA went

ahead to distribute mealie meal before election day and cooking oil for every voter that was registered.

He further testified that the voters were swayed and could not exercise their right to vote for their preferred candidate, which was the petitioner. GOZA members were present in all polling stations. They were clad in GOZA T-shirts, which were white and others were orange. He managed to pass through most of the polling stations and noted that GOZA people were found in all polling stations.

He further testified that on 10<sup>th</sup> August, 2021, the respondent herself went to Chitembo grounds in the company of her agents where a meeting was called in the late hours. The petitioner happened to be near that place when he went to pay a courtesy call on Chief Chitembo. Around 19 hours, he heard a noise coming from the ground. When he inquired, he was told that it was PF people who were in the ground giving money and chitenges (non-branded). The respondent through her agents was giving K100 and 15 chitenges to a club and told the members that they should vote for her and the PF president, that more money would come once they won.

The respondent's top campaign message was that if they did not vote for the respondent and the President, they would stop receiving social cash transfer. He was at pains where ever he went to convince the electorate that social cash transfer was not for the respondent nor for the President for PF. It was difficult to change

their minds over what they had been told about the social cash transfer. That was wide spread in all the wards of Chifunabuli constituency. The respondents and her agents were taking advantage of the literacy levels of the people of the constituency.

He further testified about how he and his accredited polling agents and monitors were treated on polling day. He received a shock of his life at Chikoko polling station in Kasaba ward when he was prevented from entering the polling station. He was told that he could not enter because he did not have an accreditation card. He be-labored to explain that ECZ did not provide an ID for a candidate to access the polling station but to no avail.

The petitioner moved to Nsengaila polling station in Kasaba ward. At that polling station, it was even worse because he found the Zambia National Service (ZNS) officer who was manning the polling station. He asked the officer to ask the presiding officer whether that instruction was coming from her. He was told he would just be allowed to be there for one minute. He insisted that he had a right to stay even for the whole process but he was flushed out of the polling station.

According to **PW1** the officer's instructions were that when he got there, he should not be allowed to enter the polling station to observe the counting. He however did not tell the court who gave these instructions.

The petitioner further moved to Mwansa Kombe which had two polling stations. He entered one of the two and found them in the process of counting the votes. He found that a GOZA person was participating in the counting and working as an ECZ polling staff. When he moved closer, he found that this person was being given ballot papers for the petitioner. On further inquiry the presiding officer, Mr. Mumba Sydney brushed off his concern. He moved to the next room where he found his campaign manager, his monitors and the Council Chairperson of their party (DP) who were told they could not be there for more than one minute to observe the counting. He asked the Presiding Officer where he had gotten such a rule. He said that is what they were told by the people who sent them to do the job. He found out that the Presiding officer was the chief retainer of Chief Mwansakombe who said he had been tasked to man the process for the candidates for Mayor, President, MP and Councilor. He mentioned the traditional leaders who were actively involved in the campaign for the PF candidates as: Senior Chief Mwewa, Chief Mwansa Kombe, Chief Chitembo, Chief Mulongwe and Chief Mbulu of Chishi. On various days, the chiefs were dragged by PF to campaign for PF candidates to all their subjects through the village headmen.

Preceding the above activities, there was a meeting that was held in Mansa where traditional leaders were called and ushered by PF as ambassadors and given scarves in that regard. The task of the chiefs was to call all village headmen and women in all the chiefdoms to ask them to vote for the respondent and President Edgar Chagwa Lungu for PF. They were moving as a

group of traditional leaders clad in the same scarves as ambassadors. Their message to the village headmen was that they should go and tell all their people under their villages that they should only vote for the respondent in the name of Julien Nyemba and the President in the name of Edgar Lungu of the PF. This was done through out all the five chiefdoms. It was after this meeting that the activities went to take place in the constituency.

It was his testimony that this really disadvantaged him a great deal and rendered the election not free and fair to the extent that when the voting happened the result was biased towards the respondent.

He further testified that on the 11<sup>th</sup> August, 2021 in the market of Lubwe, the respondent was distributing money to the marketeers and businessmen in the market, shop by shop and stand by stand. As she did this, she left out a few who were known to be DP supporters. She did this with the help of her campaign team. The money was distributed with the emphasis that the respondent be voted for the following day. He told the court that Lubwe was the biggest town in the constituency and the most populated. He listed the number of voters registered in the polling stations in Lubwe ward, where the market is, as follows:

1. Chipya	758
2. Chifunabuli	828
3. Chifunabuli (2)	828
4. Lubwe Girls Mission Primary	503
5. Lubwe Girls Mission Primary (2)	502

The petitioner pointed out that apart from the foregoing, there were other polling stations outside the ward but near the market. He listed them with the respective numbers of the registered voters as follows:

7. Katapa (1)	376
8. Mashitolo (1) (which is 1 kilometer from Lubwe)	646
9. Mashitolo (2)	646
10. Katola (half a kilometer from Lubwe Market)	273

The total of these is a big population which when influenced through the overt act of giving money, will impact the voting pattern in the market. He added that the act of giving out money in the market was done in the afternoon, he could not remember the exact time.

He further testified that the respondent's agent, Vincent Mweni was giving out money to fishermen at fishing camps in Lubwe ward, across Lake Chifunabuli and he ferried these people to the polling stations in what was believed to be the respondent's Prado. A boat (super boat) would carry 10 to 15 people. This was on the material day of voting, 12<sup>th</sup> August, 2021 around 08:00 hours, the boats were arriving between 08:00 hours to 09:00 hours.

Further on the same day, the respondent herself while being driven in a white car was seen giving money to the people she met on the way and asked them to go and vote for her. There were people who were given a K30 when they met the respondent near Lubwe Catholic Church.

His testimony was that the activities were wide spread because Chifunabuli has 13 wards of which 2 are Islands on Lake Bangweulu called Mbabala and Chishi. The respondent visited these two wards and gave out money. In addition, the GOZA organization also took food stuffs to the Islands. The third ward called Kasaba ward, where he visited each and every polling station, there was an exercise of distributing money to the people who had been lined up to be given a K20 each. This was done by the respondent's campaign team in her company. The campaign team included Dr. Chitalu Chilufya and Vincent Mweni. This is where he had also mentioned the presence of GOZA, as well as distribution of money and food.

Mwansa Kombe is another area where money was distributed to the people who were lined up.

It was his testimony that the vices of distribution of food and money and intimidation of voters by PF was widespread. The electorate were being threatened that if they did not vote for PF, they would stop receiving the social cash transfer. The malpractice happened in each and every ward.

Furthermore, in Chinkutula ward, there was also distribution of money and recording of the voters' NRCs and voters card numbers.

The other ward is Kasansa ward. The petitioner also visited all the polling stations on the voting day, except one. He found the representatives of GOZA in all the polling stations, who found the DC going round in polling stations. He claimed to have been distributing masks to the voters on the line. The registration of voters, distribution of cooking oil and mealie meal also happened in Kasansa ward. This was the same in the case of Kafumbo ward where he visited five of the polling stations and again found the representatives of GOZA in their T-shirts. He heard about how Mr. Vincent Mweni took money to the youths of Kafumbo on 11<sup>th</sup> August, 2021 for them to buy beer and food on the 12<sup>th</sup> August, 2021.

He called Lubwe ward the epicenter of the malpractices. This is where the distribution of money happened, and people were ferried from the fishing camps. This is where there was distribution of truckloads of mealie meal and cooking oil. This is also where Dr. Chitalu Chilufya in the company of the respondent was distributing K20s to people who had lined up and K50 for the headmen.

He further testified that in Masonde ward, people were ferried in a Mitsubishi Canter. There was also the distribution of food by the representatives of GOZA.

He further testified that Chifunabuli ward is where Fr. Moses Mwansa, a Catholic Priest went to have a meeting.

Kasangole ward is where he had mentioned visiting all the polling stations. PF was distributing food stuffs through GOZA representatives. He concluded that the vice was widespread.

The role of the respondent in all the mentioned vices, was personally or in the company of her campaign team giving money. If she was not in the company of the campaign team she gave her vehicle to her agent, Vincent Mweni. The respondent was a candidate sponsored by PF who was perpetrating the vices through GOZA.

He came across Mr. Vincent Mweni on nomination day, 17<sup>th</sup> May, 2021, when he was filing in the forms for the respondent. During the campaign, Mr. Mweni was moving hand in hand with the respondent. He was seen to be the right-hand man to the respondent. He was instrumental in most of these vices of distributing money. He was also the election monitor for the respondent.

He further pointed out that (in relation to paragraph 3 of the petition), the petitioner had polling agents in 75 of the polling stations. They had polling agents present in all the wards. However, in Kafumbo ward, particularly, Matafwali ward the polling agents only joined around 10 hours because they were sent back by the polling staff for having a photocopied form

Furthermore, it was his testimony that the respondent personally intimidated the electorate with the threat that they would stop accessing social cash transfer if they did not vote for candidates of the respondent's party.

His prayer was that the election be declared not have been free and fair because the electorates were unduly influenced through the malpractices that have been pointed out before this court. It was his further prayer that the court gives other sanctions and orders as deemed fit and that the costs of these proceedings be for the petitioner.

In cross examination, the petitioner told the court that he stood for the first time as MP for Chifunabuli in 2016, as an independent candidate. However, he said he was known even before 2016. He told the court that he was not born in Chifunabuli and neither did he have any businesses in the area.

It was his testimony that he campaigned in all the wards and did was just met with a few hitches. He told the court that there were about 43,000 registered voters and about 20,000 to 30,000 voted. On 11<sup>th</sup> August, 2021 he was in different places. He mentioned Kakote, Lubwe and Chitembo polling station in Chifunabuli ward. He was also at Mashitolo in Chifunabuli, Musaba Katebe in Kasongole ward. In Lubwe ward on that day he did not personally see the respondent giving out money at the market but was seen by his agents.

He testified that there were five political parties involved in the election. His party gave out party regalia to the electorate. He did not personally see Vincent Mweni giving out money at different wards. He however, saw the respondent ferry people to the polling stations. He had no photos or documents to show the court.

Concerning GOZA, it was his testimony that he did not conduct a search at PACRA or Registrar of Societies to show that the organization is affiliated to the PF. Page 3 and paragraph 3 of the petitioner's bundle of documents was read out in court. It was the petitioner's evidence that according to paragraph 3, the organization was not concerned with any political party. He was not in the meeting at Chitembo and did not know what was discussed. He did not have minutes of the meeting.

The petitioner told the court that he polled the highest at Chitembo polling station. He denied Counsel's position that the meeting had no effect on his results.

He further added that the t-shirts for GOZA branded as such but did not have any photograph of the t-shirts.

He reiterated that on 10<sup>th</sup> August, 2021, he paid a courtesy call on Chief Chitembo but did not personally see the respondent give out money.

It was his testimony that the ECZ and not the respondent was in charge of controlling the polling officers. He reported the

grievances at the polling stations to the agents of the ECZ who were at polling stations.

He did not personally see the respondent give out money on the 18<sup>th</sup> of July, 2021. He saw some things but sometimes he was told by members of his campaign team.

In further cross examination, it was his testimony that he visited Kasongole and Kasansa wards where he visited all the polling stations but one. He further stated that he further visited the Kafumbo ward. He visited the polling stations between 06:00 hours to 24:00 hours on polling day. He said the roads are accessible. They are within a 10-kilometer radius. He visited Chitembo, Mashitolo, Chitembo, Mundubi, Sombwela, Lule in Kasongole, also Mweshi Ilungu, as well as Chibingila, Luule, Chibuye is where he cast his vote. He further went to Mafamu polling station. He also entered a polling station in Masonde ward, he went into Kafumbo ward at Matafwali polling station. He also entered Nshungu polling station Kafumbo ward, as well as Mbilima polling station and another polling stations. He went to Mufumbo, Mwewa polling station. He went to Mwansa Kombe in Kasonge. He then went to Kasansa. There he met the DC. He then went to two other polling stations, in Kasansa. He moved to Kasaba ward, at Chikoko, also Kasaba Primary School. He went to Musengaila polling station also in Kasaba.

It was his testimony that it takes about 2 hours from Lubwe to Chishi Islands depending on the speed of the boat. He did not know how far Mbalala was from Lubwe.

In re-examination, he told the court that it was actually on the 10<sup>th</sup> and not 11<sup>th</sup> August, 2021 when he saw the respondent giving out money at the market.

Concerning the mealie meal, it was his testimony that he did not talk about distributing mealie meal at the market.

He personally saw the respondent distributing money to the women in their clubs at Chitembo ground around 19:00 hours. This was done not only by the Respondent but also members of her team. There also chitenges which were not party regalia being distributed by the respondent.

On 18<sup>th</sup> July, the person who received the money Yvonne Mulilo, is the one who told the respondent. It was his testimony that he reported the illegal acts to the presiding officer at Mwansa Kombe and Nsengaila orally because it was election day. The other report was done by writing to report the activities of GOZA to ECZ through their CMC. Even if he did not attend the meeting in Chitembo ward, he was told what transpired at this meeting.

It was his testimony that he grew up in Chifunabuli and he was schooling at Chifunabuli Boys' School. Besides, his parents, meaning the young sisters and elder brother in his father's town.

Chifunabuli. His biological father was a teacher at Lubwe Primary School and hence they stayed at Lubwe. His father was transferred to Sansa Primary school where they stayed for many years and later Nshungu Primary school where they stayed for several years. His father's mother comes from Mutobi village, in Chifunabuli ward. His father's father comes from Chitembo, near Chitembo Palace. He has stayed in all these places and there is no way he cannot be known in the place he has stayed.

**PW2 was Yvonne Mulilo.** It was her testimony that on 18<sup>th</sup> July, 2021, the group that she belongs to, which is Women's League, at Lubwe Parish received some money. She has been a member of the Lubwe Parish for twenty-one (21) years.

The mass which should have started at 10 hours only started at 10:45 hours because it was announced that they were waiting for Dr. Chitalu Chilufya and his people who were going to be worshipping with them on that day. Dr. Chitalu Chilufya was introduced in church. They were invited to talk to Dr. Chilufya by Fr. Kanja.

Dr. Chilufya was accompanied by Julien Nyembe, Charles Mulenga and Kaunda and other people that the witness did not know. After he was introduced, he said every group should send representatives of two people each for a meeting with Dr. Chilufya. After mass, Dr. Chilufya praised the St. Cecilia choir for singing well. He then went where the Catholic Women's League stood. He said he likes the League because it is the only one that is not

of the league. From there he told them that he had brought their mother who he wanted them to work with in Chifunabula.

The respondent was taken where **PW2's** group was and introduced her as the person they wanted to work with. This was because she was going to take care of them because she is a woman. They were implored that they should vote for her on 12<sup>th</sup> August, 2021. He took out a K5,000. Which he gave the treasurer for the League with the message that the money was so that they could vote for the respondent. The respondent was present and heard the words being said and the money being given. The money was given in the presence of 14 members of the league.

Dr. Chilufya then proceeded to the meeting where he had asked for the two representatives from each group. At the meeting Dr. Chilufya said time had run out he would not give out the money. However, the Catholic Women's League and St. Cecilia choir were given. The choir was given K12,000. The respondent was not there when St. Cecilia choir was given the money.

When the respondent went to introduce herself to the Women's League, she told them to look at her carefully so that on 12<sup>th</sup> August, 2021, they would know who to vote for. The money was given on the same day after the meeting where the representatives of groups went. Dr. Chilufya told his driver to give the Women's League K5000 and St. Cecilia Choir K12, 000. The money was shared among the members of the respective groups. **PW2** got a K300 from this money

There were some groups which were not given money on this day. There were three choirs, Men's League, Nazarate, Lovic, Pioneer, St. Anne, St. Joachim, Legion of Mary, and many other groups. Dr. Chilufya said he would give them money on a Friday, the same week.

On the Friday, he went back with a helicopter and landed at the ground for Lubwe Secondary School. He then went to his vehicle and gave money to the groups which remained. Each group got K2,500, with the message that they should vote for all PF candidates.

It was *PW2*'s testimony that she voted for the respondent because she is the one who gave her money. She testified that she was unable to tell the court the number of people who attended church.

In cross examination, she told the court that as a church they don't normally receive money from visitors. In the 21 years she has been a member of the church, she has never seen anyone making a contribution to the church. The one who gave them the money was Dr. Chitalu Chilufya's driver. The respondent remained in the meeting. She further testified that the respondent was not present when the money was given.

In re-examination, she clarified that when the Catholic Women's League was being given, the respondent was not present. She was attending other meetings. The one who gave out the money was the driver for Dr. Chilufya.

**PW3** was **Maureen Chanda** who resides in Lubwe ward. On 18<sup>th</sup> July, 2021 she was in church, at St. Joseph's Catholic Church, in Lubwe. While in church they were told that they had received leaders Dr. Chilufya, respondent and Kaunda. They were told by the Church Council, that the leaders who had visited them were from PF.

After mass, Dr. Chilufya was asked to stand, he went to stand at the altar. Dr. Chilufya praised the church and told the young altar boys that they are blessed by God and he has to do something good for them. When they went outside Dr. Chilufya, the respondent and Mr. Kaunda went to stand where the choir members were and told them that he had taken a woman to them who can do things for them. He praised them and urged them to vote for the respondent, Edgar Lunga, Mr. Mulenga and Mr. Kaunda. He told them he would give them a K12,000.

After that he went to the Catholic Women's League and said he loved the group because that's the group which the mother belongs to. **PW3** recalled the group telling Dr. Chilufya that they do not have chitenges. After asking how many they were, he said he would give them a K5,000.00. He got two people to go and receive the money. **PW2** was the one who got the money together with Exildah Tamba. It was the first time they were receiving money from PF; they had never received any money in church before. Each member of the group who was present received a K300.00. They were fourteen members of the women's league present. Those

who were not present each got a K100.00. They were told to vote for Mr. Lungu, the respondent, Mr. Mulenga and Mr. Kaunda.

The person who gave this money was Dr. Chilufya as he is the one who got them from the church. When they were being told to vote for PF, the respondent was present. Mr. Mulenga and Mr. Kaunda were also present.

When she was coming from a funeral on 26<sup>th</sup> July, 2021, **PW3** saw a lot of people at Lubwe ground, who said they were waiting for Dr. Chilufya who was bringing money for them to vote for Edgar Lungu, the respondent, Mr. Mulenga and Mr. Kaunda. Dr. Chilufya arrived around 18 hours. On arrival he told the people that he had gone to campaign for President Edgar Lungu, the respondent, Mr. Kaunda and Mr. Mulenga. He told them that President Edgar Lungu is the one who brought about the establishment of Lubwe District, and social cash transfer. If they did not vote for PF, they would not continue getting the social cash transfer. They were lined up in five queues, and were given K20 each and K50 for the village headmen. The women were given chitenge and the men were given t-shirts. **PW3** was given a K50 because she is a village headwoman. Others were given K50 between two people. They were also told to vote for PF. The respondent was also present.

Furthermore, on 10<sup>th</sup> August, 2021, around 19 :00 hours, she saw a car coming from Kakote school and people were chanting the slogan of power (PF slogan). She saw people being given money

from the car. The car followed her also, someone called for her. **PW3** informed the court that the Respondent gave the driver whose name was Jackie K20.00 who in turn gave it to the guard. The guard then gave her the money, she was told that she knew the story, she should vote for the respondent. She received a total amount of K370.00. She told the court that she voted for the respondent.

In cross examination, she told the court that she has been in the Women's League for twenty-five (25) years and the church has never received gifts from visitors.

The respondent was with Dr. Chilufya when they were being given the money. On 10<sup>th</sup> August, 2021, the car from which money was being given was small and painted green. The money was given by the respondent through the cadre.

**PW4** was *Albina Kunda Lupupa* of Lubwe ward. On 12<sup>th</sup> August, 2021 at 08 hours, she went to Chifunabuli river when she saw a Prado ferrying people to the respondent's building. The driver to the respondent is Mweni Musunka. When the vehicle stopped, the people in the car started giving people money, they were given K20s, after which they took them to Mansanta to vote. They were told not to vote for anyone else other than PF. Mweni was the one giving out money. **PW4** was standing right there at the respondent's building in Lubwe when she saw people getting money. These people who were ferried in the Prado were coming from Pungu, across the river. She knew that these people had

been taken to Mansanta because that is the direction in which the vehicle went. The people who were taken were approximately 10 people. She just witnessed one trip.

She testified that she was a recipient of a K25 from the money which was being given to people in May, 2021 in Kasonge Mulefu ground. She was given at night and she did not know who was giving the money, she just saw a car. They were gathered in the ground and told to vote for PF. There were a lot of people and she cannot manage to count. She did not know the names of these people.

After voting, on 13<sup>th</sup> August, 2021 she had gone to Samfya and later went back to Lubwe. She informed the court that PF said they would burn their houses.

In cross examination, she said on 12<sup>th</sup> August, 2021 she saw about 10 people getting K20s. These were the only people she saw. She did not see the respondent at any time.

Concerning the events of the 26<sup>th</sup> May, 2021, **PW4** denied that she was given any money. She stated that she did not see the Respondent give anyone money. She did not see Mweni give money to anyone. She testified that it was dark.

**PW5** was **Mark Kalaba**, of Chief Chitembo area in Kasongole ward. On 9<sup>th</sup> August, 2021 around 15:00 hours, there was a vehicle which was announcing an invitation to a meeting at the

Nsombwela ground to be addressed by the respondent. He went according to the announcement. When he got there, the respondent addressed them. She firstly introduced herself and then explained her manifesto for the area if chosen as MP. She asked them to make two queues so that she could give them t-shirts, men made their own queue and the women their own. Men were given t-shirts while women were given chilenges. She also said she was going to give them some money for water. She asked them to be in groups of five. Each group of five was given a K100 to share among themselves. The respondent was the one giving out the money personally.

It was his testimony that there were a lot of people, approximately more than 200 people. At the meeting the respondent also told the electorate that they should not abstain from voting on account of food because food would be made available.

On voting day, food was provided as promised. He was not aware of who was supposed to eat that food but he had some of that food. They were told that if they did not vote for (PF) they would not see any development in that area.

In cross examination **PW5** informed the court that five parties campaigned in their Constituency. All the parties gave out party regalia. He told the court that he voted for (PF). That he was not concerned about whether or not other people received money for water after he received his money. He would not know for a fact that all the people he said were gathered received money. He denied being a foot soldier in the campaign. When it was put to

him that he was a (PF) member, because these were a feeding camps for PF members, he denied. The respondent was not there on 12<sup>th</sup> August, 2021.

In re-examination, he told the court that whoever went for voting ate the food.

**PW6** was **Chola Chilando** from Mwewa Chiefdom of Chinkutula ward. Her testimony was that on 27<sup>th</sup> July, 2021 around 09 hours, when she was going to the market, she found a large group of people. When she inquired what the group was all about, she was told that the respondent was going to be giving out money at the Mwewa School ground. **PW6** joined the group and later a Canter truck came and was playing music. Around 15:00 hours, other vehicles came whereupon Dr. Chilufya told the people not to fight because there was more than enough money. The respondent came out and brought out chitenges and implored them to vote for her as she would do everything that they desired. She assured them of development and increase in the number of people who will be receiving social cash transfer. She warned them that if they did not vote for her there would be no development and even the social cash transfer would stop. The people lined up in queues and were all given K20:00 each. At the end **PW6** was called by the respondent to sing a song for her, which she did.

The message that came with the money was for the people to vote for her. To her recollection, there were a lot of people that one could not easily count. It was her testimony that she voted for the

respondent because she was the one who was giving them money. She reiterated that she voted for her because she gave her a K20.

Concerning GOZA, she did not know of this group. She asked the Presiding Officer who the people she came to know when she went inside to vote were. She said she was surprised to see GOZA representatives in the polling station. She saw two in number who she said were just sitting.

In cross examination, she told the court that she inquired because she saw that the number of the people in the polling station was more than required. According to her excluding observers from each party, they should have been three apart from the presiding officers.

She told the court that the respondent is the one who was giving out the money to all who were gathered including children. She reiterated that she voted for the respondent because she was given a K20. She left the ground after people had left.

She described GOZA representatives as wearing orange t-shirts. She did not ask about other people in the polling station but just asked about the GOZA representatives.

**PW7** was **Veronica Mwape** of Kafumbo ward. On 22<sup>nd</sup> July, 2021 when she was coming from work, she saw the respondent's vehicle stop. Her vehicle was branded. **PW7** was wearing a t-shirt for the Socialist Party, the respondent stopped her and asked her what

she was wearing. She told her to remove it and gave her a white t-shirt with the picture of Edgar Lungu on it. The respondent went away with the t-shirt for Socialist Party (SP). She later gave her a K20 and she told her to vote for her and leave the Socialist Party (SP).

On the 11<sup>th</sup> of August, 2021, the respondent and Mr. Vincent Mweni went to their area in Mumbilima. They gathered the youths and gave them a K500.00 and told them to buy beer. There were forty-two youths present when the money was given to them. The respondent told them not to vote for anybody else other than herself. She told them that after voting they should go and eat nshima and then go and drink. She voted for the respondent because of the things she had given them.

It was her testimony that she had heard about GOZA, in fact her elder brother told her that he was in GOZA. He wrote down her NRC and voter's card numbers. She was told that he needed to record 50 people who would be give material which would be given by PF, and would be shared among group members. After voting she was given food by GOZA.

She observed that in the polling station on 12<sup>th</sup> August, 2021, there were a lot of people including GOZA representatives who were wearing orange t-shirts.

In cross examination, she told the court that she saw GOZA representatives among whom was her half brother. She did not

bother about the brother because she knew that he was working. She never saw the respondent at any GOZA meeting.

When the brother was collecting her details, he told her that he had been employed by the respondent through GOZA so that they could bring them food and t-shirts. She said she gave her details to the respondent on 25<sup>th</sup> July, 2021. They were given food and T-shirts on 12<sup>th</sup> August, 2021. They collected the t-shirts and food at a place called Mbilima at Ireen's house. Ireen was also a member of GOZA. The respondent was not there.

When asked how long it would take from Mbilima to Kafumbo she said she did not know. That on the day the youth was given K500.00 the time was around 22:00 hours.

She explained that on the 22<sup>nd</sup> July, 2021 she was physically undressed and she remained with her bra. She was aggrieved by this action.

In re-examination she explained that she went to cat from Ireen's place because she knew her as her friend. She was directed to that place by her brother who wrote her name down.

**PW8** was **Annette Mweni** from Chitembo village in Chifunabuli ward. On 10<sup>th</sup> August, 2021 around 07:00 hours, she heard an announcement that all women who had clubs should gather at Chitembo ground. They went in accordance with the announcement they received. A Mr Ngosa Mumbira, who told them

he was with the respondent told them that they were going to Chibuye village and would be back. He further told them that the respondent had something to discuss with them. They were told that they would be back at 09hrs.

They waited until 12 hours but the respondent did not turn up and so they dispersed. Around 19hours again there was an announcement for them to gather. They once again gathered; the respondent and her group went to meet them. She encouraged them to vote for her and told them that she had something she had brought for them. She asked them to line up in order of their respective clubs. The respondent went to the vehicle with Astridah Chibemba and Ngosa Mumba. Astridah and Mumba brought a sack which contained chitenges (not party regalia). The witness informed the court that she was actually wearing the chitenge she had received as she testified in court. They were also given a K100:00 each and told that she was asking for a vote for herself and Edgar Lungu. She pleaded that they should vote for them if they wanted development, otherwise they would not have any development; no road and that the social cash transfer would stop.

The respondent told them that on polling day, there was food prepared at Davis Mwewa's place, Mpundu Lucian's place, Mr. Chola's place, Godfridah Ntambi's and Bernard Lubembe's place. They were told that after voting they should go and eat the food which had been prepared by herself and that all she wanted was for them to vote for her.

The women's club are 13 with a membership of 25 women each. There were a lot of women when the respondent was giving them chitenges.

On 12<sup>th</sup> August, 2021 after voting, she went to eat as promised. She voted for the respondent who gave her a chitenge and money. On 5<sup>th</sup> August, 2021 around 16 hours, her nephew by the name of Ntambanashe went to ask her which party she belonged to. He told her that they had been sent by the respondent to register 50 people each. He asked for her voter's card and NRC numbers. She gave him and he took down her details. He then told her that since she had been registered, she would be given a K20:00 and on the day of voting she should go and have food at Davis Mwewa's house. Her nephew is a PF member.

She further testified that on 2<sup>nd</sup> August, 2021 she had been called for a meeting at Chitembo Primary School. She found two teachers from Chitembo and others from Mundubi Primary; a certain woman who came from Mundubi. The person who opened the meeting was Fr. Moses Mwansa from Mwewa Parish. He said he had been sent from GOZA with Brian Funda, a teacher at Lubwe Girls. He pleaded with them that they wanted to use them to register 50 people each. They were told that the organization was set up by the PF. They were required to go back with 50 registered people each. They said they would have things to give the people who were being registered. There was a protest from one of the teachers Lydia Chola who told the meeting that as civil servants they cannot be involved in such activities. This person said that if

the Patrotic Front (PF) heard they would lose their jobs (work). Other teachers also echoed the same sentiments and one teacher from Mundubile said he could not be involved in politics. **PW8** also declined together with her friend. That was how they were released from the meeting.

When she went to vote on polling day, she saw GOZA representatives were there clad in orange T-shirts.

In cross examination, she told the court that they were being encouraged to vote for PF and were asked to register 50 people each. That she voted for a candidate of her own choice. Although she informed the court that there were thirteen women's clubs each having twenty (20) members, she did not know if all the members of the club were present. That she did not know how many chitenges were given out at the meeting of 10<sup>th</sup> August, 2021 all she knew was that everyone got a chitenge and a K100.

In re-examination, **PW8** told the court that she voted for the respondent because she gave her a chitenge and a K100.

**PW9** was **Chanda Kaoma** of Buleti Village, Masonde Ward. On 26<sup>th</sup> July, 2021, the respondent went to Chimanda village, where the people were gathered. The respondent introduced herself as a Parliamentary candidate. She asked them to vote for her otherwise the money that they currently receive as social cash transfer will stop coming. If voted in, she promised to increase it to K500 per person. **PW9** was with six fellow headmen. They were given a

K250.00 for them to share. The money was given so they could vote for the respondent. The respondent told them that on the 8<sup>th</sup> August, 2021, she would bring mealie meal, cooking oil and goat meat to cook for those who were voting.

On 8<sup>th</sup> August, 2021, around 21:00 hours, the respondent went with 10 bags of mealie meal, 3 goats and 3, 20 liters cooking oil. The respondent took these food stuffs herself. They were delivered at headman Chimanda's place and **PW9** was called to that place.

On 12<sup>th</sup> August, 2021, the goats were slaughtered and members of GOZA began to cook and they started giving out cooking oil to people in small bottles as they went to vote. People were being given with instructions that they should go and vote for the respondent. The respondent had appointed people to distribute the food stuffs. Nshima was cooked at Kennedy Kapisha's house and everyone who was there ate.

The distribution of cooking oil happened at 08 hours. He reiterated that GOZA went through their houses collecting their NRCs and voter's cards and told people to vote for PF.

He told the court that on 12<sup>th</sup> August, 2021 he voted from Chimanda, Masonde Ward. He voted for the respondent who gave them food stuffs. He testified that a lot of people received cooking oil, he could not count them.

In cross examination, he told the court that he got to know the respondent during the campaign period. It was his testimony that the respondent is well known in Chifunabuli but in his area Chimanda, Masonde that was the first time he was getting to know her.

He further testified that only seven (07) people got money (K250) which they shared. That he got K35.00 and cooking oil. When asked if he saw the respondent give money to anyone else, he said he did. When asked how many people he saw receive money he stated that he saw many people receive money. He estimated that the number could have been two hundred. When asked if he was there from the start to finish when money was given to the many people, he stated that after he was given money, he left so he would not know if the 200 people who remained got money from the respondent.

Further that the people who were distributing food were GOZA representatives because they were going round getting NRCs and voters cards numbers. He recognized them as they introduced themselves as such when collecting the voters' card and NRC numbers.

In re-examination, he added that the GOZA representatives were sent by the respondents.

**PW10** was **Chisala Boston**, from Chitembo village, Lubwe Ward. He testified that on 28<sup>th</sup> July, he came from Lubwe and found

information that people had gone to his village collecting voters' cards and NRCs numbers. They were told that once they finished with voting, they would be given something from the government. He found out that Mr. Steven Chisha was the one collecting this information. Mr. Chisha was very well known to him. When he followed the issue up, Mr. Chisha told him that the five of them had just been engaged to carry out the exercise by a Mr. Shikalengwe Perry, a teacher. He went to see the teacher who agreed that they had been tasked to register 50 people per person. The forms were supplied by his fellow teacher. He approached all the people who he learnt were involved in the exercise.

He told the court that he was annoyed because no one had a right to touch his voter's card. On the same day there were people who went to their area to teach voters on how they should vote. Among those was Mr. Mwila. Mr. Mwila had written his telephone number on a poster. He called ECZ, and spoke to Mr. Mwila and asked him whether he knew what was happening in Nkulunga but he did not get any response. He did not get any help from this person.

On the 5<sup>th</sup> August, 2021, he saw the DC's vehicle drive passed his house. He followed the car to Mr. Stephen Chisha's house. He saw them offload bales of chitenge, 10 bags mealie meal without labels and 3, 20 liters of cooking oil from the car. He was told and he proved that these things went to a GOZA member. GOZA representatives were going round campaigning for PF.

The foodstuffs were to be used after elections and some people were given cooking oil in small bottles. He stated that they were four homes where food was being cooked for people on election day.

He further testified that on 9<sup>th</sup> August, 2021 they received PF members including the respondent and the Mayoral candidate, Charles Mulenga and the person who was aspiring to be Councilor. This meeting took place at Nkulunga at the school grounds. The message was that they wanted to develop this area. They asked them why they would they vote for Nkonge who is from the valley. They further told them that if they did not vote for them the social cash transfer would stop. These words were spoken by the respondent. They left a K600 with the witness and it was given to him by the respondent to share. People wanted to beat him, so he just let go off the money. He estimated that the meeting consisted of about 400 and 500 including children. He was given the money because he is a headman. The meeting was at Nkulunga ground. On 12<sup>th</sup> August, 2021, the date of voting, he was surprised to see GOZA representatives in the polling stations. He knew them because they were wearing branded t-shirts. He saw them just sitting, as a result he did not know what they were doing.

All the people whose names were written down ate the food that was being distributed on voting day.

In cross examination, it was his testimony that Mr. Chisha got NRC and voters' cards numbers from all the people who were illegible to vote at his house. They were six in number.

When he followed up with Mr. Chisha, he was told that the forms that were being used for the exercise came from Mr. Terrace Sikalangwe who in turn got them from Mwape. That he did not see the respondent on that day. However, whoever went to collect the information said they had been sent by the respondent. To his knowledge the respondent is a member of GOZA. This is the information he was getting from people who were involved in GOZA. The evidence he had was that GOZA was affiliated to PF and that GOZA representatives were campaigning for PF.

He further stated that he was not happy because it was clear that people had been swayed because of the threats from the respondent. That the number of those swayed was 250 and only 82 were not swayed. He did not make any other complaint other than report to ECZ. He stated that the only reason he got the money was because people said he should be the one to collect the money.

**PW10** knows the respondent well from childhood and they have a cordial relationship. He denied ever having a dispute with the respondent over sand which is on his road side.

It was further his evidence that there are 332 registered voters in his village register and each of the five representatives of GOZA

was registering 50 people. That is how he came to conclude that 250 people had been swayed only leaving 82 people in his village.

**PW11** was *Chipulu Angel Mwape*, from Kasansa ward. On 29<sup>th</sup> July, 2021, he was going to the market. When he reached Kasuba Primary, he found chairs and desks had been taken out in readiness for a meeting. He observed that there were a lot of people; this was around 15 to 16 hours. The meeting was started by the respondent who was explaining why they did not have development in Chifunabuli and how they can bring development once the respondent was voted for as MP. However, if the respondent was not voted into power, they would stop receiving social cash transfer and hence will not be able to help their school going children. She explained that the area is not developed because there has never been a Minister appointed from that area. However, if voted in as MP, she will be appointed Minister and therefore will be able to bring development. She went on to talk about development, in terms of schools, hospitals and roads.

At the end of the meeting the respondent gave a K1000 to the person who offered a prayer, by the name of Dominic. Another lady by the name of Judith Chapa got a K500. A lot of people shared this money, the witness went away with a K10. There were lot of people, from his recollection, more than 500 people.

On 8<sup>th</sup> August, 2021, around 10 hours, he saw a group of people among whom was Dr. Chitalu Chilufya at Kasuba polling station in the football ground. These people were campaigning for PF.

They told the village headmen to make a queue; the next queue was for elderly people. In total there were four queues. It was announced that all headmen should vote for PF and those who refused were asked to raise up their hands. No one raised their hand. They proceeded to give the headmen a K100 each, the elderly K70 each, youthful men and women K50 each and the children were given K20 each. He himself received a K70. The respondent was not present at this meeting.

It was his evidence that Dr. Chitalu Chilufya was in the company of people from the Office of the President. He knew one of them who was his neighbor. He and his family voted for PF because he keeps orphans and was warned that if they did not vote for PF, he would stop receiving the social cash transfer. He had family members who were beneficiaries of the social cash transfer. He also told them that Chifunabuli was not developed because they had never had a Minister from the area. Voting for Edgar Lungu as President and the respondent will enable her be appointed as Minister.

In cross examination, he declined being paid by the petitioner to testify for him.

**PW12** was **Bwalya Emmanuel** from Chief Mwansa Kombe, Kasaba Ward. On 8<sup>th</sup> August, 2021, they were at Kasaba Roman Catholic Church, Kasaba Centre, where they received visitors namely: Dr. Chilufya, the respondent, Mr. Mulenga and other PF leaders. At the end of mass the leaders were made to stand and

the congregation was encouraged to vote for the respondent because the road would be developed and further that social cash transfer would stop if they did not vote for the respondent. Even the tiling of the church which she had started would be completed.

The respondent gave a K4000 to Sr. Gift Tailoka in the hands, to hold on behalf of the choir. She further removed another K10,000 and gave it to the choir again. She started giving people randomly, the disabled were given K100; the elderly K50 and the young people K20.

He narrated that as the wife was buying tomatoes at the market on their way home, she was told that she should put out the tomatoes that she had just bought on a stand for sale because the respondent's team was giving out money to marketeers at the market. When Dr. Chitalu Chilufya and the respondent went to the stand where his wife had put out her tomatoes; the respondent went and gave her a K100 for four tomatoes. As they were being given money, they implored them to vote for the respondent. This was around 12 hours.

The District Chairperson for PF, Michael Kasebe was announcing that a tree of money had come. He asked them to go to the ground. Countless people went to the ground at Kasaba Primary school.

At the ground people made a queue. Those who wanted to take pictures had their phones confiscated. The respondent and Dr. Chitalu Chilufya gave people K20s, T shirts and chitenges. The

respondent told the people to vote for her because she would be appointed as Minister. At church, the witness collected a K20 and another K20 at the ground. He voted for the respondent on account of the money that he received and so that the respondent could work for them.

In cross examination **PW12** informed the court that when money was given to the church choir he was present. The money was given in appreciation of the choir's performance.

He further testified that there were more than ten (10) traders at the market where he went to buy tomatoes with his wife. The process of giving money to the traders at the market took five minutes. That it took five minutes because some people were not there. He clarified that although he had earlier said that they don't receive any visitors in church except Priests, Mr. Harry Kalaba, the President for the DP had also worshipped with them in December, 2020 but it was not during the campaign period.

**PW13** was **Evans Chanda** from Chifuko Village, Chinkutula ward. It was his testimony that he had a meeting at Mwewa as a member of GOZA. They gave them papers to record 50 people and taught them what to do. The meeting was chaired by the respondent, who had called for the meeting. There was a total of 25 people in attendance, including the respondent. The meeting started at 10 hours. They were told that they were to ensure that the people who were registered voted for them. They were to give a sign to their members when they went to vote.

He was at Chifuko polling station in Chinkutula ward. He wore an orange t-shirt. He was there from 06 hours to the end of voting. They managed to give their members signs because they had told them what to do beforehand. There were two of them at any given time.

On that day they were given K250 each and were promised K1000 each should the PF candidates win the election. He knew the respondent from before the meeting. In 2016, the respondent had given them some jerseys.

During this time, he just met the respondent twice, initially, at the meeting on the 24<sup>th</sup> July and the next was at a meeting at the polling station at Chinkutula.

It was his testimony that they registered people over a period of 3 days, over a stretch of 3 kilometers from Saili to Nponda. From what he was told GOZA was sponsored by father Mwape. When he reached the target of 50 people, his form was taken to the PF District Chairman, Mr. Chiwamine this was after they made a photo copy was made.

On the 11<sup>th</sup> August, 2021, he was given 7 bags of mealie meal, K1000 for relish and 3, 10 liters of cooking oil. Food was cooked in four groups on polling day for those who were coming from voting. The food stuff was provided by the respondent through Mwewa. He knew that the food came from the respondent because

her members are the ones who called the witness to pick up the food.

At the polling station, they were not allowed to help people who were struggling to vote, that was the duty of the Presiding Officer. The K1000 was never given to them. ECZ allowed them in the polling station but they were not given any document. They had no identity cards.

In cross examination, he reiterated that there were 24 members of GOZA who were there and the respondent was also there and made the number go to 25. He described the functions of GOZA as looking into how the elections were going. The leader of GOZA was the respondent and Fr. Mwape was an agent of GOZA who was teaching them what to do.

They had photocopies of the NRCs and voter's card and that was what they used to gain access to the polling station. The Presiding Officer is the one who allowed them in. Asked whether they knew how people were voting because a vote is a secret, at first, he stated that they knew who these people voted for then later he admitted that they did not know. They just gave those voting a sign.

He was not aware of the meeting that took place on 23<sup>rd</sup> June, 2021 in Chifunabuli. He did not know Mr. Chisha Chabala.

In re-examination, he said he did not know the position of Fr. Mwape in GOZA. He was aware of how the people voted because

the candidate their people were told to vote for is the one who carried the day.

**PW14** was **Frank Mukosa** from Mwansa Kombe, Kapesha ward. On 17<sup>th</sup> May, 2021 at around 10 hours his nephew, Mobby Mwange went to his house to tell him that he wanted his National Registration card and voter's card. His nephew said that he needed them to obtain some aid. He gave his nephew his voters card and NRC whose details he noted down. He told him that he would receive aid from PF and the respondent would be the one to bring that aid. The aid would be in terms of mealie meal and money if they voted for the respondent.

He told the court that his nephew is a peasant farmer and also a PF member. He knows this because he usually spends time with him. When Mobby visited, the witness was just with his wife. Mobby collected four voters' cards and NRC numbers from him, his wife and two children. The two children lived on their own but near the witness' house. Once he got their details nothing happened to date; they have not received.

He further testified that on 7<sup>th</sup> August, 2021, which was a Saturday, at 11 hours, they were waiting for the respondent at Kabungwe school ground. When the respondent arrived and started the meeting, she was telling them that they should not vote for another person other than herself and Edgar Lungu as President. She told them if they did not vote for her, they would stop getting social cash transfer. The respondent thereafter asked

them to be in groups and told them she would leave a K1,500 for them. The money was given so that they could vote for the respondent and Edgar Lungu. The witness was the one who received the money. He could not estimate how many people were present. The money was shared and the witness went away with a K20; the other people went and shared the rest of the money.

On 12<sup>th</sup> August, 2021, he voted for the respondent because she was the one who gave them money and had told them not to vote for any other person. He voted from Kabungwe polling station where he found Mobby. He was wearing a white t-shirt and a jacket on top. Mobby was representing GOZA because that was what he explained to them when he went to get their particulars of voters' cards and NRCs.

It was his testimony that he did not tell him anything about GOZA, apart from saying that they would receive aid. It was his testimony that nothing was given in terms of the aid promised.

In cross examination, he told the court that he kept his children's NRCs and voters' cards which Mobby took and went to discuss with them and registered them.

When asked whether he would be sure that the rest of the money was distributed by the chairman since he had left the ground, he told the court that he lingered around before he left and was sure that the money was shared among the people. There were many people present possibly over one hundred. After he took the

K20.00, he gave the rest of the money to his elder brother, the Chairman for PF to distribute to the rest of the people.

He explained that Mobby was in the polling station as the GOZA representatives were found in the polling station. The GOZA people were there to assist with the voting. He did not speak to Mobby in the polling station as before voting day, on 9<sup>th</sup> August, 2021 the electorate had already been explained to on how to vote. He had explained to them that he would just look at them and they would know that they have to vote for PF. Mobby did not have any identity on him.

In further cross examination, he told the court that even when Mobby went to register them he did not have an identity card or documents to show that he belonged to GOZA.

He confirmed that he was aware that every candidate had a campaign team but he was not in the team. Further he confirmed that he would not know whether the money was distributed among the campaign team of PF members.

In re-examination, he explained that he knew that GOZA was a PF organization because PF members were the ones in the organization. He knew that Mobby was in charge of PF and was campaigning for the respondent. Mobby told him that he was a member of GOZA in June, 2021.

He knew that the money he left to the Chair Person for PF, Mr. Kabamba was shared among the people because he was told by the people who got the money.

**PW15** was **Mr. William Sebyo** from Lubwe, Lubwe Ward. He was the Campaign Manager for the petitioner under DP. He testified that on 22<sup>nd</sup> June, 2021 he was informed by Memory Chuma, who was a candidate as a Councilor, that there was an organization that was registering NRCs and voters' cards, in groups of 50. The people who registered were promised food and money. He was told that the person who was doing the registration was a Mr. Chisha, a civil servant. Memory told him as Campaign Manager for the petitioner under DP that she had been told by Mr. Chisha that she was too young and could not be involving herself in elderly people's issues.

The witness confronted Mr. Chisha on the phone as he was in Samfya at the time, on why he was collecting people's NRCs and voters' cards. He further asked where the organization that was doing this had come from. The witness further said this was a scheme for stealing votes on behalf of PF. Mr. Chisha told him not be angry and that he could not discuss the issue on the phone. They therefore agreed to meet at the Police station and they actually met there. The witness was in the company of other party officials. They met the officer in charge, a Mr. Phiri.

In the presence of the Officer in charge, the witness explained that Mr. Chisha is a civil servant but he was surprised why he was

recording people's NRCs and voters' cards. He wondered why an organization like this one had only come up now when it was close to general elections. He further explained that ECZ had told them which organizations were accredited and GOZA was not one of them.

Mr. Chisha answered that GOZA had a lot of wings through which it was operating, such as women empowerment; youth empowerment and voter education, as well taking care of those people who don't vote because of hunger by giving them food. In addition, it was to educate members how to vote for good leaders. Mr. Chisha said his role was to counsel people against voter apathy.

Mr. Phiri advised them that the issues to do with ECZ should be directed to the CMC in the district, which the witness is a member of. He asked them to write a complaint letter and take it to the CMC who had the mandate to address the issue. The complaint was lodged with the CMC the same day.

They appeared before the CMC on the 23<sup>rd</sup> June 2021. The Council Secretary (CS) asked when the organization of GOZA started in the district because as CS she was aware of all the organizations in the district except this one. Mr. Chisha said the organization has been in existence for a long time and were on their way to seeing the CS over it. Fr. Charles Mupanga, the Chair of CMC expressed concern over the fact that even the CS did not know this organization. He further said that the organization should not be

writing down NRCs and voters' cards numbers before the organization is authorized to operate in this district. He told them that they should develop a different template where they can record names but leaving out NRCs and voters' cards. They were told to stop the exercise immediately until the organization was properly recognized or accredited by ECZ. Mr. Chisha agreed with all the resolutions of the meeting.

However, after two days, Mr. Mukosa, a DP member informed him that GOZA had continued recording NRCs and voters' cards numbers at Kapeshi ward. They realized it was not going to stop and they knew that GOZA was working with the PF. They decide to go and announce that people should not be agreeing to have their names registered with GOZA. They also mentioned in their announcement that Mr. Chisha should stop what he was doing as he was a civil servant.

He knew that GOZA was working with PF because he found his elder brother's son who told him that he had been engaged to write the NRCs and voters' cards numbers to help in the election of the respondent. He even captured a photo where the PF features, symbol for PF, were showing. He further explained that for every 50 people he registered, he would be paid and those registered people would be given mealie meal and money so that they can vote for the respondent and Edgar Lungu.

The witness received the same information from Kapeshi, that is how they concluded that GOZA was funded by PF. They

approached his nephew and asked him to stop and reported to the CS, CMC and the Chairman Fr. Mupanga was upset. The CS said they would call Mr. Chisha.

On polling day, as an accredited person with an identity card he could go into the polling station. He was surprised because the resolution of the CMC was that GOZA should stop its activities, but its representatives were found in all polling stations he visited. He could identify them because of the t-shirts that they were wearing, although others had no t-shirts. They had orange t shirt branded with GOZA inscription. For the ones who did not wear t-shirts, he was told that they were GOZA representatives when he asked.

He concluded that GOZA was representing PF because even when a PF ballot paper was not clearly marked, they would let it pass. However, a ballot paper for DP would be thoroughly examined. He later asked and was told him that those people were representatives of GOZA but they were supporting PF.

He passed through 14 polling stations as Electoral Agent. He voted from Lubwe boy's Primary School. There he saw agents for all political parties and agents for GOZA at the polling stations. The last polling station he went to was Mwansa Kombe polling stations. They had polling agents at all the 89 stations.

For the meeting of 23<sup>rd</sup> June, 2021 for CMC, the witness produced minutes which he said was a true reflection of the meeting they

had. He told the court that the minutes were signed by the chairman of the CMC. The minutes were approved on 1<sup>st</sup> September, 2021.

He told the court that the announcement to stop the people from registering with GOZA was just within Lubwe. Their announcement was helpful as it enlightened them that GOZA was working with PF and the respondent.

In cross-examination he listed the names of the people who attended the meeting of 23<sup>rd</sup> June, 2021 as Fr. Charles Mupanga, the CS, Petronella Mwape, Nkandu Charles, himself, Given Tweende, Chisha Chabala and other people from the Council whose names she did not know.

He told the court that he was not aware that minutes do not need approval. He insisted that the minutes were not made up. Even the CS and the Chairperson have the minutes.

It was his evidence that the respondent was not in the meeting of 23<sup>rd</sup> June, 2021. When asked whether his evidence of PF funding GOZA, was backed by any evidence, he did not produce any in court.

**PW15** did not bring any evidence to show that GOZA was working with PF. Concerning GOZA assisting PF during vote counting, the witness testified that he did not report to ECZ because there was

no time. He had no evidence before court on the forms that GOZA was registering the electorate.

On further cross examination, concerning the cancellation of his names on the minutes which read William Chipulu, he told the court he was the one and the alteration was merely a correction of the minutes. He confirmed that there was no signature against the correction and that it would be difficult to tell who made the alteration.

It was further his testimony that the orange t-shirts had an inscription of GOZA. He did not write to ECZ concerning GOZA.

Re-examination, he did not write to ECZ concerning unauthorized people in the station because they were not getting any attention to their complaints.

Concerning his name being written as William Chipulu on the minutes, he explained that was his name but his NRC bears the names William Sebyo. The alteration was to correct the names to read William Sebyo which is on the NRC.

**PW16** was **Father Chali Charles Mupanga**, a Catholic Priest, in charge of Mabumba Parish, Mansa district. He told the court that in the just ended election whilst in Chifunabuli district, he was the Chairperson of the CMC in Chifunabuli Constituency. He has held the position from 2018 to this year.

His testimony was that in or about 22<sup>nd</sup> June, 2021, he received a call from the DP chairperson complaining about two things. Firstly, it was about an organization called GOZA which was going round giving mealie meal and cooking oil to would be voters and in exchange they designed a form where they wrote down the people's names, their NRCs and voters' cards numbers. Secondly, they complained about the two PF cadres who were going round defacing the posters for DP and UPND.

He asked the complainant to put his complaint in writing and submit to their secretary as per procedure. The complaint letter was submitted to their secretary and told the secretary to summon the parties who were involved. The letter cited Mr. Chisha as being the coordinator of an organization called GOZA. One summons was written to Mr. Chisha and the other to the two PF cadres, who were defacing the posters. The rules provide that once a complaint is filed a meeting should be held within 24 hours.

On 23<sup>rd</sup> June, 2021, around 10:00 hours they held a mediation session, but the two PF cadres did not attend. However, Mr. Chisha and the chairperson for DP and his group were in attendance.

When Mr. Chisha was asked about the complaint, he introduced the organization as having had come into the district. It had come for a lot of things and finishing voter apathy was at the helm of that organization. All that they were doing was going round finishing voter apathy so that people could go and vote in numbers.

The witness quoted the Electoral Code of Conduct and told Mr. Chisha that what he was doing was against the Electoral Code of Conduct and also that the aim of the CMC was to ensure free and fair elections without disadvantaging any candidate. In the meeting they had the District Electoral Officer (DEO), who is the CS of Chifunabuli, she was the ex-officio member of the committee. The witness asked the CS if she was aware of what Mr. Chisha was doing and whether it had her blessings, to which she said she was not aware of the activities of GOZA.

He asked whether what GOZA was doing was legal and whether it was accredited with ECZ, she refused. Mr. Chisha's response was that they were in the process of legalizing but because of the time, they thought it was better to do the work and then go and legalize with the DEO. Since the CMC's role was just to mediate, they made peace among the people involved. It was agreed that Mr. Chisha would tell his members to stop whatever they were doing. He was also to bring to the DEO the forms on which he had recorded the NRCs and voters' cards to avoid suspicion. He was further advised to go and see the DEO for legalizing and accreditation of the NGO. Thirdly, he was asked to design a new form to be agreed upon by the people involved in the elections. That form was to exclude NRCs and voters' cards numbers. They all agreed to that. The parties signed the form; the complainant, Mr. Chisha and so did the CS, the Secretary and the Chairman (PW16) to make it binding.

The witness gave brotherly advice to Mr. Chisha as it transpired that a number of people who were involved in the activity were civil servants to tone down. The meeting, in his view, was successful. The DP was represented by Mr. William Sebyo as Chairperson and three or four others whose names he could not remember.

According to what was reported in the letter, the issue was GOZA was giving people something in order to encourage them to go and vote, that was against the code of conduct. People should go and vote voluntarily. Secondly, NRCs and voters' cards are private and should only be kept by the owners. They were abrogating the Electoral Code of Conduct.

He explained about Mr. Chisha's attitude during the meeting that, when the meeting began, the tempers were hot between the two parties. Mr. Chisha actually mentioned that he had only attended the meeting because of the respect accorded to the witness and the CS.

When Mr. Chisha was told that what he was doing was against the Electoral Code of Conduct, he just kept quiet.

Barely, a week after that meeting, he again received a phone complaint from the same William Sebyo that what had been agreed upon in the meeting had not been effected as GOZA had continued with its programs. When he inquired from the CS about what could be done in order to enforce what had been agreed upon in the meeting, the CS promised to get back after consultation with higher offices. While he was still waiting, two weeks after the

complaint from Mr. Sebyo, he received a quick transfer from Lubwe Parish to Mabumba Parish. He called it a quick transfer because his Bishop wrote to him to pack and go within a week. Without the direction of the CS, nothing could be done as the CS was the one who would put logistics in place for mediation.

He received his transfer letter via WhatsApp a few days after the complaint from Mr. Sebyo. He remained a chairperson of the CMC until 13<sup>th</sup> August, when they had meeting in Lubwe where he indicated that the committee had to find someone else to chair the committee as he had moved out of that place.

The complaint of defacing the DP's campaign materials was never deliberated on and remained unresolved after elections.

He came to learn that a lot of people in GOZA were civil servants because of the names indicated in the complaint letter and in the follow up with the DP chairperson he mentioned civil servants mostly teachers who were spearheading the GOZA activities. Mr. Chisha said the organization was not only in Chifunabuli but the whole Luapula and that it had been in existence for a long time. Everyone was duty bound to be a member, including civil servants.

In reference to the petitioners' bundle of documents, it was his testimony that most of the content was a true reflection of the meeting he chaired. However, the document that was produced from the meeting was signed by four people where four people: the DP chairperson signed, Mr. Chisha, he signed as chairperson and

the DEO signed. He disputed the authenticity of the minutes before court. He pointed out that he could not recognize the signature on the document. They signed the document on 23<sup>rd</sup> June, 2021 but the document before court showed 1<sup>st</sup> September, 2021. Furthermore, the title of the document signed on 23<sup>rd</sup> June, 2021 was "*Complaint from DP against GOZA who abrogated the Electoral Code of Conduct.*" Further that the minutes of 23<sup>rd</sup> June, 2021 were signed on the same date, as at 1<sup>st</sup> September, 2021, he was not the chairperson. He further stated that more than 85% of the contents of the deliberations in the meeting were in the minutes before the court. He stated that the part of reprimanding Mr. Chisha and other civil servants to desist from the activity was not in the minutes before court. The part about all papers of all the activities they did being handed in the next day without fail, was not in the document before court. Thirdly, three signatures were missing and the person who signed the minutes before court signed on his name.

He concluded that there was no compliance with the directive to hand in the documents where the names of people with their NRCs and voters' cards numbers were written. He had asked the CS whether there was compliance and he was told there was no compliance.

In cross examination, he told the court he was not the only Priest who was transferred. There were two other Priests who were transferred in Chifunabuli. He denied campaigning for DP and asking congregants to vote for DP. He did not know the owner of

GOZA and neither did he know whether the respondent was a member of GOZA. He did not see any person from GOZA distributing food.

It was further his testimony that during the campaign time, they had three meetings. He gave the membership of the committee as: Chairperson was himself; the vice was Mrs. Mushipa (Petronella Mwape), and three members who were; the CS, Mrs. Musongole, Ms. Banda, Ms. Esther who was his secretary and each political party had one representative, whose names he could not recall. At the end of the meeting what was signed was a resolution and not minutes.

To the best of his knowledge, William Chipulu was the same person as William Sebyo. William attended the meeting as a complaint and not as a member.

When there was no compliance, he did not report to the police, although he was aware that the alleged offences were a violation under the Code of Conduct. He did not report the civil servants who took part in the activities done, either.

The other documents that were signed after the meeting are kept at the Council Secretary's office. The document before court was not the right document that he should be giving evidence on.

In re-examination, the witness told the court that they did not report to the police because the procedure was for them to report

to the National Conflict Management Committee and they in turn would report to the law enforcement agencies. He further reiterated that there was no follow up meeting as he was waiting on the CS to provide logistics, which did not happen.

**PW17** was **Chikuni Chalwe**, of Chief Chitembo in Chifunabuli ward. He told the court that between January and August 2021 till date he has been a PF member. He has been in PF from 2006. In the year 2021, he held a position of Vice Chairperson at the constituency. He has held the position for three years.

From the last week of July, to 13<sup>th</sup> August, 2021, he acted as chairperson for the constituency, as the chairperson was sick. Between the last week of July and 11<sup>th</sup> August, 2021, he was campaigning for PF. They were working so that people could vote for them. They used to give people chitenges and t-shirts.

What he recalled about the 11<sup>th</sup> of August, 2021, was that they were going from ward to ward giving people chitenges and t-shirts and caps for the party with the respondent. On this particular day, they visited these five wards with the respondent. They went to Chifunabuli, Kasongole, Mbilima, Chishi, Katola, and Mbabala. They started the campaign around 10 hours. They met at 08 hours with the respondent. They met at the PF office, at Lubwe station. They started planning on the wards which they were going to visit.

He told the court that there are two islands in Chifunabuli, Mbabala and Chishi. It was his testimony that he visited both

islands with the respondent, Charles Mulenga (Chairperson). The last island they visited is Chishi island. It around 14 hours when they reached and concluded at 17:25 hours. From there they went to Lubwe where they reached between 19 to 20 hours, the boat was not fast.

Concerning the registration of voters' NRCs and voters cards' numbers, the witness said he did not know anything.

This marked the close of the petitioner's case.

The respondent called four witnesses.

**RW1** was **Reeman James Kaluba**, of Chief Mwansa Kombe. He was the Campaign Manager for the respondent in the just ended elections. It was his testimony that the allegations in the petition were false.

The respondent expressed interest to stand as MP in 2018. They started the campaigns on 24<sup>th</sup> June, 2021. Their campaign strategy was door to door campaign and road shows as well as branches in compliance with the covid-19 guidelines. During their campaign, they distributed hats, T-shirts and party chitenges.

He told the court that this was the easiest campaign he had ever had in PF because the person was well known.

In cross examination, it was his evidence that they never conducted any rally during the campaign period. He confirmed that the respondent was not candidate in 2016 parliamentary elections but denied that the reason was because she did not have a grade 12 certificate.

He estimated the number of registered voters in Chifunabuli constituency as 41,500 plus. He has resided in Chifunabuli for 44 years. He further confirmed that most of the residents of Chifunabuli are uneducated. He denied that a K20 note means a lot in the constituency. He denied that one cannot buy a meal with K20. He however confirmed that one can buy a meal of cassava and groundnuts for K2.

He did not know that he had not been mentioned in the respondents answer and affidavit, as campaign manager. He checked through the documents and did not see his name.

He reiterated that he was the campaign manager even if he was not mentioned in the documents for reasons not known to him. He told the court there were 15 members of the campaign team. He further told the court that Vincent Mweni was the election agent for the respondent.

He confirmed that during the road shows Dr. Chitalu Chilufya would be in attendance. He did not know the total of road shows that they conducted between 24<sup>th</sup> June, 2021 and 12<sup>th</sup> August, 2021. He further confirmed that sometimes the campaign team

split and went in different locations but was present at every campaign even the ones which the respondent did not attend. He denied ever conducting the road shows near the markets. The roadshows were conducted at the wards and polling stations. It was his testimony that the constituency has 89 polling stations and 13 wards.

He repeated that Dr. Chitalu Chilufya was present at some of their events and described his role as a Presidential Campaign Coordinator in the campaigns. He was aware that Dr. Chilufya would attend church services at Catholic Churches with the respondent. He told the court that he attended Lubwe and Kasaba Catholic Churches. He could not recall the dates. He never recorded the dates because he was very busy.

He disputed that Dr. Chitalu Chilufya was at Lubwe Catholic Church on 18<sup>th</sup> July, 2021. He said on this day, they were somewhere else. It might have been 8<sup>th</sup>. He said he was at Kasansa on 18<sup>th</sup> July, 2021 from 09 hours to 18 hours. He was just at his home in his village. He did not recall the date when Dr. Chilufya and the respondent were at Kasaba.

He denied that Dr. Chilufya was introduced to the congregation when he attended at Lubwe and Kasaba. It was his position that the respondent was not introduced in those church services. However, it was his testimony that the respondent did not take time to greet the congregants, however he could not say that she

did not greet anyone. To his knowledge the respondents is catholic as they attend church service together at Lubwe.

He described the role of a campaign manager as to ensure that the campaign is properly conducted and the guidelines are being adhered to. He confirmed that ECZ banned roadshows during the 2021 campaign. He denied that during the said road shows but chitenges which did not bear symbols for PF were distributed.

The witness insisted that he was always there for campaign and roadshows when the respondent was not there. He always knew the things that respondent was doing during the campaign season, because the times that she was not around she was in Lusaka. The witness has been a PF member for 21 years. He was appointed as campaign manager by the respondent and the party. He did not have any document to show the court that he was appointed as campaign manager.

Concerning social cash transfer, the witness told the court that he did not know anything. He has, however, heard about it as "Sata Lutu". He knows it as funds given to people who are 65 years old and above. He had earlier stated that he did not know anything about social cash transfer. He did not know what kind of knowing Counsel was talking about. He only knew who the beneficiaries were, he did not know other things.

On 11<sup>th</sup> August, 2021, he remained in the constituency as campaign manager. He was at Lubwe where their office is while

the respondent was at Chishi and Mbabala. She left their office around 04 hours. She was there the whole day and only returned to Lubwe between 20 and 21 hours. He confirmed that these were campaigns that were conducted in his absence. It was his testimony that respondent went with the Council Chairman, Mr. Mulenga, John Nkhoma, Chikuni Chalwe, Vice Youth Chairman. They met with Mr. Kayabwe and Martin Chimese that side.

Concerning the evidence of Mr. Chikuni that he met the respondent at the constituency office at 08 hours, it was his evidence that Mr. Chikuni lied to the court. Mr. Chikuni's evidence that he and the respondent arrived at the Lubwe office at 19 to 20 hours, the witness told the court that one of them was mistaken.

They closed the campaign at 17:30 hours, ECZ directed that the campaigns should close at 18 hours. He denied that some of his campaign team would meet the electorate at football grounds of schools. He told the court that he knows the respondent very well but does not know what cars she owns. At least he knows that she owns a Fuso Truck, which he was using.

In re-examination, he told the court that they wanted the respondent to stand in 2021 because she was born in Ngumbo and has brought businesses in Chifunabuli and has a farm in Chifunabuli. Furthermore, that at the two events at Lubwe and Kasaba Parish he reiterated that the respondent was not introduced.

RW2 was the *respondent, Ms. Julien Nyemba*. She had filed an answer and affidavit to oppose the petition, as well a bundle of documents.

It was her testimony that she was not aware of any malpractices in the just ended election petition in Chifunabuli constituency. She denied being involved in these malpractices. She just learnt about the malpractices from the petition. Further that she was not called out for any malpractices, by either the CMC, Police or ECZ.

Concerning paragraph 6 of the petition (vote buying and undue influence), the witness told the court that she did not involve herself neither did PF members nor traditional leaders. She reiterated that none of them were called for disciplinary actions. She further disputed the contents of paragraph 7 and stated that Vincent Mwani was not her campaign manager but her election agent. Dr. Chitalu Chilufya and herself did not give out any money neither were they seen giving money in the mentioned places. They only went to worship. When they went to worship, they came out and as they were going to Kasaba they passed through Mwansa Kombe and Mwewa, which are on the way to Lubwe ward. They only gave out PF party regalia by the roadside as they were driving back to Lubwe ward, which was their campaign centre.

She recalled attending Lubwe ward Catholic Church on 11<sup>th</sup> July, 2021 and Kasaba was on 18<sup>th</sup> July, 2021. She attended two church services with Dr. Chitalu Chilufya.

She told the court that on 11<sup>th</sup> August, 2021, she left Lubwe ward early in the morning around 04 hours going to Samfya where they hired banana boats to take them to Mbabala and Chishi islands on Lake Bangweulu. It takes about 2 to 3 hours to reach the islands using banana boats. They left Chishi island around 17 hours and reached Lubwe harbour around 20:30 and 21 hours, after which she went straight home to prepare herself for the voting day.

She further testified that on 12<sup>th</sup> August, 2021, Vincent Mweni was given instructions by the campaign team to go through Lubwe, Chifunabuli, Kasongolwe and Lubasanshi to check if the polling agents were at the stations in these wards. She denied hiring Canters to transport people from fishing camps to polling centers. After voting on the 12<sup>th</sup> August, 2021, she had a problem with her car, she was confused and could not move because she was working on the problem which occurred to the car. She voted at 06:10 at Chifunabuli Primary school. She did not see her agent hiring these Canters from fishing camps to polling stations.

**RW2** further testified that she did not see Vincent Mweni and PF members ferrying people because she was in one place and did not even know where the PF members were. They had given each other tasks. Other people went back to their polling stations while Vincent Mweni carried on his assignment in the wards mentioned earlier.

She denied lining up people and giving them money but that she only gave out party regalia as they were passing. They gave those who were near the roadside as they were driving back to their base in Lubwe ward.

Concerning Mwansa Kombe polling station, she could not have known what was going on because it is the duty of the ECZ to deploy police officers. However, after receiving the petition, she contacted the polling agent, (referred to pages 6 to 11 of the bundle of documents) who she pointed out on page 12 on the GN 20 as Vincent Musenge. Vincent confirmed that there was one police officer, by the name of Mr. Chongo.

Further that before the campaign started there was a workshop with ECZ, where they were told what to do and what not to do, or where to report. She believed there was a presiding officer under ECZ and that they were observing covid-19 guidelines, which dictated that there should just one agent at any given time. She believed that this is what was happening at Mwansa Kombe and other polling stations.

She knew that this is what was happening because Vincent Musenge, her polling agent, told her that they were observing covid-19 guidelines as instructed by ECZ.

At Nsengaila polling station, in reference to GN20 at page 13 of the respondent's bundle of documents, there was a polling agent for

PF, whose name she could not read but he informed her that they were following covid-19 guidelines.

She denied knowing what was going on with GOZA. She told the court that she is neither a member of GOZA nor did she know its membership. She did not even know where they were operating from. She did not even know the activities of GOZA. She also denied knowing the activities of the people listed as members of GOZA. She was not in the meeting of 24<sup>th</sup> June, 2021, therefore, she reiterated that she did not know anything about GOZA.

She denied moving with the DC and did not know what was happening in Kasaba. She told the court that it was not true that she was involved in vote buying and intimidation. She just learnt about this through this court when she was petitioned. It was her testimony that her team started its campaign on 24<sup>th</sup> June, 2021. She was not present as she was in Lusaka attending a funeral for her son in law.

Concerning the testimony of *PW7*, she denied undressing anyone and forcing them to wear her party regalia. She was not even in that part of the constituency at that time. From Chishi island she went to Lubwe and then went to sleep. It was her testimony that it takes about 25 minutes to get home from Lubwe harbor.

On 26<sup>th</sup> July, 2021 she went to Chamalawa around 12 to 13 hours. Thereafter she went to Mabote around 15 to 16 hours. Since she was not feeling well the previous week, she was actually on

medication, she proceeded to Maloba, and then went back to their base. She did not go to Chimanda to give the alleged three goats and other food stuffs.

She concluded by stating that most of the areas where she was alleged to have been, she was not there being conscious of security and the desire to have peaceful elections.

It was her prayer that she be upheld as duly elected MP of Chifunabuli constituency and for the petitioner to pay her costs.

In cross examination, she told the court that she also goes by the name Mfwanki, which is her nickname. She has a degree in Education Leadership and Management. She had contested the election as MP for Chifunabuli constituency in 2011, under the PF.

She confirmed that she did not contest in 2016 because she did not have a grade 12 certificate. She also admitted that the majority of the electorates in Chifunabuli are uneducated. She denied that the majority of the people in Chifunabuli are poor. Their main source of livelihood is fishing and farming. The majority are peasant farmers. She described Chifunabuli as a big constituency. This is the reason why she had a campaign team of 15 members to assist her in the 2021 election.

She further confirmed that she had polling agents in each and every of the 89 polling stations. Within the party structure she also utilized other members to assist with the campaign.

Sometimes she had to rely on the information conveyed by the campaign team in the wards where she was not at a particular time.

She denied that Dr. Chitalu Chilufya was part of the campaign team. She also denied being helped by Dr. Chitalu Chilufya, as he was the Presidential Campaign Co-ordinator. She further denied ever attending any campaign events with Dr. Chitalu Chilufya.

She started her campaign on 27<sup>th</sup> June, 2021 campaigned up to 11<sup>th</sup> August, 2021. She admitted attending church services in Lubwe and Kasaba. She attended at Lubwe on 11<sup>th</sup> July, 2021 with Dr. Chitalu Chilufya. It was her testimony that after the church service she did not greet people. She was accompanied by Mr. Charles Mulenga aspiring candidate for the Council, Margaret Chalwe, aspiring candidate for Chifunabuli ward, and the DC, Mwaba Hendrix. She was certain of this date. She confirmed that she does not ordinarily attend service with the people she was with on this day. It was actually the first time she was attending mass with them. Mass started around 09:00hrs and ended at 11:00hrs. They were given seats in front of the church. It was her testimony that she did not interact with other people than the people she was with because she had a program. She did not even greet the congregants.

The program that she went to was to take her elder sister to the hospital. She left Dr. Chitalu and the group having lunch with the

Catholic Priest and also having a meeting with different church members. The Catholic Priest who presided at this service is Fr. Kanja. She denied being introduced to the congregation at any time. They were invited for lunch but she could not attend because of her elder sister who was sick.

On 18<sup>th</sup> July, 2021 she went for service with Dr. Chitalu Chilufya Kasaba Parish. At this service they were with the aspiring Mayor, Mr. Charles Mulenga, Mr. Mwaba, the DC, Dr. Chitalu Chilufya and Vincent Mweni. The presiding Priests were Fr. Kalasa and Fr. Ponde, who was celebrating his 10<sup>th</sup> anniversary. She denied that her presence was recognized. The service started at 10hrs. After the service she did not interact with any congregant even if the church encourages members to interact because of covid. They thereafter went to have lunch with the sisters of Mercy and the Priest who was celebrating his tenth anniversary. At this function she and other candidates were not introduced as aspiring candidates. She interacted with the Sisters of Mercy and started off. It was her testimony that she was quite modest in her campaign.

She told the court that she engaged in one on one, door to door and road shows as campaign strategies. She mentioned that, among other things they used to play loud music. They used to distribute campaign party regalia to the people. They would talk to those who were on the road as they passed. She insisted that they never attracted large crowds because as they were playing their music, they would be moving.

Lubwe ward had about 4,800 registered voters and was the biggest ward followed by Chinkuti with close to 5000 registered voters. Lubwe has some parts like town centre and markets which are populated.

Some of the campaign material, such as chitenges, caps and t-shirts were distributed when people were gathered at school grounds, especially Lubwe which is densely populated. Others, like Kamoya polling station, Nkulunga polling station and Katolo are thinly populated.

It was also her testimony that her first witness was not telling the truth when he said no such things were distributed at school grounds. She admitted that she was aware that giving people money was an offence. She further said that she was aware that intimidating the electorates is an offence, according to the Electoral Code of Conduct.

When asked whether she knew that by telling people that they should vote for her or else they would not have social cash transfer she would be violating the Code of Conduct, she answered in the affirmative. She denied telling the electorates that if she voted for them, she would bring development.

Her motivation to stand as MP was to revamp the education system; she has seen levels of illiteracy have gone high; infant mortality has also gone high and also to encourage women to grow

more food, for food security as well as to scale down malnutrition levels.

She defined social cash transfer as money given to the aged and vulnerable in society. She said it was by an Act of Parliament, it is law. She confirmed that there are people who benefit from this social cash transfer. As MP it was her intention that people should continue receiving social cash transfer because it is a means of survival for some of them. She confirmed that if abolished, it could send a number of people into poverty.

When asked whether a candidate who tells the electorate that if they did not vote for them, the social cash transfer would be withdrawn would be intimidating them, her answer was that it was law and cannot be withdrawn by anyone. She, however, admitted that the people in the constituency are illiterate. She was aware that social cash transfer is in all the wards of Chifunabuli constituency but not everyone gets.

She was not aware that the DP campaigned in all wards and that they had polling agents in all the wards.

The respondent reiterated that she did not know anything about GOZA. When referred to the evidence of **PW16** and further the meeting of 24<sup>th</sup> July, 2021 at which the respondent was alleged to have introduced 24 people including Mr. Evans Chanda, she denied being at that meeting. However, she confirmed that she did not tell the court where she was on 24<sup>th</sup> July, 2021. She did not

agree that the allegation against her concerning GOZA was serious. She further confirmed that she did not tell the court that she knew Evans Chanda. She admitted that GOZA's activities as told to the court by witness is a violation of the electoral Code of Conduct.

On the election date, it was her testimony that her motor vehicle had not been fixed until the next day. She confirmed that she did not have an opportunity to visit the other 89 polling stations. Even where she voted from, she had left, as a result she was not in a position to tell what was happening in the other polling stations.

When referred to paragraph 9 of her answer concerning Vincent Mweni, she told the court that she was not with him, and so she cannot tell where he was and what he was doing.

Concerning the evidence of Mr. Emmanuel Mwaba of Kasaba ward, that money was given to the choir, she admitted hearing that evidence. She also admitted that she did not tell the court where she was on 8<sup>th</sup> August, 2021.

She further told the court that Dr. Mutaba Mwali from the PF was the one who won the election in 2011. She did not stand, she had just applied, contrary to what she earlier stated. In 2016 she did not contest because she did not have a grade twelve school certificate. She attained her grade twelve certificate in 2016. She got her degree in 2019 from Chalimbana University.

Concerning Mr. Chikuni's testimony that they met at Lubwe office at 08 hours, when she said she was at Mbabala island, it was her testimony that she could not tell whether he was lying. On 11<sup>th</sup> August, 2021, at 04 hours she was preparing to go to Mbabala, she was at base and that at 08 hours she was on Lake Bangweulu. She told the court that Mr. Chalwe was not telling the truth.

Paragraph 8 of the answer, she denied that it was a contradiction that at 04:00hrs she was at Lake Bangweulu campaigning and what she told the court she started off at 04:00hours.

Lastly, she confirmed that the petitioner's witnesses except for Mr. Sebyo and the petitioner said were not DP members.

In re-examination, when asked about the church service where Fr. Kombe and Fr. Kalasa were presiding on 18<sup>th</sup> July, 2021, her evidence was that she went to worship and not campaign.

**RW3** was **Nkhoma John Jackson**, of Lusaka. He was the respondent's body guard. His duties included ensuring the safety of the respondent and her team. He was employed on 26<sup>th</sup> July, 2021.

His testimony was that Maureen Chanda (**PW3**) was his cousin. Concerning her testimony that on 26<sup>th</sup> July, 2021 when she was coming from a funeral, she saw him at the football ground driving the respondent, his response was that he did not see **PW3**

when he was in Chifunabuli. When he visited his family he was told that **PW3** had gone campaigning with the DP candidate.

Secondly, he clarified that he was not the driver of the response. On 10<sup>th</sup> August, 2021, they went to the place called Kakasa and then rushed back to prepare for a trip to the islands. They went back as early as 16 hours to the station at Lubwe.

It was his testimony that on 8<sup>th</sup> August, 2021, nothing really happened. He recalled it was a Sunday and did not have any activities.

On 11<sup>th</sup> August, 2021, they were on the islands (Mbabala and Chishi), they had left very early in the morning around 04:00 hours and came back late in the night around 19 to 20 hours. He could not remember the exact number of the entourage for the islands, but estimated not less than eight and no more than fifteen. They used two boats. He was not sure how long it took them to get to Lubwe. They left when the sun was going down, about 17 and got to Lubwe about 19 or 20. When they got back, they went to their respecting places.

On election day, he went to the respondent's shopping complex to safe guard her complex, because there is a tendency to break people's property when someone wins or loses. He went around 09 hours, broke off for lunch at 12 to 13 hours and then he stayed until 18 hours.

He joined the campaign team on 26<sup>th</sup> July, 2021, and he was with the respondent all the time during the campaign period. It was his evidence that it was not true that the respondent was vote buying and involved in bribery. As far as he could remember, the respondent only met people who were in her camp (who supported her) and people that she wanted to represent. She would give them chitenge material, caps and t-shirts and a message of good will and that she was willing to represent them.

In cross examination, he testified that he was verbally engaged, personally by the respondent. He had never provided the kind of service to the respondent before. There was no documentary evidence that he was engaged by the respondent.

He is a gym trainer and businessman by profession. The respondent engaged him in his capacity as gym trainer. He is not employed by any gym, he is a freelancer. He was not paid any money by the respondent for the service he was providing. He is still working for the respondent until he sees that she is free on her own or when the government secures security for her. He does not provide the service when she is in Lusaka as there is no danger in Lusaka. She is not known as a rival in Lusaka by any political party there.

When asked whether by virtue of the respondent standing on PF ticket, she is a rival to other candidates who stood for the same position, his answer was in the affirmative but that it is different in other places than in Chifunabuli. He admitted that there are

15 days between 26<sup>th</sup> July, 2021 to the 11<sup>th</sup> August, 2021; he disputed that he only provided the services of a bodyguard for 16 days during the campaign period.

When asked whether he knew that the respondent commenced her campaign in Chifunabuli on 24<sup>th</sup> June, 2021, his answer was in the affirmative. He admitted that was a total of 30 days from 24<sup>th</sup> June to 11<sup>th</sup> August, 2021 and that he was not with the respondent throughout her campaign period.

It was his evidence that he knew what happened during the time he was not with the respondent before 26<sup>th</sup> July, 2021, because they shared notes. He told the court that on 25<sup>th</sup> June, 2021 the respondent was in Lusaka, she had a funeral but was not sure what she was doing on 27<sup>th</sup> June, 2021.

Asked what happened about 17<sup>th</sup> May, 2021, he was still not sure. On 8<sup>th</sup> July, 2021 he knew the respondent was in Chifunabuli but was not sure about what she was doing as he was not with her. When asked whether the notes do not include what she was doing on 8<sup>th</sup> July, 2021, his answer was that the notes had to do with security details. He further told the court that he was not charging the respondent for his services now but would charge her when his work is done.

His testimony was that there was no violence in Chifunabuli constituency. It is a very peaceful constituency. From the time he joined the respondent has not been threatened by any violence.

When asked about on the 12<sup>th</sup> August, 2021 on election day, where he went to the respondent's complex, at 08 hours, it means that the respondent was with him at her complex at 08 hours, his answer was that he went there after 08 hours and the respondent found him there. When put to him that the respondent's evidence was that she was immobile after casting her vote at 06:10 hours, as her car developed a fault when she mixed diesel and petrol, and so she went home thereafter, and asked who was telling the truth between two, he told the court that none of them was lying and there was no inconsistency in their stories.

He explained that there was quite a distance between the respondent's home and her complex. He told the court that it was under 10 minutes' drive. The road is gravel. It was his evidence that he was not providing the services at the respondent's home. The vehicles the respondent was using was a Mitsubish Fuso, Prado and Toyota Land Cruiser V8, white in colour. The Landcruiser is the one which developed a fault due to fuel mix up. Infact all the vehicles had problems.

It was his testimony that he could not tell how many polling stations the respondent visited if at all because the car had a fault and he was at the complex. He would not know how many polling stations are within the area of the respondent's residence. He does not know most of the names of the polling stations in Chifunabuli. He could not remember the polling station at which the respondent voted from. The respondent only passed through the complex around 08:00 hours and then she went home.

Asked whether the respondent met a lot of people who supported her, he told the court that she met a good number of people. She campaigned by way of door to door, road shows and with the branch officials. He could not remember the respondent addressing any people at some school grounds.

When asked whether the respondent distributed campaign material at some school, his answer was in the negative. He said that she did not distribute during the time he was with her.

He reiterated that the respondent gave the electorate messages of goodwill and would tell them that she is willing to represent them further and give them hope that the place will be a better place than it is now. She mentioned what she would do for the electorates in terms of schools and hospitals. She told the electorates that once voted into power, she would seek audience with the parents to end child marriages. For the boy child who engage in beer drinking, she would have a voice through the parents and local authorities on what time the beer would start selling. On health, she promised to engage the community and to sensitize everyone on infections that are hereditary and bring hope to the mothers, especially pregnant mothers. He told the court that there was much more that she said. It was about how this would be tackled and not empty promises.

She did not touch on the issue of social cash transfer from the 24<sup>th</sup> July to the 11<sup>th</sup> August, 2021. Asked about the respondent's evidence that she did not say anything to the electorates when she

did road shows and door to door campaigns, his answer was that she was lying if that is what she said. It is not true that all the respondent was doing just distribute chitenges, caps and T-shirts without words. He told the court that she added some words. He further added that there were songs that were played during roadshows.

Concerning the trip to Mbabala and Chishi Islands, where he said there were 8 to 15 people, he told the court that the times of departure and the number of people is something that should matter if he was engaged by the PF party. However, they did not matter much because he was engaged by the respondent. He could remember the titles of some the people on the trip to Mbabala and Chishi. District Chairman, aspiring candidate for Mayoral position, Mr. Chikuni Chalwe, and a tall gentleman. He could not remember much.

On Mr. Chikuni's testimony that he met the respondent at 08 hours in Lubwe, his evidence was that if Mr. Chikuni said that he would be lying.

Concerning Dr. Chilufya being on the respondent's campaign trail, it was his testimony that Dr. Chilufya did not meet the respondent during the time he was with the respondent.

He wanted the respondent to win the election and would be happy if she won the election. The respondent did not only tell the people to vote for her but also Edgar Lungu and all the other candidates

that stood on PF ticket. The message was that they needed to make a suit, President, MP and Mayor. He reiterated that he did not visit any of the polling stations on 12<sup>th</sup> August, 2021.

**PW3** is his cousin, the mother to **PW3** was the elder sister to his mother. When asked whether he visits her, his answer was that he visits the village at least once in a while. On 24<sup>th</sup> July, 2021, he joined the company team in the evening after the respondent had come up back from her campaign. He did not call **PW3** and would not dispute what **PW3** would say about her whereabouts on that day.

In re-examination, he told the court that he was with the respondent from the date of engagement on 24<sup>th</sup> July, 2021 to the time she was declared winner.

On the respondent's testimony about the 12<sup>th</sup> August, 2021, the evidence of the witness was that the fuel was being stored at the complex and after mixing the fuel, the respondent left.

**RW4** was *Mweni Vincent*, who was the election agent for the respondent in Lubwe. He was carrying out the electoral activities on behalf of the respondent and his names were written on the nomination papers for the respondent on 17<sup>th</sup> May, 2021, nomination day.

Concerning paragraph 7 of the petition, the witness told the court that he was not the campaign manager for the respondent and that there was no bribery in those areas.

It was his testimony that they were with Dr. Chitalu Chilufya, the first time being on Sunday, 11<sup>th</sup> July, 2021 and the second was on the 18<sup>th</sup> July, 2021. The first Sunday was at Lubwe Parish where he went to congregate and after mass he went home. On 18<sup>th</sup> July, he was at Kasaba where they congregated together because Fr. Ponde was celebrating his tenth-year anniversary. After mass they went to have a meal with the fathers. After lunch, he went home. There were people on their way as they were going whom they gave out a few PF regalia, chitenges in particular.

He told the court that there were no activities of ferrying people contrary to what is contained in paragraph 7(c) of the petition. He remembered the activities of 12<sup>th</sup> August, 2021, he was going round in some polling stations, Chifunabuli, Lubwe, Kasongole and Lubasenshi ward. He was not at Lubwe hub on this day.

Concerning the testimony of Albina Lupupa (*PW2*), he denied giving out the K20s. He was just alone in the car. He was in Lubwe because that is where he stays with his parents and that is where their command centre is.

He voted between 6 and 7 hours, at Lubwe boys, Chifunabula polling station. From 6 to 7 he was in Chifunabuli ward, checking the election activities. Thereafter, around 17 hours he was back

at home to prepare himself to go to the totaling centre at Lubwe Secondary School.

Concerning paragraph 7 (e) of the petition, he reiterated that he was only with Dr. Chitalu Chilufya on the Sundays earlier mentioned. They were not lining up people but giving their chitenges from their respective cars as they were going home.

He came to know GOZA after the election, when the respondent was served with a petition. People told him that it was an organization which was none partisan and was one of the election monitors. \* He does not know the leader of GOZA. He could not tell what relationship the respondent has with GOZA.

He was not always with the respondent, except for a few occasions. He clarified that he was not usually with her. He explained that when he was with her the campaigns were free and fair, no vote buying, no malpractices and no corruption. They had PF chitenge material, PF caps, t-shirts and scarves. All were PF branded.

In cross examination, he testified that he has never been a member of PF. The terms on which he was engaged as election agent were because of fidelity (truthfulness) traits that he portrays. He was a supporter of the respondent and not the PF. He wanted President Lungu and the other candidate on the Mayoral position to win. It was his position that he wants the respondent to win this case.

He was appointed as an election agent the same day the nomination papers were filed on 17<sup>th</sup> May, 2021. He repeated his duties as to carry out election activities, inspection of the election activities on the polling day. To see if there are malpractices or not and also during the election period to carry out electoral activities of the respondent. To carry out almost the same developmental information, ideologies of the respondent. This includes revamping of the education sector, improve health facilities and attending some meetings on her behalf.

He could not remember the time when the respondent started her campaign. He could not remember all the campaign activities he attended with the respondent. He could only remember the on 26<sup>th</sup> July, 2021. He could not remember all. When put to him that the respondent was in a meeting on 24<sup>th</sup> July, 2021 discussing this election, he disputed. However, he did not know whether the respondent was campaigning on 6<sup>th</sup> August, 2021. He was at home on 24<sup>th</sup> July, 2021. He said the respondent was sick between 20<sup>th</sup> and 25<sup>th</sup> July, 2021 and she was in Mansa recovering. They resumed the campaign trial on 26<sup>th</sup> July, 2021

When asked about another witness, Mr. Nkhoma (RW3), who said the respondent was in Lusaka because she was attending a funeral and she was not in Mansa, who was telling the truth, he said he was the one who was telling the truth.

He further told the court that on 24<sup>th</sup> July, 2021, sometime around 10 hours, he went to Mansa. He saw the respondent between 13

and 14 hours and went back to Chifunabuli around 17 hours. He was just checking on her health. They discussed her health. She was at Jimbara Lodge. The respondent's residences are in Lubwe ward and Kasongole ward. Jimbara Lodge is outside the constituency, it about 3 to 4 hours' drive to Lubwe. The estimation of the travel time to the respondent's residence in Kasongole ward is also about 3 to 4 hours.

He did not understand what undue influence was when it comes to voting. He was not familiar with the Electoral Code of Conduct. He was aware that the Electoral Code of Conduct lists the malpractices of the electoral process. He said he was not very familiar with the Electoral Code of Conduct. He was familiar with the offences of voting buying, corruption, violence, ferrying of people. He said he could tell if something falls outside the list he has given the court, because they were enlightened by the DEO, Mrs. Kasonde.

His answer was in the affirmative when asked whether when somebody said if you don't vote for me, you will not be getting social cash transfer, would amount to malpractice. He explained that it was breaking the law. He added that giving people money and telling them to vote for the candidate was also a malpractice called vote buying.

Asked about the events that he remembered, firstly the campaign of 26<sup>th</sup> July, 2021 and the two church services of the 11<sup>th</sup> and 18<sup>th</sup> July, 2021. He told the court that he was a member of the

Catholic Church at Lubwe Parish, his home parish. On the 18<sup>th</sup> July, 2021, he attended church at Kasaba, and Dr. Chitalu was in attendance, as well as the Mayoral candidate, Mr. Charles Mulenga and the respondent was present. This was during the campaign period. He did not know whether the candidate for one of the constituencies, was present. They had carried the campaign material as they were going for mass. The PF cadres and himself were the ones distributing.

He admitted that he did not go with Dr. Chitalu nor the respondent after mass. He was arriving home around 15 to 16 hours. He did not know what time mass ended. He told the court that he was a demographer but it would not be unreasonable to expect him to remember dates and figures.

The respondent barely talked but her campaign message for the respondent was to revamp the education sector, improve the health sector in the constituency and empowering youths and women.

He was with the respondent when she was with Mr. Nkhoma on the 11<sup>th</sup> August, he escorted the respondent to Samfya harbour, when they were going to Chishi and Mbabala. However, he did not go with them to Chishi and Mbabala. The respondent was not campaigning on this day.

The times he recalled with the respondent and her body guard were, firstly, on the 10<sup>th</sup> August, 2021 at Katapa polling station,

the respondent was doing a door-to-door campaign, with the PF party team. The respondent was giving a message of hope and telling people what she would do when elected as MP. They were together with the respondent up to a certain point. Sometimes, he would be with her but sometimes he would be outside. He admitted that the times he was not there, he would not know what the respondent would say or do.

He did not know the other events. When asked whether all the respondent did was just distribute campaign material, party regalia, his answer was that it was not true.

He admitted that his father is SDA, he was also a member of the SDA at sometime, but denied being a staunch member. He could not remember when he stopped being a member of the SDA. He was a member of the Catholic Church from birth. He was baptized in the Catholic church. He became a member of the SDA after being baptized in the Catholic Church. He did not know when he stopped being a member of the SDA church. He admitted that he has a problem remembering numbers.

He recalled that the respondent had a misfortune of collapsing during an election campaign and thereafter she took leave for a week or so. He told the court that it was on 20<sup>th</sup> July, 2021. He denied that this event happened in the first week of July, 2021. He told the court that this happened at Muteta polling station. He was present at this event. The respondent was having a door-to-door campaign when she fell ill. She had difficulties in breathing.

She had been there for about 30 minutes before she collapsed. She was addressing PF party members when they were having a door-to-door campaign. After collapsing, she was rushed to the hospital.

When asked whether he could not remember this peculiar event earlier on, he said he could not remember.

When asked what had helped him to recall the 20<sup>th</sup> July, 2021 was that it was the saddest day which happened during their campaign trail. He did not record this day but was certain that it was on the 20<sup>th</sup> July, 2021.

The campaign material included caps, chitenge, t-shirts, scarves and woodies with symbols and initials but denied that the respondent distributed these materials.

Concerning GOZA, he told the court that he was told about GOZA by the DEO, Mrs. Kasonde. After the petition was served, he phoned the DEO to inquire about GOZA, because he saw it in the petition. He was able to confirm from what he was told that GOZA did, infact, exist. He reiterated that he did not know the relationship that the respondent had with GOZA and would not know whether she attended any of their meetings.

He did not know where the respondent was on 12<sup>th</sup> August, 2021. He would not know whether she attended any polling station. He visited Chifunabuli Primary School, Mashitolo, 1 and 2, Chitembo

1 & 2, Mundubi 1 & 2, Musombwela, Mafumbi, Lule, Chibuye, Chola Nsenga, Kamowa and Nkulunga (14). He admitted that there are 89 polling stations in Chifunabuli and he visited 14 of them.

He confirmed that there were polling agents for DP, UPND, PF, Socialist, NDC and the independent. He confirmed that one of the duties of the polling agent was to inform the candidate what was happening at the polling station. He did not know where the respondent cast her vote.

He confirmed that the respondent owns a house and a complex in Lubwe. The distance from the house to the complex from her house is 10 minutes' drive. He did not know the distance.

Counsel for the petitioner filed written submissions on 13<sup>th</sup> October, 2021, while Counsel for the respondent filed their submissions on 26<sup>th</sup> October, 2021, in compliance with the directions. I am indebted to Counsel for their submissions.

The petitioner testified before me and brought witnesses as recorded above to prove that the respondent and her agents were engaged in activities of vote buying both directly and through an organization called GOZA. To this regard, a summary of the witnesses was given in the petitioner's submissions.

**PW2**, of Lubwe Ward in Chifunabuli Constituency testified that on 18<sup>th</sup> July, 2021 the respondent visited the Lubwe Catholic Church

in the company Dr. Chitalu Chilufya, a Mr. Mulenga and a Mr. Kaunda and others at which the respondent and others were introduced to the congregants. When mass ended Dr. Chitalu Chilufya gave the Womens' Catholic League a K5,000 in the presence and hearing of the respondent with the message that they should vote for the respondent. Dr. Chilufya also gave St. Cecilia Choir a K12, 000, with a promise that he would return and give the other groups some money. Dr. Chilufya, in the presence of the respondent further gave K2,500 each to the other groups, while urging them to vote for the PF candidates and the respondent as MP for Chifunabuli Constituency.

In cross examination she confirmed receiving the money on behalf of Catholic Women's League on 18<sup>th</sup> July, 2021 from Dr. Chitalu Chilufya's driver.

**PW3's** testimony was the same as that of **PW2** concerning the visit of the respondent at Lubwe Parish, where Dr. Chitalu Chilufya and giving out the K12, 000 to the choir and K5,000.00 to the Catholic Womens' League. **PW3** further testified that on 26<sup>th</sup> July, 2021, when coming from a funeral, she saw, Dr. Chitalu Chilufya giving money to a crowd of people in the presence of the respondent, Mr. Kaunda, and Mr. Mulenga. Dr. Chilufya told the crowd he was campaigning for President Lungu, the respondent, Mr. Kaunda and Mr. Mulenga. The headmen in this gathering were given K50, while the other people were given K20 notes in the presence of the respondent. While they were being given money they were told to vote for the respondents and the other PF candidates.

Further on 10<sup>th</sup> August, 2021 she was given a K20 by the respondent through one of the respondent's guard called Jack, as she was walking along the road. The respondent called her and told her to get the money and told her to vote for her. She got a total of K370 and told the court that she voted for the respondent because of the money she had been given by the respondent and the PF.

Furthermore, **PW4**, also of Lubwe Ward testified that at 08:00 hours on 12<sup>th</sup> August, 2021, he saw a Prado ferrying people from the harbor of Chifunabuli river to the respondent's building in Lubwe Ward. She saw the respondent's driver, Mweni Musunka give out K20 notes to people at the respondent's building and telling them to vote for the respondent. Earlier, on 26<sup>th</sup> May, 2021, she was given a K25 at Kasongo Mulefu where a lot of people were being given money.

Counsel contended that **PW4** maintained that the K20 was given by Mweni Musunka but that she did not see the respondent on 26<sup>th</sup> May, 2021 and 12<sup>th</sup> August, 2021.

**PW5** of Kasongole Ward testified that on 9<sup>th</sup> August, 2021, he saw the respondent giving money in 22 long queues and asking them to vote for her. The respondent was giving K100s to groups of five. He was one of the recipients. The respondent was also giving out t-shirts and chitenge material, while promising to give them food. The respondent also promised to give people food on election day

and told the people to vote for PF, or else they would not see development.

In cross examination, he told the court that there over 200 people in attendance and the food that was being given on election day was meant for all voters not just PF members.

**PW6**, from Chinkutula Ward told the court that on 27<sup>th</sup> July, 2021 she found people gathered at Mwewa school grounds to receive money from the respondent. She saw Dr. Chitalu Chilufya who was telling people not to push each other as there was plenty of money to go round. The respondent told people that even those who were not receiving social cash transfer would start receiving, but if they did not vote for her, they would stop receiving. The respondent and her entourage later started giving people K20 notes and telling them to vote for the respondent. The people were innumerable. She voted for the respondent because of the money she received.

**PW6** further testified that she saw two GOZA representatives in the polling station on election day and that she identified them by the orange t-shirts they were clad in.

**PW7** of Chifumbo ward also testified that on 22<sup>nd</sup> July, 2021, on her way home she was stopped by the respondent while wearing her t-shirt bearing the Socialist Party's symbols. The respondent took the t-shirt off **PW7** and gave her a PF t-shirt and told her to

be wearing the PF regalia. The respondent also gave her a K20 and told her to vote for her and President Edgar Lungu.

On 11<sup>th</sup> August, 2021, she saw the respondent and Vincent Mweni at a place called Mbilima, which is on the way to Mwewa Village. The respondent and Vincent Mweni asked all the youths to gather around her and that when they did, the respondent gave them a K500 to buy alcohol and drink it on election day when they are done with voting. She also told them to vote for her and not any other candidate. The respondent also told the youths to go and eat nshima on election date. He estimated about 42 youths who received money from the respondent. **PW7** voted for the respondent because she bought alcohol for the youths.

Concerning GOZA, it was **PW7**'s testimony that she heard about GOZA because her half-brother was part of GOZA. She was approached from people from GOZA, who were gathering details of people's NRC and voters' card numbers in batches of 50. In exchange they would be given materials by PF and would be fed from a designated place. She saw two people at the polling station wearing orange GOZA branded t-shirts. One of them was her half-brother. She gave her brother her details on 25<sup>th</sup> July and collected t-shirts and food on voting day from Ireen's place. Ireen was a member of GOZA. In cross examination, she told the court that she was given a K500 on 11<sup>th</sup> August, 2021 around 22 hours.

**PW8** was from Chifunabuli ward. She testified that on 2<sup>nd</sup> August, 2021, she was attending a meeting at Chitambo Primary School

which was convened by representatives from GOZA and attended by some teachers. The meeting was addressed by Father Moses Mwansa from Mwewa Parish, who told the people in attendance to join the GOZA activities. Father Mwansa told them that GOZA was from PF and that if people managed to register 50 people, they would be given some things and attend further training. When some teachers refused to join GOZA father Mwewa left for another meeting in Masitolo. On 5<sup>th</sup> August, 2021 she met her nephew Tambazano, who is a PF member. He recorded her NRC and voters' card number and afterwards gave her a K20. He told her that he had managed to register 50 people and that on voting day she should go to eat food at Davies Mwewa's house. Tambazano told her that he was sent by the respondent.

She further testified that on 10<sup>th</sup> August, 2021 around 19 hours, following an announcement for various women's clubs to gather at Chitembo school grounds, they gathered. The respondent met them there and gave them chitenge materials which were not branded PF symbols or campaign messages. The respondent further gave them K100 each with the message that they should vote for her and President Edgar Lungu. The respondent further told them that if they did not vote for the respondent, they would not see development and would stop receiving the social cash transfer. The respondent further told them that on voting day they should go and eat the food that she had prepared for them at some named persons' residences and added that the women should accordingly vote for her. There were 13 women's clubs in Chifimabuli with 25 members each. It was her testimony that

there were a lot of people who were gathered at the school grounds on the material day and time. She voted for the respondent because she gave her money and chitenge material. She also testified to seeing GOZA representatives inside the polling station, who were clad in orange GOZA branded t-shirts.

In cross examination she added that those who were writing their NRC and voters' cards numbers were telling them to vote for PF.

**PW9** was from *Masonde Ward*. His testimony was that on 26<sup>th</sup> July, 2021, he saw the respondent at Chimanda village gather 7 headmen and asked them to vote for her as MP for Chifunabuli Constituency. The respondent went on to tell them that if they did not vote for her, they would stop receiving the social cash transfer. The respondent gave the headman a K250 to share equally among themselves. The respondent told the headmen that on 8<sup>th</sup> August, 2021 she would take mealie meal and goats so the they would cook for the people who would be voting. The respondent delivered 10 bags of mealie meal, 3 goats and 20 litres of cooking oil on that said date around 21 hours. These were delivered at headman Chimanda's residence. The goats were killed on 12<sup>th</sup> August, 2021 whereas the cooking oil was delivered in small quantities to people by GOZA people as they were telling them to go and vote for the respondent. The food was cooked and eaten by the voters at Kennedy Kapisha's house around 08:00 hours on 12<sup>th</sup> August, 2021. He too, voted for the respondent. It was his testimony that the people who benefited from the food distribution were a lot.

In cross examination, he told the court that he only came to know the respondent during the campaign period. He knew about GOZA members as they were introducing themselves as such when recording their NRC and voters' card numbers. **PW9** saw the respondent directing GOZA people when distributing food stuff.

**PW10** was from Lubwe ward. He told the court that he was initially told about GOZA members who had gone to collect their NRC and voters cards numbers. Later he met these members, including a Mr. Steven Chisha and when confronted them they told him they were GOZA members. He personally interviewed them; they were telling people to vote for PF.

It was further his testimony that on 5<sup>th</sup> August, 2021, he saw the DC's car offload 10 bags of mealie meal, 3 containers of 20 litres of cooking oil each, PF chitenge materials and t-shirts. The 10 bags of mealie meal were used on 12<sup>th</sup> August, 2021 whereas the cooking oil was pre-packed in small bottles and was given to people that went to vote the same day.

He further testified that on 9<sup>th</sup> August, 2021, the PF campaign team went to Lubwe where **PW10** and others had a meeting at Nkulunga school grounds. The respondent addressed the meeting and told the people in attendance that they should vote for her and the PF in order for the area to receive development and that they should not vote for the petitioner, a stranger. In the course of the meeting, the respondent gave **PW10** a K600 to distribute to the people and told the people in attendance to vote for her and the PF

otherwise they would stop receiving social cash transfer. He estimated that the attendance was between 400 and 500 people.

He, too, saw GOZA members in the polling station at Nkulunga on polling day; they wearing orange t-shirts. On the same day the people whose NRC and voters' card numbers were registered with GOZA members went to eat food delivered by GOZA members.

He found out that the people who were recording the NRC and voters' card numbers were being sent by Mr. Steven Chisha. He also established through those people that the respondent was a member of GOZA. He established that the five members of GOZA managed to register 250 people in the ward leaving out 82, this he based on the number of registered voters in the area. He was not happy that the voting pattern was distorted because were influenced by intimidation that if they did not vote for PF they would not see development in the area.

**PW10** knew the respondent as they grew up in the same neighborhood in Lubwe.

In addition, the testimony of **PW11**, from Kasansa ward, was to the effect that on 29<sup>th</sup> July, 2021, the respondent addressed them at Kasuba Primary school, telling them if voted for she would bring development in the area. If they did not, there would be no development and the social cash transfer would stop. At the end of the meeting the respondent gave out a K1,000 to be shared

among the participants and a K500 to be shared among the women. The people were in excess of 500 at that meeting.

*PW11* further testified that Dr. Chitalu Chilufya in the company of people from the Office of the President, on 8<sup>th</sup> August, 2021, went to Kasuba Polling station football field. Dr. Chilufya gave the headmen K100 each; elderly people were given K50 each and younger people K20 each. He and his family voted for the respondent because of the money he received and also for fear of losing the benefit of the social cash transfer as he keeps orphans at home, who are beneficiaries of the social cash transfer.

*PW12*, from Kasaba ward, testified that he attended mass at Kasaba Parish Centre where Dr. Chitalu Chilufya, the respondent and other PF members were in attendance. After mass the respondent was introduced and the congregants were urged to vote for the respondent in order for the constituency to receive development. The respondent equally addressed the congregants and promised to finish tiling the portion of the church which had not been completed the previous time. The respondent gave K4,000 to Choirs members, through the Choir Master, Gift Tailoka. She gave another K10,000 to the choir outside the church premises. The respondent further gave K100 notes to the disabled, K50 notes to the elderly and K10 notes to the younger ones.

Furthermore, the respondent and Dr. Chilufya went to a nearby market in the presence of other PF members and gave out money.

**PW12**'s wife was a recipient of a K100 for tomatoes that were not worth K100.

**PW12** added that on the same day, following a public announcement by the PF District Chairperson for people to give at Kasuba Primary School grounds, the respondent and Dr. Chilufya gave out K20 notes, chitenge material and t-shirts (party regalia) while telling people to vote for the respondent as they would be guaranteed of a female Provincial Minister.

In cross examination, it was his testimony that Chapa village, where his wife was given a K100, there were more than 10 traders and only 5 marketeers were given the K100 notes.

**PW13** from Chinkutula ward also testified that on 24<sup>th</sup> July, 2021 around 10 hours, he attended a meeting at Mwewa as a member of GOZA. They were taught how to write down names, NRC and voters' card numbers of 50 people each. The meeting was chaired by the respondent. He had known the respondent from as far back as 2016 when she donated jerseys for their football team, which jerseys the respondent left to the charge of **PW13**. There were 25 GOZA members in the meeting including the respondent.

When doing the registration of the people, they were promising them a K50 and a bag of mealie meal and that the GOZA members themselves were promised K250 if they managed to register 50 people and would get K1000 should the respondent be voted into office as MP. There was a Father Mwape who was part of the

meeting. They were given papers on which they were to register their 50 people.

They were instructed to ensure the people they registered voted for the respondent. When the people they registered entered the polling station, they would give them a signal, such as a wink to remind them what to do in the voting booths.

He was stationed at Chifuko polling station in Chikuntula ward on polling day, 12<sup>th</sup> August, 2021. He was clad in an orange t-shirt with another member until voting was concluded. He felt their objective of showing people who to vote for was achieved.

**PW13** further testified that when they registered 50 people, they gave photocopies of the forms to the PF Constituency Chairperson, by the name of Chiwamine.

On 11<sup>th</sup> August, 2021 they collected 7 bags of mealie meal, relish and cooking oil from the respondent's members, which they were supposed to distribute on voting day. It was his testimony that GOZA was not accredited with ECZ but as GOZA members they entered designated polling stations using only the NRCs and voter's cards.

He knew that the people they registered voted for the respondent because she won.

**PW14** was from Kapeshi ward. On 17<sup>th</sup> May, 2021, his nephew Mobby Mwange went to his house and got details of his NRC and voters' cards and those of his wife and two children. Mobby was a PF supporter.

It was further his testimony that on 7<sup>th</sup> August, 2021 he attended a campaign gathering at Kaongwe School which was addressed by the respondent. The respondent told the gathering to vote for her and President Edgar Lungu, otherwise they would stop receiving social cash transfer. The respondent told them that she would leave a K1,500 from which he got a K20. Mobby told him what the respondent would give them if they voted for her.

**PW15**, was the petitioner's campaign manager. His testimony was similar to **PW16**, Father Mupanga's testimony. The difference was that **PW16** told the court that the document that **PW15** produced in court as minutes of 22<sup>nd</sup> June, 2021 was not an authentic document (contained in the petitioner's bundle of documents). It was their testimony that **PW15** had complained about a Mr. Chisha, a civil servant who was involved in the activities of GOZA. There was a complaint about two PF cadres who were defacing the campaign material for UPND and DP.

A meeting was convened on the 23<sup>rd</sup> of June, 2021 to hear the two complaints filed on 22<sup>nd</sup> June, 2021. **PW16** was the Chairman of the Conflict Management Committee. Mr. Chisha was censured against carrying those activities. However, Goza continued with its activities and this prompted **PW15** to make a second report.

**PW16** requested the Council Secretary, who is the District Electoral Officer to arrange for the Committee's logistics. This was not done.

**PW15** also testified to his nephew telling him that he was recruited by PF as a GOZA member to register 50 people, taking their NRC and voters' cards numbers. This is what made him conclude that GOZA was being funded by PF. His nephew also told him how he had been paid some money and the people who were registered would be given mealie meal and money to vote for the respondent and President Lungu.

The last petitioner's witness was **PW17**, from Chifunabuli ward. He has been a member of the PF since 2006. He has been a chairperson of the PF Youths in Chifunabuli Constituency for the past three years. He was appointed as acting PF Chairperson for Chifunabulu between July and 13<sup>th</sup> July, 2021.

It was his testimony that on 11<sup>th</sup> August, 2021, the PF campaign team visited 5 wards, Chifunabuli, Kasongole. Katola, Mbilima and Chishi, where they gave out t-shirts and chitenge material. It was further his testimony that as campaign team, they met at 10 hours but that he met the respondent at 08 hours at the PF office at Lubwe station and started planning the visits.

In the submissions. Counsel for the petitioner pointed out that the evidence of **PW17**, a partisan witness, being a longstanding member of the PF was contradictory to the evidence of the

respondent as **RW3**, who both said the respondent left for Mbabala and Chishi islands at about 04 hours on 11<sup>th</sup> August, 2021 and not 08 hours as testified by **PW17**.

Further that **PW17** also told the court that the last ward they visited was on Chishi islands and that they returned to Lubwe station on the same day, 11<sup>th</sup> August, 2021 between 19:30 and 20 hours.

However, Counsel submitted that **PW17** was in essence the epitome of a witness with an interest to serve whose evidence ought to be given little weight, and at any rate should be treated with caution. That **PW17** did not proffer much in terms of evidence.

Counsel for the petitioner restated the petitioner's assertions in his petition and the verifying affidavit that in relation to the August, 2021 Parliamentary elections, that there was wide spread malpractices, vote buying, bribery and corruption and undue influence perpetrated by the then ruling party, the Patriotic Front (PF) and traditional leaders which characterized the campaign period up to the voting day in the whole District of Chifunabuli. The acts of vote buying and undue influence were itemized as follows:

- a) *The respondent's agent and Campaign Manager, Vincent Mweni and the Mansa Central Member of Parliament, Dr. Chitalu Chilufya, were seen on divers dates but during the*

*campaign period giving out money in Kasaba, Mwansa Kombe, Mwewa and Lubwe Wards;*

- b) The respondent was on the 11<sup>th</sup> day of August, 2021 seen distributing money to marketeers at Lubwe market in Lubwe ward;*
- c) The respondent through his agents organized transport in form of canters to ferry people from fishing camps to polling centers;*
- d) The respondent's agent and Campaign Manager, Vincent Mweni was seen on 12<sup>th</sup> August, 2021 giving money to the electorates at Lubwe harbor and other members of the PF and ferried them to the polling centers;*
- e) The respondent's agent and Campaign Manager, Vincent Mweni and Mansa Central Member of Parliament Dr. Chitalu Chilufya were seen on divers dates but during the campaign period lining up people and giving out money in Kasaba, Mwansa Kombe and Mwewa wards;*
- f) At Mwansa Kombe polling station there was deliberately no Zambia Police security deployed at the station but instead the Chief Retainer to Senior Chief Mwansakombe Danny Katonya was the one manning the polling station;*
- g) The Presiding Officer for Mwansa Kombe polling station, Michael Chola was restrictive in terms of time for monitoring by the opposition candidates insisting that he would only allow few minutes for the candidates to monitor the vote counting;*
- h) Similarly, at Nsengaila polling station the Presiding Officer, Memory Chizema was restricting the time opposition candidates could enter the polling stations and monitor the counting of the ballot papers insisting that she would only*

*allow few minutes for the candidates to monitor the vote counting.*

It was further stated that, in addition, the petitioner alleged in paragraphs 8-12 of his petition that the PF, the respondent's political party members created an organization called Good Governance Zambia, abbreviated as "GOZA", which was meant to defraud the electoral process. He also alleged that GOZA members would go round all polling stations registering people with their NRC numbers and voter's cards numbers and distributing bicycles and food stuffs to would be voters whilst urging them to vote for the respondent and other PF candidates (who contested the other seats in the general election).

In addition, that the petitioner also alleged that GOZA deployed monitors throughout Chifunabuli constituency and that GOZA members were seen distributing mealie meal, cooking oil and other food stuffs to the electorates during the campaign period. That the petitioner also stated that the acts of vote buying and undue influence resulted in several people voting for the PF and the respondent in particular, to the detriment of the petitioner and other candidates.

Counsel, contended that in his oral testimony, the petitioner also testified at length that the election that he participated in was not free and fair as it was characterized by widespread malpractices in almost all the wards in Chifunabuli Constituency, which included vote buying through bribery, which happened through distribution

of money, food stuffs and the intimidation of voters through registering of names, NRC and voter's card numbers of the electorates prior to the election and promises of handing out of food after voting. The petitioner's evidence in this regard was corroborated by independent witnesses, particularly; Veronica Mwape (*PW7*), Aneti Mweni (*PW8*), Chanda Kaoma (*PW9*) and Evans Chanda (*PW13*).

It was further contended that the petitioner also told the court in his evidence in chief that the malpractices referred to in the preceding paragraph was undertaken by the respondent and the PF through an organization called GOZA. The petitioner elaborated on each of the malpractices in his evidence in chief and referred to the activities of the respondent and Dr. Chitalu Chilufya and in particular their distribution of money to would be voters at open grounds at Kasaba, Mwewa, Mwansakombe, Chinkutula, Lubwe, Chifunabuli, Masonde, Kafumbo, Kasansa, Mbabala, Chishi Wards. It was submitted that the connection between GOZA and the respondent was ably demonstrated by the petitioner through an independent witness, Evans Chanda (*PW13*), whose evidence was referred to. It was further stated that according to *PW13*, the respondent chaired and addressed a meeting on 24<sup>th</sup> July, 2021 at Mwewa within Chifunabuli, at which she confirmed her connection or membership to GOZA and told the GOZA members how to go about the business of registering people and giving them promises to induce them to vote for the respondent and the PF.

Furthermore, the petitioner also told the court that when the people were being given money in different amounts by the respondent and Dr. Chitalu Chilufya, they were being told to vote for the respondent and President Edgar Lungu. This evidence was corroborated by a number of witnesses, particularly Yvonne Mwape (**PW2**), Maureen Chanda (**PW3**) and Emmanuel Bwalya (**PW12**). Counsel added that the witnesses were not members of the Democratic Party or relatives or acquaintances of the petitioner and therefore cannot be said to have had any interest to serve.

It was contended that the petitioner also told the court how he came to learn of the activities of GOZA on 22<sup>nd</sup> July, 2021 through his Campaign Manager, William Sebyo and how the said organization was going round the constituency collecting people's names, NRC and voter's card numbers and telling them to vote for the respondent and the PF and being promised money and food stuffs. He also told the court that the activities of GOZA were meant to influence voters to vote for the respondent and all the PF candidates in the last general elections. The petitioner also told the court that as one of the candidates in the elections, he had agents and supporters everywhere within the constituency who were informing him of the happenings in the constituency and about GOZA. The petitioner also testified that on 12<sup>th</sup> August, 2021, he personally found GOZA members at the polling stations that he visited and that they were clad in orange t-shirts, while others were in white t-shirts.

Further that the petitioner also told the court that the respondent and her campaign team were intimidating voters by telling them that if they did not vote for the respondent, they would stop receiving social cash transfer.

In response, Counsel for the respondent contended that part of the evidence tendered by the petitioner and his witnesses is conflicting. They therefore submitted that the evidence should be given very little weight and be treated with caution. It was submitted that, although the petitioner submitted that his witnesses were independent and not members of the Democratic Party and therefore had no interest to serve, however, that the position was not established by the petitioner. None of the petitioner's witnesses testified as to their political affiliations to indeed establish that they were independent witnesses with no interest to serve. It was submitted that the onus was on the petitioner to show that he was bringing independent witnesses to court.

Counsel for the respondent highlighted what they called relevant portions of the petitioner's witnesses.

Concerning **PW2**, it was contended that in examination in chief, **PW2** told the court that Dr. Chitalu Chilufya gave some money in the presence of the respondent. In cross examination this statement changed. When questioned in cross examination, **PW2** testified that it was Dr. Chitalu Chilufya's driver who gave the money and that the respondent was in the meeting.

Furthermore, **PW3** also testified that it was Dr. Chitalu Chilufya who gave out the money. She testified that the respondent was present. **PW2** also testified that the Patriotic Front group was introduced by Father Kanja and yet **PW3** testified that the introductions were done by the Church Council. Counsel contended that it was ironic that both **PW2** and 3 were in church and yet both tendered testimonies that were inconsistent and contradictory.

It was further contended by Counsel for the respondent that **PW4** did not link the respondent to any of the malpractices that the petitioner alleged.

Further that **PW7** testified that she saw the respondent in Mbilima on the 11<sup>th</sup> of August, 2021 and that the respondent removed her t-shirt. The petitioner testified that the respondent was on this day, 11<sup>th</sup> August, 2021 in Lubwe Market allegedly distributing money.

Counsel further contended that **PW1** also testified that his agents who were present on the 10<sup>th</sup> of August, 2021 at Chitembo grounds who saw the respondent give out 15 non-political chitenges, however, **PW8** testified to a sack full of chitenges being distributed. Furthermore, the petitioner testified to the respondent being on Chitembo grounds on the 10<sup>th</sup> August, 2021 at 19 hours while **PW3** testified to the seeing the respondent on the same date and time coming from Kakote.

Concerning GOZA, it was contended that all the petitioners' witnesses testified that they were told it was for the respondent but no evidence was produced to link the respondent to GOZA. **PW13** testified to attending all alleged meeting at Mwewa School being a member of GOZA. It was testified that the meeting was called for by the respondent. It was pointed out that no minutes of the meeting was produced to provide evidence of the persons in attendance in the meeting or indeed what was the agenda of the meeting. Further that **PW13** did not know any other member of GOZA despite carrying out works for them. **PW13** placed the respondent in Mwewa on the 11<sup>th</sup> August, 2021.

It was further contended that **PW14** testified that he received a K20 but couldn't confirm that everyone received the same except that he was told that they received. Furthermore, that **PW15**, who was a campaign manager for the petitioner testified to attending an alleged meeting on 23<sup>rd</sup> June, 2021 and the document pertaining to that meeting was exhibited by the petitioner in his bundle of documents at pages 1 to 3. It was pointed out that **PW15** attended the meeting as both member of the committee as well as complainant. **PW16** confirmed that he was the chairperson of CMC and the person who called for the meeting of the 23<sup>rd</sup> June, 2021. **PW16** when questioned in cross examination testified that the document produced in the petitioner's bundle of documents was not the document he signed and therefore was not the document he could be giving evidence on. As chairperson of the CMC **PW16** did not know who was behind GOZA.

Concerning the respondent's evidence, Counsel contended that **RW1**, the respondent's campaign manager testified that the respondent's team started campaigning on 24<sup>th</sup> June, 2021. He also placed the respondent in Mbalala and Chishi islands on the 11<sup>th</sup> August 2021 as did all the respondent's witnesses as well as **PW17**, a witness called by the petitioner.

Further that **RW2**, the respondent herself testified that she started her campaigns from the 27<sup>th</sup> June, 2021 and not 27<sup>th</sup> July as submitted by the petitioner. She denied the petitioner's allegations and testified that she did not know anything about GOZA.

**RW3**, the respondent's body guard, testified that the respondent was in Mbalala and Chishi islands on 11<sup>th</sup> August, 2021. He also testified that on 25<sup>th</sup> June, 2021 the respondent was attending a funeral in Lusaka. Further, **RW4**, the respondent's election agent, testified that the respondent was ill and in Mansa during the period between 20<sup>th</sup> and 24<sup>th</sup> July, 2021. 24<sup>th</sup> July, 2021 was the date of the alleged meeting called by the respondent for GOZA as testified by **PW13**.

On the other hand, Counsel for the petitioner, overall and in relation to the evidence of the respondent and her witnesses, drew my attention to the case of *Steven Masumba v Elliot Kamondo, CCZ Selected No. 53 of 2017*, in which the Constitutional Court held that once a witness is found to be untruthful in material respects, his or her evidence carries very little weight as this goes to the credibility of such a witness. It was submitted that the evidence

of the respondent and her witnesses who contradicted each other should carry very little weight. For **RW3** and **RW4**, it was also quite clear that they were partisan as they categorically told the court that they wanted the respondent to win the election in question as well as this particular case.

It was submitted that the evidence of the respondent required corroboration and all her witnesses were witnesses with an interest to serve. It is for that reason that the respondent and her witnesses contradicted each other on a number of issues, such as her campaign messages and whereabouts on days that mattered such as 24<sup>th</sup> July, 2021, when the respondent is alleged to have been in a GOZA meeting. The respondent and her witnesses' testimonies should therefore be treated with caution.

Counsel for the petitioner referred me to *sections 83, 97, 98 and 99 of the Electoral Process Act No. 35 of 2016 (hereinafter "the Act"); the schedule to Act as well as the Electoral (Code of Conduct) regulations, 2011, Statutory Instrument No. 52 of 2011.*

Counsel stated that *section 83 (1)(c)(i) to (iv) of the Act* deals with undue influence and quoted the following:

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

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

*(ii) to vote or not vote;*

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

*(iv) to support or not to support any political registered party or candidate;*

Counsel went on to cite **section 97** of the Act as follows:

*97(1) An election of a candidate as Member of Parliament, mayor, council chairperson or councilor 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 councilor 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;*

I was further referred to **section 2 of the Act** which defines corrupt practice as, "any conduct which is declared to be a corrupt practice in accordance with section eighty-one". I was further referred to **section 81 of the Act** which lists various Election Offences categorized as bribery and provides in **subsections (1)(a)**, which is relevant to this matter that:

*81. (1) A person shall not, either directly or indirectly, by oneself or with any other person corruptly-*

*(a) give, lend, procure, offer, promise or agree to give, lend, procure or offer, any money to a voter or to any other person on behalf of a voter or for the benefit of*

*a voter in order to induce that voter to vote or refrain from voting or corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.*

It was Counsel's submission that the petitioner's allegations against the respondent's act of giving voters money to vote for her was clearly a violation of **section 81(1) of the Act** as it amounted to bribery or vote buying.

Concerning intimidation, Counsel cited the **Electoral Code of Conduct**, which is a schedule to the Act, **paragraph 15(1)** which provides as follows:

**15(1) A person shall not-**

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

It was contended that the respondent's message or utterances to the electorates during her campaigns to the effect that if they did not vote for her, they would stop receiving social cash transfer or that they would not see development amounted to intimidation and a violation of the Electoral Code of Conduct. It was submitted that this is even more so given the fact that the evidence from the respondent herself and **RW1** was to the effect that most people in the Chifunabuli Constituency are illiterate. The literal meaning of the word "*intimidation*" was defined in accordance with the **Oxford Advanced Learner's Dictionary, New 7<sup>th</sup> Edition**, at page 783 as meaning "*to frighten or threaten somebody so that they will do what you want*". It was submitted that this is precisely what the respondent

was doing when telling the electorates about them losing the social cash transfer and lack of development if she was not voted into office.

I was further referred to *section 97(2)* of the Act which Counsel acknowledged that the petitioner had to prove with cogent evidence, if the petition were to succeed, that:

*(a) A corrupt practice, illegal practice or other misconduct was committed in connection with the election:*

*(i) By the respondent; or*

*(ii) With the knowledge and consent or approval of the respondent or of that respondent's election agent or polling agent*

*(b) On account of (a) above, the majority of voters in Chifunabuli Constituency, were or may have been prevented from electing the candidate or indeed the petitioner in Chifunabuli Constituency, whom they preferred.*

I was referred to the case of *Abuid Kawangu v Elijah Muchima, Appeal No. 8 of 2017 at page J411*, where it was stated, the Constitutional Court held, in relation to *section 97(2)(a)* of the Act, that:

*Under section 97(2)(a), an election may be annulled where a petitioner shows that the alleged corrupt or illegal practice or misconduct was committed in connection with the election by the respondent or his election or polling agent and that, as a result, the majority of the voters in that constituency were or may have been prevented from electing the candidate of their choice.*

It was Counsel's submission that it would be demonstrated that indeed the respondent committed a corrupt practice, illegal practice and other misconduct, which prevented the good people of Chifunabuli Constituency from voting for the petitioner.

Counsel contended that they were alive to the fact that the standard of proof required in an election petition, though a civil matter, is higher than "*on a balance of probabilities*". In this regard, I was referred to the case of *Lewanika and Others v Chiluba (1998) ZR 792*, where the Supreme Court held that: "*election petitions are required to be proven to a standard higher than a mere balance of probabilities.*"

Counsel went on to state that this position was restated by the Constitutional Court in the case of *Steven Masumba v Elliot Kamondo, Selected Judgment No. 53 of 2017* and referred to in the case of *Saul Zulu v Victoria Kalima SCZ Judgment No. 2 of 2014*; and *Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Others (2005) ZR. 138* and several other cases.

Counsel further referred to me the case of *Wilson Masauso Zulu v Avondale Housing Project Limited (1982) ZR 1723*, concerning the burden of proof, where Ngulube DCJ, as he then was, put it aptly when he said:

*"I think it is accepted that where a plaintiff alleges that he has been wrongly or unfairly dismisses as indeed any other case where he makes allegations, it is generally for him to prove those allegations. A*

*plaintiff who has failed to prove his case cannot be entitled to judgment, whatever may be said of the opponent's case".*

Counsel acknowledged that the burden of proof fell on the petitioner to place before the court credible evidence to satisfy the court that the allegations in his petition were true. It was submitted that the petitioner discharged this burden from his testimony and the testimony of all the independent witnesses that he called, particularly from **PW2** to **PW14**, whose testimonies they summarized and evaluated above. It was further submitted that the petitioner provided cogent evidence to prove that the respondent personally committed corrupt practices, particularly the acts of bribery, intimidation and undue influence in connection with the election and in some instances with the knowledge and consent or approval of the respondent, particularly through GOZA, and the majority of voters were or may have been preventing their preferred candidate, namely the petitioner.

Counsel highlighted the following facts as being undisputed:

1. *The petitioner was contesting on the Democratic Party ticket, while the respondent was contesting on the Patriotic Front ticket as candidates in the parliamentary election conducted on 12<sup>th</sup> August, 2021, in respect of the Chifunabuli Constituency; and*
2. *After the votes were counted, the Electoral Commission of Zambia declared the respondent as the winner of the election with 18, 020 votes and the petitioner had 7,786 votes.*

Counsel submitted the following as issues for consideration and determination:

- a) *Whether or not the respondent by herself and/or her agents was engaged in corrupt and illegal practices prior to during the election contrary to Part VIII of the Act, in particular sections 81 and 83, namely whether or not the respondent by herself and/or agents was involved in bribery and undue influence;*
- b) *Whether the alleged malpractice was widespread and the majority of voters in Chifunābuli Constituency were or may have been prevented from electing a candidate of their choice; and*
- c) *Whether or not the petitioner is entitled to the relief he prays for in his petition.*

In relation to the question as to whether the respondent by herself and/or her agents was engaged in corrupt and illegal practices prior to or during the election as alleged by the petitioner in his petition, contrary to Part VIII of the Act, in particular sections 81 and 83, namely whether or not the respondent by herself and/or agents was involved in bribery and undue influence. It was submitted that the evidence on the record particularly from the petitioner's witnesses clearly showed that the respondent was specifically identified by the witnesses as having given money to the witnesses and to other people in the presence of the witnesses and told them and others that they should vote for her. I was referred to the evidence of **PW1** and **PW14**.

It was submitted that it is important to note that all the witnesses that testified on behalf of the petitioner were not members of the DP or relations or associates of the petitioner. The witnesses were independent with no interest to serve therefore credible. It was further submitted that the petitioner's witnesses' testimonies should be given significant weight. The only witness that could be said to have had an interest to serve was **PW15**, William Sebye.

who told the court that he was the petitioner's Campaign Manager in the election in issue. In addition, it was submitted that **PW17**, Chikuni Chalwe, who told the court that he was a member of the PF and that he has been a member of the same party since 2006.

I was referred to the case of *Abuid Kawangu v Elija Muchima, Appeal No. 8 of 2017* at page J38, where the Constitutional Court in referring to the case of *Steven Masumba v Elliot Kamondo, Selected Judgement No. 53 of 2017*<sup>4</sup>, directed that:

*“Witnesses from a litigant’s own political party are partisan witnesses who should be treated with caution and require corroboration in order to eliminate the danger of exaggeration and falsehood....*

*The appellant’s witnesses were suspect witnesses with a possible interest to serve who had to be treated with caution. It was incumbent upon the appellant to corroborate his witnesses’ evidence of the allegations put forward”.*

Counsel submitted that there was overwhelming evidence on the record particularly from **PW2** to **PW14** who pointed to the respondent herself as being involved in giving money to the electorates and telling them to vote for her. It was pointed out that these were independent witnesses.

It was further submitted that **PW13** (Evans Chanda) specifically identified the respondent as having chaired a meeting for GOZA on 24<sup>th</sup> July, 2021, where the respondent told people in attendance to conduct the affairs of GOZA for her benefit. In addition, that in her testimony, the respondent did not lead any evidence to dispel

**PW13's** evidence for instance by providing any evidence or testimony as to where she was on 24<sup>th</sup> July. 2021 or **PW13's** testimony regarding her previous interaction with her regarding her donation of football jerseys. It was submitted that the respondent's involvement with GOZA and GOZA's activities were clearly in contravention of sections 81 and 83 of the Act as they were not only bribing voters but also influencing them unduly. It is, Counsel submitted, for that reason that the respondent and her witnesses tried very hard to distance the respondent and themselves from GOZA because they were fully aware that the activities of GOZA were contrary to the law.

In relation to the question as to whether the alleged malpractice was widespread and the majority of voters in Chifunabuli Constituency were or may have been prevented from electing a candidate of this choice, it was submitted that the answer is in the affirmative because firstly, as indicated, the respondent won the election with over 18,000 as against the petitioner's 7000 votes from a total of 29,688 votes cast as indicated on page 5 of the Respondent's Bundle of Documents. Furthermore, as **PW13** told the court, the activities of GOZA were clearly effective in Chifunabuli Constituency because the outcome that GOZA desired came to pass, that is, the respondent was declared the winner of the Chifunabuli Constituency albeit through her corrupt practices and undue influence both on her own account and through GOZA.

It was Counsel's submission that the fact that all the petitioner's witnesses who received money from the respondent or from GOZA

told the court that they voted for the respondent because she gave them money, it follows that the majority of voters who either received money from the respondent or GOZA or indeed Dr. Chitalu Chilufya were influenced to vote for the respondent in Chifunabuli Constituency and were in fact and may have been prevented from electing a candidate of their choice, namely, the petitioner.

It was submitted that the petitioner was able to bring 15 witnesses from 9 out of 13 wards of Chifunabuli Constituency. The wards were listed with the registered voters from the wards:

- (i) *Chinkutula -5,860 registered voters*
- (ii) *Lubwe- 4,517 registered voters*
- (iii) *Kasaba- 4,105 registered voters*
- (iv) *Chifunabuli- 3,818 registered voters*
- (v) *Kafumbo- 3,211 registered voters*
- (vi) *Kasansa- 3,204 registered voters*
- (vii) *Masonde- 2,987 registered voters*
- (viii) *Kapeshi- 2,653 registered voters; and*
- (ix) *Kasongole- 2,327 registered voters*

It was submitted that quite clearly the incidences of corrupt and illegal practices perpetrated by the respondent on her own or through GOZA were widespread and affected the majority of the voters in Chifunabuli Constituency as the number of voters in wards in which the petitioners witnesses reside clearly outnumber the voters in the wards where there were no witnesses, namely

Mbabala (2,042 registered voters); Chishi (3,061 registered voters), Mubansenshi (2354 registered voters) and Kapamba (2,350 registered voters). It was submitted that the fact that the respondent was able to bring witnesses from 9 out of 13 wards of Chifunabuli Constituency demonstrates how widespread the corrupt practices by the respondent were.

It was further submitted that although various authorities indicate that for a petitioner to succeed in a challenging the validity of an election of a respondent as an MP, there is no law that prescribes how many witnesses a petitioner should bring to the court prove his claim. In this regard, it was their contention that once a petitioner has provided clear evidence with a fairly high degree of clarity as the petitioner did in this matter, a petitioner should be entitled to the relief he seeks. Counsel reiterated that their submissions that the petitioner's witnesses were influenced by the money given to them by the respondent or GOZA; they did not have any interest to serve as they were not partisan; and they were not shaken in cross-examination.

On whether or not the petitioner is entitled to the relief he prays for in his petition, it was submitted that on account of the overwhelming evidence on the record from the petitioner and his witnesses, the petitioner has discharged the burden of proof imposed on him in this matter and therefore prayed that the relief that he seeks in his petition should be granted to him as prayed, viz:

- (a) A declaration that the election of the respondent as Member of Parliament for Chifunabuli Constituency was null and void;
- (b) This court to make such orders as deemed fit; and
- (c) The petitioner to be granted costs of and incidental to this petition.

Counsel for the respondent also submitted in line with Counsel for petitioner that in election petitions, the standard of proof is higher than that which is required in ordinary civil matters and for this referred me to the case of *Dean Masule v Romeo Kangombe 2019/CC/A002*. Counsel submitted that the testimonies of the petitioner's witnesses were contradictory and inconsistent, calling their credibility into question.

I was referred to the case of *Armagas Limited v Mundogas SA (The Ocean Frost) (1986) AC 717*<sup>s</sup>, where it was held that:

*"When considering the credibility of witnesses, always test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case...."*

Counsel submitted that the petitioner only submitted one document in his bundle of documents, which alleged to be minutes of a meeting called by the CMC. These minutes were not the actual minutes of the meeting as testified by **PW16**. It follows that the document carries no weight and may well be fabricated evidence by the petitioner. There is therefore no evidence on record to substantiate the petitioner's allegations of the respondent's alleged involvement in an organization called GOZA or indeed the respondent's alleged electoral malpractices of vote buying, bribery and corruption; indeed, no pictures or video clips

have been presented before court despite the petitioner alleging widespread malpractices.

Counsel made reference to the three issues brought out by the petitioner as issues for determination in this matter. In the first issue of their being overwhelming evidence of the respondent's involvement in GOZA, as well as acts of vote buying, bribery and corruption, it was submitted that the petitioner has not linked the respondent in any way to the organization called GOZA. The petitioner upon whom the onus fell, failed to present before this court any document showing that the organization was established by the respondent. The petitioner also failed to present any document or minutes of the alleged meeting held on 24<sup>th</sup> July, 2021 as testified by **PW13**. Counsel found it strange that the **PW13's** testimony was that he only identified the respondent but failed to mention any of his fellow members who were in the same organization and who attended the same meeting.

Counsel further submitted that in accordance with *section 97(2) of the Electoral Process Act, No. 35 of 2016*, the election of the respondent as Member of Parliament for Chifunabuli Constituency can only be nullified if the petitioner proves to the satisfaction of the court that the respondent personally committed a corrupt practice or illegal practice or other misconduct in relation to the election or that the corrupt practice or illegal practice or misconduct was committed by another person with the respondent's knowledge, consent or approval or that of her election or polling agent. It was submitted that the petitioner has failed to satisfy this provision. Many of the

petitioner's witnesses testified to either Dr. Chitalu Chilufya giving money or his driver giving money. It is therefore misleading for the petitioner to submit that the evidence of **PW1** to **PW14** clearly showed that the respondent was the one giving money.

Further, that in fact **PW1** testified in cross examination that he did not personally see the respondent give out money but that it was her agents. It was submitted that that is hearsay because he was being told by his agents rather than perceiving facts with his own eyes. It was submitted that this testimony is inadmissible. I was referred to the case of *Subramanian v The Public Prosecutor (1956) 1 WLR 956* where it was stated that:

*"Evidence of a statement made to a witness by (another) person .....may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is purported to establish by the evidence, not the truth of the statement but the fact that it was made."*

It was contended that **PW1**'s evidence was that the election of the respondent should be nullified because she perpetrated electoral malpractices. He stated that he was aware of these malpractices because he was informed. The intent of his evidence therefore was not to establish that such statements were made but the intention was to prove that what he was told was true and the respondent perpetrated such malpractices. It was submitted that this evidence is therefore hearsay and inadmissible.

Counsel reiterated that the petitioner has failed to prove or link the respondent to GOZA. There is no print out from PACRA or the Registrar of Societies to show the respondent spearheaded this organization. The only witness called by the petitioner was **PW13**, who allegedly attended a meeting as GOZA member, failed to provide evidence of the minutes of that meeting or indeed the person in attendance at that meeting. It was their submission that the meeting did not take place at all.

On the allegations that malpractices were widespread and that the majority of voters in Chifunabuli Constituency were or may have been prevented from electing a candidate of their choice, it was submitted that the petition has not only failed to prove the allegation.

My attention was drawn to the case of *Mubika Mubika v Poniso Njeulu*, SCZ Appeal No. 114 of 2007, in which the Constitutional Court cited with approval in the case of *Jonathan Kapaipi v Newton Samakayi*, CCZ, Appeal No.13 of 2017, where the Supreme Court stated the following:

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

*greater number of registered voters were prevented or might have been prevented from electing their preferred candidate."*

I was further referred to the case of *Mubita Mwangala v Inonge Mutukwa Wina*, SCZ Appeal No. 80 of 2007 where the Supreme Court expressed the sentiments as stated in the *Mubika* case above. I was also referred to an earlier case of *Josephat Mlewa v Eric Wightman* (1995/1997) ZR 106, as well as the case of *Nkandu Luo and the Electoral Commission of Zambia v Doreen Sefuke Mwamba and the Attorney General*, Selected Judgment No. 51 of 2018<sup>s</sup>, where the Constitutional Court held the following:

*"In order for a petitioner to successfully have an election annulled pursuant to section 97(2)(a), there is a threshold to surmount. The first requirement is for the petitioner to prove to the satisfaction of the court, that the person whose election is challenged personally or through his duly appointed election or polling agents, committed a corrupt practice or illegal practice or other misconduct in connection with the election, or that such malpractice was committed with the knowledge and consent or approval of the candidate or his or her election or polling agent...in addition to proving the electoral malpractice or misconduct alleged, the petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorate from electing the candidate of their choice."*

It was submitted that the petitioner has clearly failed to prove to the required standard in election petitions that the respondent engaged in any electoral malpractices, vote buying, bribery and corruption and that these malpractices swayed the people of Chifunabuli to vote for the respondent as opposed to a candidate of their choice. The petitioner did not adduce sufficient evidence

to support the allegations that the respondent was engaged in the distribution of money for purposes of vote buying and that these malpractices prevented the people of Chifunabuli from voting for their preferred candidate. Neither did the petitioner produce cogent evidence to show the respondent led the activities of GOZA to sway the voters. It was pointed out that **PW16** who was the chairperson of the CMC did not know who the leader of GOZA was. **PW16** confirmed that the respondent was not even present at the meeting of 23<sup>rd</sup> June, 2021.

It was further submitted that **PW16** confirmed that to his knowledge and in accordance to the CMC meeting, GOZA was a non-partisan organization. **PW16** testified that there were two complaints which were to be dealt with at the said meeting. The first was the malpractices by GOZA of recording people's NRC and voter's card numbers and the second was two Patriotic Front Cadres who were going round defacing posters for the Democratic Party and United Party for National Democracy.

It was submitted that the petitioner was aware of the several channels available to him to report the alleged malpractices by the respondent. Surely, if the respondent was behind GOZA and had been committing the several allegations stated by the petitioner of vote buying, bribery, corruption and distribution of food and mealie meal, one would have expected the matter to be reported to the CMC with evidence brought before the court. The fact that there is no report that has been produced before court by the petitioner, which was made to the relevant authorities of these

malpractices by the respondent strongly suggests that these did not happen and indeed the respondent is not responsible. Further to that if the respondent was spearheading the organization called GOZA one would also expect that she attended the meeting of the Conflict Management Committee. As stated above **PW16** confirmed that the respondent was not present.

Counsel further contended that the petitioner's own witnesses placed the respondent in different places on the same date hence contradicting themselves. This is highlighted in the petitioner's evidence. It was submitted that the petitioner is therefore falsely implicating the respondent in things she did not do.

It was further submitted that the petitioner only called 17 witnesses out of a total of 41,504 registered voters; 15 of these witnesses were brought from 9 wards out of 13 wards. Many of the petitioner's witnesses contradicted themselves and it therefore cannot be said with certainty that the respondent is the one who distributed money. Counsel cited the testimonies of **PW2** and **PW3** as being inconsistent. Although **PW2** and 3 were both in church, they gave conflicting testimonies as to who gave them the money. **PW4** did not testify that the respondent gave her money but rather testified that there were many people and she didn't know who gave her money. Further to that **PW4** testified that it was also dark so she didn't know who the money was being distributed by.

Concerning the petitioner being entitled to the reliefs he prays for; it was submitted that the petitioner has failed to prove his case to the required standard. The petitioner did not adduce with convincing<sup>42</sup> clarity the exact number of voters who allegedly received benefits from the respondent. In the circumstances the only conclusion was that the elections were free and fair and the people of Chifunabuli voted for their preferred candidate who is the respondent. It was their prayer that this court declares the respondent as duly and legally elected Member of Parliament for Chifunabuli Constituency. It was further their prayer that the court dismisses the petition with costs.

I am indebted to both Counsel for their spirited submissions as well as for their industry of authorities that this court has been referred to.

I will adopt the issues to be determined by this court as those pointed out by Counsel for the petitioner, viz:

- 1) Whether the respondent by herself and/or her agents was engaged in corrupt and illegal practices (bribery and undue influence) prior or during the election contrary to Part VIII of the Electoral Process Act, in particular sections 81 and 83;*
- 2) Whether the alleged malpractice was widespread and the majority of voters in Chifunabuli Constituency were or may have been prevented from electing a candidate of their choice; and*

3) *Whether the petitioner is entitled to the reliefs sought.*

As correctly elucidated by Counsel, the basis for annulling an election of a Member of Parliament is contained in **section 97 of the Electoral Process Act**. Although the section has been reproduced above, I will quote it here because of its importance:

*(2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be, that— (a) a corrupt practice, illegal practice or other misconduct has been committed in connection with the election— (i) by a candidate; or (ii) with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred;*

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

*(3) Despite the provisions of subsection (2), where, upon the trial of an election petition, the High Court or a tribunal finds that a corrupt 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 election agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent; (b) such candidate and that candidate's*

*election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and (c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent; the High Court or a tribunal shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void.*

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

Therefore, from section 97, cited above, an election will be nullified where, on the first limb, the candidate personally or with the knowledge and consent or approval of the candidate or the candidate's election agent, or polling agent has committed a corrupt practice, illegal practice or other misconduct. On the second limb, as a result of that illegal practice or misconduct, the majority of the voters in a constituency, district or ward were or may have been prevented from electing their preferred candidate in that constituency, district or ward.

Fortunately, in this election, we are not dealing with any novel issues. The provisions the Electoral Process Act in its current form were thoroughly tested both at High Court level and on appeal in the Constitutional Court, in the 2016 election petitions and subsequent petitions following by-elections. We thus have a rich jurisprudence to fall back on.

In the case of *Giles Chomba Yamba Yamba v Kapembwa Simbao, Electoral Commission of Zambia and The Attorney General Appeal No. 12 of 2018 Selected judgment No. 6 of 2018*,<sup>9</sup> the court held that:

*“We have already stated above that an election can be annulled on the strength of one incident of corrupt or illegal practice or misconduct provided that, under section 97(2) (a), such is attributable to the candidate or his duly appointed agent with their knowledge and consent or approval and the majority of the electorate were or may have been prevented from electing a candidate they preferred; or if it is an allegation pursuant to section 97(2) (b) on non-compliance, cogent evidence must be preferred to show that the results were affected.. That is the new threshold.”*

- 1) *Whether the respondent by herself and/or her agents was engaged in corrupt and illegal practices (bribery and undue influence) prior or during the election contrary to Part VIII of the Electoral Process Act, in particular sections 81 and 83;*

In the case of *Nkandu Luo and the Electoral Commission of Zambia v Doreen Sefuke Mwamba and the Attorney General Appeal No. 10 of 2016, Selected No. 51 of 2018*, cited by both Counsel above, the court expanded what they stated in the *Yamba Yamba* case when it stated:

*“Section 97(2) of the Act is central to the judicial resolution of electoral disputes”. Section 97(2)(a) was quoted in full.*

The court went on to state as follows:

*"As earlier stated, we have, in unequivocal terms, stated our position on the above provisions. In order for a petitioner to successfully have an election annulled pursuant to section 97(2)(a), there is a threshold to surmount. The first requirement is for the petitioner to prove to the satisfaction of the court, that the person whose election is challenged personally or through his duly appointed election or polling agents, committed a corrupt practice or other misconduct in connection with the election; or that such malpractice was committed with the knowledge and consent or approval of the candidate or his or her election or polling agent. Sections 81 to 95 in Part VIII of the Act and also relevant provisions of the Electoral Code of Conduct outline the corrupt or illegal practices or misconduct in the electoral process..."*

The petitioner's allegations that the respondent violated the above provisions of the Act and the Code of Conduct was based on the evidence of the witnesses as stated above.

Counsel for the petitioner contented that the following witnesses testified to have received money were listed as follows:

Yvonne Mulilo (PW2); Maureen Chanda (PW3); Albina Kunda Lupupa (PW4); Chisala Boston (PW10) all from Lubwe Ward; Mark Kalaba (PW5), from Kasongole Ward; Chola Chilando (PW6), from Chinkuntula Ward; Aneti Mweni (PW8), from Chifunabuli Ward; Chanda Kaoma (PW9), from Masonde Ward; Angel Chipulu Mwape (PW11), from Kasansa Ward; and Emmanuel Bwalya (PW12) from Kasaba Ward; who testified to have witnessed the respondent's acts of bribing the electorates and other people in their respective wards and voted for the respondent. In addition, Evans Chanda (PW13) from Chinkutula Ward and Frank Mukosa (PW14) from Kapeshi Ward who equally testified that they witnessed the

respondent's acts of bribing and unduly influencing the electorates and other people in their respective constituencies through GOZA and voted for the respondent.

Bribery, as already stated above took the form of giving out cash of various amounts. There were testimonies of the respondent in the company of Dr. Chitalu Chilufya giving out huge amounts of money to the Catholic Women League and the Choir at Lubwe Parish as well as Kasaba. Various gatherings at different grounds were given cash of amounts ranging from K10 to K100.

Apart from party regalia, there was a testimony by **PW8** that she was a recipient of a non-branded chitenge from the respondent, that was the chitenge she was wearing when she was giving her evidence.

It was the petitioner's evidence that all the above gifts went with a message that the recipients should vote for the respondent. This message came from the respondent personally sometimes and other times the people in whose company she would be, in particular Dr. Chitalu Chilufya. The respondent was cited as giving the money personally or by her agents in her presence. It was also testified by **PW7** that on 11<sup>th</sup> August, the respondent and Vincent Mweni gave the youths at Mbilima a K500 and told them to buy alcohol to drink on election day after voting. The youths were also told to go and eat nshima on voting day. They were in turn urged to vote for the respondent and other PF candidates.

The evidence of acts of intimidation consisted of testimonies of how the witnesses were told that if they did not vote for the respondent, they would stop receiving the social cash transfer. Further that she was the only hope they had of having a Provincial Minister from their own land and that this would foster development in the area. The reason there was no development in their area was that they never had a Minister who hails from their area.

The other issue which was prevalent from the testimonies of the petitioner's witnesses was that the respondent through an organization called GOZA flouted the Electoral Code of Conduct. Through this organization, people were recruited to register the electorates' NRCs and voters' card numbers. The court heard that the people who were recruited as members of GOZA, included civil servants, in particular, a man referred to as Mr. Chisha by **PW10**, **PW15** and **PW16**.

The other civil servant who was connected to GOZA was the DC, whose vehicle **PW10** saw off loading 10 bags of mealie meal, 3 containers of 20 litres of cooking oil, PF chitenge materials and t-shirts (party regalia). The 10 bags of mealie meal were used on 12<sup>th</sup> August, 2021, whereas the cooking oil was re-packed in small bottles and was given to the people that went to vote on the same day. I brought up the association of the DC because the distribution of mealie meal for feeding people on polling day and the distribution of oil was something nearly every witness who talked about GOZA mentioned as something that was being done by GOZA.

According to **PW13** GOZA promised to remunerate the people they had recruited with a sum of K250 for every 50 people registered and a further K1,000 would be given to them should the respondent be elected into office as MP. The people who were being registered were to be given K50 and a bag of mealie meal.

Furthermore, the people who were being registered were to eat food from designated places, allegedly homes of the GOZA members on polling day. Food stuffs such as mealie meal, cooking oil and goats were allegedly delivered to these places and people were fed on polling day.

There was also evidence that the GOZA members were in the polling stations on polling day. **PW6** testified that she saw two GOZA representatives in the polling station. She identified them by the orange t-shirts they were clad in. **PW7** testified that her elder (half) brother was one of those who were collecting people's NRCs and voters' cards numbers. When she went to cast her vote, she found her brother and another person clad in orange GOZA branded t-shirts in the polling station. **PW8** also saw the GOZA representatives at the Chitembo polling station. They were in the same GOZA orange t-shirts. **PW13** testified that he was himself a member of GOZA. On polling day, he was stationed at Chifuko polling station in Chinkutula ward and was clad in an orange t-shirt. He was with another member. They were there until voting concluded. **PW14** was another one who testified that his nephew Mobby Mwange a self-prophesied member of GOZA, was also in

the polling station assisting people to vote on election day. He was assisting people to vote.

The illegality about GOZA was not only the registration of people's NRCs and voters' cards in exchange for money and securing a vote for the respondent but also the organization was not accredited by ECZ for monitoring Elections. **PW16** who was the chairperson for the CMC, confirmed that the Council Secretary who was DEO did not know anything about GOZA. He further told the court that in the meeting they had on 23<sup>rd</sup> June, 2021, it was resolved that GOZA should stop its activities until it had been recognized and given authority by ECZ. **PW13**, who testified to be a GOZA member also said that GOZA was not accredited to ECZ but as GOZA members they entered the designated polling stations using NRCs and voters' cards.

There were witnesses who testified as to how the respondent was connected to GOZA. **PW7's** testimony was that when she asked her brother why he was collecting people's NRCs and voters' cards numbers, he told her that GOZA belonged to the respondent and that she is the one who had instructed GOZA members to be collecting people's NRCs and voters' cards numbers. **PW8** also testified that her nephew, Tambanazo, who was a PF member told her that the respondent had sent her to write people's NRCs and voters' cards numbers in batches of 50. Tambanazo also gave **PW8** a K20 and told her that on voting day she should go and eat food from Davies Mwewa's place.

In addition, **PW9** testified that the respondent told the headmen at Chimanda village that on 8<sup>th</sup> August, 2021 she would take mealie meal and goats so that they cook for the people who would be voting. The respondent delivered 10 bags of mealie meal, 3 goats and 20 litres of cooking oil on the promised date around 21 hours. These were the activities related to GOZA. Feeding people on election day was alleged to be a reward for those who allowed to have their names registered with GOZA members.

**PW10**, equally testified that he was told by the GOZA members who he interviewed that they had been sent by the respondent to register people in the manner they did.

**PW13** testified that he was a GOZA member. He attended a meeting chaired by the respondent on 24<sup>th</sup> July, 2021. This was the meeting at which they were taught how to register people's names, their NRCs and voters' cards numbers. He testified that the respondent told them at that meeting that they should ensure that when the people they registered entered the polling station, they voted for the respondent. They had a signal such as a wink, which they gave those people. He further told the court that the respondent was the leader of GOZA and that Father Mwape was merely the respondent's agent.

Another allegation that was proffered by the petitioner was that the respondent and her agents were ferrying people from the islands in canters to go and vote on voting day.

**PW4** testified that on 12<sup>th</sup> August, 2021, around 08 hours, she saw a Prado ferrying people from the harbor of Chifunabuli river to the respondent's building in Lubwe ward. She saw the respondent's driver Mweni Musunka give out K20 notes to the people at the respondent's building and telling them to vote for the respondent.

The respondent's view of the petitioner's witnesses, according to the submissions filed on her behalf was that **PW2** changed her testimony about Dr. Chitalu Chilufya giving money in the presence of the respondent. In cross examination, she said the money was given by Dr. Chitalu Chilufya's driver and that the respondent was in the meeting. Further that although **PW2** testified that the PF group was introduced by Father Kanja, **PW3** testified that they were introduced by the Church Council. It was submitted that it is ironic that both **PW2** and **PW3** were both in church and yet both tendered testimonies that were inconsistent.

Further that **PW4** did not link the respondent to any malpractices that the petitioner alleged. Also, that **PW5's** testimony was that he received a K20 but that he was not sure whether anyone else received.

It was also their contention that **PW7** testified that she saw the respondent in Mbilima on 11<sup>th</sup> August, 2021 when she removed her t-shirt, while the petitioner testified that the respondent was in Lubwe market on the same day allegedly distributing money.

Concerning **PW1**'s evidence that his agents who were present on 10<sup>th</sup> August, 2021 at Chitembo grounds saw the respondent give out 15 non-political chitenges, **PW8** testified to a sack full of chitenges being distributed. Further that whereas the petitioner testified that the respondent was at Chitembo grounds on 10<sup>th</sup> August, 2021 at 19 hours, **PW3** testified that the respondent was seen on the same date and time coming from Kakote.

On the petitioner's evidence on GOZA, the respondent submitted that there was no evidence to link the respondent to GOZA. **PW13** testified to attending an alleged meeting called for by the respondent at Mwewa school as a GOZA member. However, there were no minutes of the meeting produced to show the attendance or even the agenda of the meeting. **PW13** did not know any members of GOZA despite carrying out work for them. **PW13** placed the respondent in Mwewa on 11<sup>th</sup> August, 2021.

Furthermore, **PW15**, the petitioner's campaign manager testified to being at an alleged meeting on 23<sup>rd</sup> June, 2021, exhibited a document appearing on pages 1 to 3 of the petitioner's bundle of documents. They pointed out that **PW15** attended both as a committee member and complainant. Further that **PW16** who testified as the chairperson of the CMC said the document produced by **PW15** is not the document he signed. **PW16** did not know who was behind GOZA.

Counsel for the respondent stated that **RW1** testified that the respondent started her campaign on 24<sup>th</sup> June, 2021. He also

placed the respondent in Mbalala and Chishi islands on 11<sup>th</sup> August, 2021 as did all the respondent's witnesses as well as **PW17** a witness called by the petitioner. The respondent herself testified that she started her campaigns from the 27<sup>th</sup> June, 2021 and not 27<sup>th</sup> July as submitted by the petitioner. She denied the petitioner's allegations and testified that she did not know anything about GOZA. Further that **RW3**, who was the respondent's body guard, testified that the respondent was in Mbalala and Chishi islands on 11<sup>th</sup> August, 2021.

Respondent Counsel concluded by stating that **RW4**, the respondent's election agent testified that the respondent was ill and was in Mansa between 20<sup>th</sup> and 24<sup>th</sup> July, 2021, the date alleged to have been the date on which the respondent is alleged to have called for a meeting.

The gist of the respondent's submissions was that the testimonies of the petitioner's witnesses were full of inconsistencies and were contradictory. The credibility of the witnesses was called in question.

In reply, Counsel for the petitioner argued that the respondent failed to demonstrate which portion of the petitioner and his witnesses' testimonies were conflicting. A sweeping statement is unsubstantiated and untenable. In relation to the respondent's argument that the petitioner did not establish that his witnesses were independent with no interest to serve, it was submitted that the evidence on record is crystal clear. Each of the petitioner's

witnesses were asked to state their occupation and apart from the petitioner and **PW15**, none of them informed the court that they belonged to DP, let alone any political party.

It was further submitted that the respondent who cross examined all the witnesses save for **PW17**, a member of the respondent's political party, elected not to solicit any evidence from any of the other witnesses in relation to their political affiliations or persuasions, if any. In the light of the foregoing, it was submitted that it was erroneous for the respondent to submit that the petitioner did not demonstrate the independence of his witnesses, when all the witnesses informed the court of their occupation and were available to be cross examined on their political affiliations, if any, but the respondent chose to sit on her rights in this regard. It was submitted that the petitioner's witnesses were, as far as the evidence on the record shows, non-partisan and accordingly, had no interest to serve.

Counsel further contended that the alleged inconsistencies between **PW2** and **PW3**, in relation to who introduced Dr. Chitalu Chilufya and other PF members in church, the question of who introduced them was immaterial. In any event, it was submitted that there was no evidence tendered by the respondent and her witnesses to show that Father Kanja, mentioned by **PW2**, was not part of the Church Council that **PW3** mentioned. It was submitted that it was obvious that the Church Council consisted of several people, it was up to the respondent to solicit for information on such composition.

Counsel further submitted that with regard the issue of who gave money to the congregants as between Dr. Chitalu Chilufya and his driver, it was not in dispute that money was given to some of the congregants and that this was done at the instance and instruction of Dr. Chilufya in the presence of the respondent.

It was further submitted that **PW4** demonstrated that there were malpractices in Lubwa ward perpetrated by the respondent's supporters, particularly vote buying. This evidence went to support the petitioner and other witnesses' evidence that there was vote buying and undue influence in Lubwe ward and Chifunabuli Constituency in general.

Further concerning the testimonies of the petitioners' witnesses having seen the respondent at different locations on 10<sup>th</sup> and 22<sup>nd</sup> August, 2021, it was submitted the respondent is suggesting that it was humanly impossible for her to have been at the locations stated by the petitioner's witness on the said dates. Counsel added that what was not in dispute was that the respondent was conducting campaigns in Chifunabuli Constituency on the said dates.

Counsel further contended that there was no evidence to show that it was not possible for her to move from Mbilima to Lubwe market on the same day or to have visited both Chitembo grounds and Kakote on the same date. In the absence of evidence to show that it was impossible to cover the distances in one day, the respondent's submissions were speculative and without merit.

Concerning **PW13**'s evidence that the respondent was present in the meeting of 24<sup>th</sup> July, 2021, where she addressed the GOZA meeting, it was contended that the witness was steadfast. Further that **PW13** did not tell the court the names of other members because they were from different polling stations, however, he identified Father Mwape as another person who attended the same meeting. It was submitted that the fact that **PW13** identified and linked the respondent to the meeting of GOZA of 24<sup>th</sup> July, 2021 and the petitioner's other witnesses testified about GOZA's activities and the presence in their respective wards and polling stations were sufficient evidence to show that the respondent was behind GOZA or in the very least knew about GOZA's illegal activities and supported the illegal activities.

It was further submitted that it was not a legal requirement for an unregistered and clandestine organization or entity such as GOZA to produce minutes of a meeting. Further that **PW13** did not identify himself as a secretary to that meeting to require him to produce minutes.

In relation to the document produced by **PW15**, it was submitted that **PW16** categorically stated that the contents of the document were fundamentally accurate despite him not having signed that document.

In relation to **RW4**'s testimony that the respondent was unwell on 24<sup>th</sup> July, 2021, the date she was allegedly addressing a GOZA meeting, it was submitted that that evidence was not corroborated

or supported by any independent evidence. The respondent herself did not produce any sick note or evidence to attest to her illness or that the illness was so severe that she could not attend any meeting on the said date.

Counsel further contended that the respondent has not shown the court how the expansive testimonies of the petitioner and his witnesses was contradictory and inconsistent, which would warrant questioning the witnesses' credibility. That is in fact the respondent and her witnesses who were contradicting each other, as demonstrated in their submissions.

It was submitted the respondent's reliance on the case of *Armagas Limited v Mundogas SA (The Ocean Frost) (1986) AC 717* is out of context. Their reading of the case and the portion quoted by the respondent shows that it refers to instances where witnesses in a matter are testifying by reference to documents. In this case only **PW15** and **PW16** referred to the petitioner's bundle of documents, a single document. The rest of the witnesses gave their testimonies on the basis of what they personally experienced, either using their sense of sight or sense of hearing.

In relation to the respondent's argument that the petitioner's testimony was hearsay because he was being told by his agents rather than perceiving facts, it was submitted that the respondent did not object to the petitioner tendering evidence at trial. Further that the petitioner categorically stated that for the portion of his testimony that referred to what his agents told him, he would bring

witnesses to testify to those allegations and the petitioner went ahead to call **PW2** to **PW15**, who testified about the allegations of vote buying, bribery, corruption, intimidation and undue influence, which were also set out in the petition and the affidavit verifying the petition.

Concerning the respondent's submission that the petitioner did not bring the allegations of the respondent being behind GOZA, as well as vote buying, bribery, corruption and distribution of food and mealie meal to the Conflict Management Committee; it was submitted that **PW15** testified that despite submitting three complaints to the Conflict Management Committee, two of which related to GOZA and one the defacing of campaign material by PF cadres, the CMC failed to attend to the one complaint unrelated to GOZA and also failed to attend to the second complaint about GOZA and this was confirmed by **PW16**. **PW15** also told the court that the DP had lost faith in the CMC as it was unable to help them. It was further submitted that there was unchallenged evidence on the record from **PW15** and **PW16** that despite the CMC making resolutions and directives on 23<sup>rd</sup> June, 2021 about GOZA and its activities, GOZA continued to conduct its illegal activities of registering voters and other vices.

The alleged malpractices and misconduct committed by the respondent are contrary to the following sections of the Act:

**Section 81(1)(a)**, which provides that:

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

- (a) Give, lend procure, offer, promise or agree to give, lend, procure or offer, any money to a voter or to any other person on behalf of a voter or for the benefit of a voter in order to induce that voter to vote or refrain from voting or corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting any election;

**Section 83(1)(c) of the Act provides as follows:**

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

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

- (i) To register or not to register as a voter;*
- (ii) To vote or not to vote;*
- (iii) To vote or not to vote for any registered political party or candidate;*
- (iv) To support or not to support any political registered party or candidate; or*
- (i) To attend and participate in, or not to attend and participate in, any political meeting, march, demonstration or other political event;”*

Further referred to **paragraphs 14 and 15 of the Electoral Code of Conduct**, applicable parts provide that:

*“14 Person or a member of a law enforcement agency, civil society, a Church, faith-based organisation, traditional leader, political party or media shall not, by means of threats, violence or sanction, coerce or intimidate another person during campaigns, public debates or elections.*

*15 (1) A person shall not—*

- (a) Cause violence or use any language or engage in any conduct which leads or is likely to lead to ... or intimidation during election campaign or election*

*(g)offer any inducement, reward or bribe to any person in  
consideration of such person-  
(iii) voting or not voting*

As stated by both Counsel, the onus is on the petitioner to prove the allegations levelled against the respondent. Both Counsel submitted that the standard in election petitions is higher than the standard in other civil matters.

In the case of *Sikota Wina, Mafo Wallace Mafiyo, George Samulela and Michael Mapenga SCZNO. 15 of 2003* which restated the case of *Akashambatwa Mbikusita Lewanika and Others v Frederick Jacob Titus Chiluba (1998) ZR 79*<sup>10</sup> the court held that:

*“Parliamentary election petitions were required to be proved to a standard higher than on a mere balance of probability and therefore in this, where the petition had been brought under constitutional provisions and would impact upon the governance of the nation and deployment of constitutional power, no less a standard of proof was required. Furthermore, the issues raised were required to be established to a fairly high degree of convincing clarity”*

The evidence before me mainly consisted of testimonies of witnesses. The only document before the court was in the petitioner’s bundle of documents which document also failed the test of authenticity. **PW16** who was more of an independent witness than **PW15** attempted to tender the document in court however, he told the court that the document was not that which was produced and signed after the meeting of 23<sup>rd</sup> June, 2021, whose deliberations it was meant to represent. I have no doubt that it was not an authentic document.

The respondent has attacked the credibility of the petitioner's witnesses stating that they were inconsistent and their testimonies contradicted each other. As stated in a Ugandan case of *Nabukeera Hussein Harifa v Kibule Ronald and another (2011) UGCH 72* cited by my learned sister Justice Kaoma in the case of *Christopher Kalenga v Annie Munshya and two others 2011/HK/EP/03*<sup>11</sup> where the court stated as follows:

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

I tend to agree with Counsel for the petitioner that the differences of where one witness say the money was given by Dr. Chilufya and the other goes on to state that the driver to Dr. Chilufya is the one who went to the car to get the money can hardly be referred to as conflicting statements. I think what was important in this regard was the source of the money. The witnesses both pointed to Dr. Chitalu Chilufya as the source. In addition, the issue of who in particular introduced the PF delegation to the congregation is immaterial. As Counsel for the petitioner has stated, there was no description of the Church Council; father Kanja might as well have been a member of the Church Council.

I cannot say that I took issue with the credibility of the petitioner's witnesses. It was pointed out even during trial that the petitioner's witnesses, except **PW15** were non-partisan. This was also put to the respondent in cross examination and her answer was in the affirmative that it had been said that all the petitioner's witnesses except **PW15** were non-partisan. This evidence remained unchallenged.

On the other hand, the record will also show that all of the respondent's witnesses were the respondent's party members and one employee, **RW3**, the respondent's body guard. The record will also show that almost all the respondent's witnesses stated that other witnesses were not telling the truth on one point or the other. In my view there were more inconsistencies and contradictions in the respondent's witnesses than the petitioner's witnesses.

Nonetheless, as stated earlier, the onus is on the petitioner to prove what he is alleging. As stated by Ngulube, DCJ, as he then was, in the case of *Khalid Mohamed v The Attorney General (1982)* ZR 49<sup>12</sup>:

*"A plaintiff must prove his case and if he fails to do so the mere failure of the opponent's defence does not entitle him to judgment. I would not accept a proposition that even if the plaintiff's case has collapsed of its own inanity or for some reason or other, judgment should nevertheless be given to him on the ground that a defence set up by the opponent has also collapsed. Quite clearly a defendant in such circumstances would not need a defence."*

As already stated in the case of *Sikota Wina and others*, the issues raised by the petitioner are required to be established to a fairly high degree of convincing clarity. It is a requirement that cogent evidence is adduced.

By stating this, I am not, by any means changing my mind on the credibility of the witnesses. I actually found the witnesses credible. I am alive to the fact that some of them, maybe two would speak of the same incident, in particular the respondent's attendance of mass at Lubwe and Kasaba, where sums were allegedly given out (*PW2* and *PW3*). However, some of the witnesses gave evidence in isolated incidences concerning the respondent and her agents dishing out money.

I agree that in this world of technology, perhaps videos, photographs of these incidences would have assisted the court a great deal. Even as suggested by Counsel for the respondent, evidence of reports to the CMC, would have also helped this case. For instance, *PW1* merely told the court that there were minutes in the bundle to show the respondent or her party were involved in bribery, corruption and malpractices. He did not bring any written complaints, reports to authorities, photographs to show the malpractices. Similarly, there was no photographic evidence or otherwise to show the respondent distributing mealie meal in Lubwe.

In addition, the petitioner cannot ignore the statutory laid down procedure to assist in curbing the malpractices and misconduct.

and only wait to petition the election. Even in an unfortunate event that the CMC ignored or neglected to resolve the complaint presented to them, that report would act as proof in case of future litigation as is the case now. For example, in demonstrating the issue of GOZA **PW15** pointed to a complaint that was lodged with the CMC. Even though there were no minutes on record to back this assertion, there was evidence from the Chairperson of the CMC, **PW16**, which corroborated this piece of evidence.

In fact, one issue that was made very clear by the petitioner's witnesses was the existence of GOZA. This especially on the evidence of **PW16**, who was a totally independent witness and gave his evidence dispassionately. In addition, **RW4** also said when he inquired about the existence of GOZA from the Council Secretary who told him that the organization existed but was not accredited by ECZ.

The question is whether there was a relationship between the respondent and GOZA. As outlined above, **PW7** told the court that his half brother told him that the respondent was the one who instructed him to register people. Similarly, **PW8** was also told by his nephew Tambanazo that they had been sent by the respondent to register people under GOZA. **PW9** also testified that the respondent told the headman at Chimanda village that she would and actually did bring food stuffs, which was food promised to be fed to those who were registered under GOZA. **PW10** was also told by the GOZA members that he interviewed

This is, in my opinion not sufficient evidence to connect the respondent to GOZA.

Moreover, the issue of the presence of GOZA representatives in the polling stations without the accreditation of ECZ is an issue that can only be resolved by ECZ itself.

In the case *Giles Chomba Yamba Yamba v Kapembwa Simbao, Electoral Commission of Zambia and the Attorney General* already referred to. In interpreting *section 97(2)(b)* the Court stated the following:

*"It is unequivocal that section 97(2)(b) relates to non-compliance with the provisions of the law in the conduct of elections. It calls for the annulment to elections in the event that there has been non-compliance with the principles laid down in the Electoral Process Act in as far as the conduct of elections is concerned. The question then arises, who has conduct of elections? The answer in our view lies in Articles 229(2)(b) of the Constitution of Zambia.... It reads:*

*"(2) The Electoral Commission shall...(b) conduct elections and referenda"*

*Thus, the Constitution expressly gives the function to conduct elections to the Electoral Commission of Zambia (ECZ). According to its preamble, the Electoral Process Act was enacted to, inter alia, provide for the conduct of elections by the Electoral Commission of Zambia. The ECZ must fulfill this function by ensuring that the requirements of the Electoral Process Act are respected and observed in the Electoral process. Section 97(2)(b) therefore concerns non-compliance to the provisions of the Act by ECZ, the body charged with the conduct of elections under Article 229(2)(b) of the Constitution, and not the candidates to an election or their agents.*

*On the whole we do not agree that section 97(2)(b) is open ended as asserted by the Appellant and find this claim misconceived."*

In this case, it is clear that ECZ is not a party to this matter and therefore they cannot be brought in. There was an attempt by the petitioner to join ECZ but that was not done.

The issue remains, has the petitioner proved to the satisfaction of the court that the respondent personally committed a corrupt or other misconduct in relation to the election or that the corrupt or illegal practice or other misconduct was committed by another person with the respondent's knowledge and consent or approval or with the knowledge or consent or approval of the respondent's election agent or polling agent? In the details of the acts attributed to the respondent it was said that she was distributing money by nine of the sixteen witnesses called by the petitioner. Two witnesses testified that they saw the respondent bribing and unduly influencing the electorates. That others seen distributing money were Dr. Chitalu Chilufya the Co-ordinator of the Presidential campaign team in the province and Mr. Vincent Mweni who was said to be the campaign manager and agent to the respondent.

Having established that there was insufficient evidence connecting the respondent to GOZA, I now proceed to make my findings on the allegations raised by the petitioner of bribery and undue influence. I do so bearing in mind firstly that I cannot say that I took issue with the credibility of the petitioner's witnesses.

Secondly, that I am alive to the fact that most of the witnesses gave evidence in isolated incidences concerning the respondent and her agents dishing out money.

### **Undue influence**

Based on the totality of the evidence before me, I am of the considered view that the Petitioner has established his allegation that there was some degree of undue influence used on the part of the respondent.

The learned *Authors of Halsbury's Law of England at Paragraph 784* stated that:

*"In order to constitute undue influence a threat must be serious and intended to influence the voter but it would appear that the threat should be judged by its effect on the person threatened and not by the intention of the person using the threat." Therefore, a threat may amount to undue influence even though the person using the threat has no power to carry it out."*

The court heard from the Petitioner's witnesses that they were threatened that if they did not vote for the respondent, they would stop receiving social cash transfer. Social cash transfer is a means of survival for Zambians with limited means. What I have considered is the effect that this threat had on those receiving such help (being the aged and vulnerable in our society).

Accepting what was stated by the learned Authors of Halsbury Law cited above, even though the respondent stated that the giving of

social cash transfer cannot be withdrawn as it was provided for by law, this is not enough. This for all I know was only information known to her and not the people she was asking to vote for her. The learned authors stated that a threat may amount to undue influence even though the person using the threat has no power to carry it out. I totally agree with this position.

I am therefore of the considered view that the petitioner has succeeded in establishing the allegation of undue influence through the evidence of credible witnesses, with the requisite clarity and standard of proof required under the relevant applicable laws referred to.

### **Bribery**

Whether or not there was bribery which took place in the form of vote buying which according to the evidence before me took the form of giving out cash, it is similarly, my considered view that the petitioner has succeeded in establishing his allegation regarding acts of bribery within the requisite clarity and standard of proof required under the relevant applicable laws.

*2) Whether the alleged malpractice was widespread and the majority of voters in Chifunabuli Constituency were or may have been prevented from electing a candidate of their choice.*

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*2) Whether the alleged malpractice was widespread and the majority of voters in Chifunabuli Constituency were or may have been prevented from electing a candidate of their choice.*

The Supreme Court of Zambia had occasion to pronounce itself on what amounts to an act being wide spread. In the *Austin Liato* and in *Jonathan Kapaipi V Newton Samakayi* cases the Constitutional Court cited with approval the case of *Mubika V Poniso Njeulu*,<sup>13</sup> in which the Supreme Court said:

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

In the *Nkandu Luo* case, the Constitutional Court went on to state as follows:

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

In this regard, the court cited the case of *Austin Liato v Sitwala Sitwala*, *Selected Judgment No. 3 of 2018*<sup>14</sup> in which it was held that:

*“It is not sufficient for a petitioner to prove only that a candidate committed an illegal or corrupt practice or engaged in other misconduct in relation to the election with proof that the illegal or corrupt practice or misconduct was widespread and prevented or may have prevented the majority of the voters in the constituency, district or ward from electing a candidate of their choice.”*

The court affirmed this position.

The term “widespread” was defined in the case of *Sunday Chitungu Maluba v Rodgers Mwewa and Attorney General CCZ Appeal No. 4 of 2017*<sup>15</sup> The Constitutional Court in this case stated as follows:

*“To appreciate what is meant by majority we resorted to its natural and ordinary meaning found in W H Smith Concise Oxford Dictionary wherein the majority is said to be the greater number of a part.*

*It is also pertinent to note that the word is used only with Constable nouns. The numerical sense of “Majority” has been further elaborated through the line of the term “widespread”. In the W H Smith Concise Dictionary widespread means widely distributed or disseminated.”*

Further in *Anderson Kambela Mazoka and Others V Levy Patrick Mwanawasa & Others (2005) ZR 138*<sup>16</sup> the Supreme Court shed light on what widespread means by stating that:

*“Since a Presidential election involves the 150 constituencies the petitioners must prove electoral malpractices and violations of electoral law in at least a majority of the constituencies.”*

To prove that vice of malpractices and misconduct were wide spread, Counsel for the petitioner submitted that the petitioner

was able to bring 15 witnesses from 9 out of 13 wards of Chifunabuli Constituency. From these wards the registered voters were stated as follows:

- (i) Chinkutula -5,860 registered voters
- (ii) Lubwe- 4,517 registered voters
- (iii) Kasaba- 4,105 registered voters
- (iv) Chifunabuli- 3,818 registered voters
- (v) Kafumbo- 3,211 registered voters
- (vi) Kasansa- 3,204 registered voters
- (vii) Masonde- 2,987 registered voters
- (viii) Kapeshi- 2,653 registered voters; and
- (ix) Kasongole- 2,327 registered voters

It was also Counsel's contention that the respondent won with over 18,000 votes against the petitioner who had 7,000 out of 29, 688.

Counsel went on to provide the numbers of registered voters in the wards from which they did not bring any witnesses Mbabala with 2,042 registered voters; Chishi with 3,061 registered voters, Mubansenshi with 2354 registered voters and Kapamba with 2,350 registered voters. It is clear from these figures that the wards where the petitioner did not call witnesses from were smaller in terms of registered voters in comparison to the wards where witnesses were called.

Counsel for the petitioner further quoted **PW13** who testified that the activities of GOZA were effective as the objective was met, which was to ensure that the respondent won the election.

On the other hand, the Counsel for the respondent submitted that only 17 witnesses out of a total of 41,504 registered voters, 15 of who were brought from 9 wards out of 13 wards was not enough to conclude that the malpractices and misconduct was wide spread.

During trial, Counsel for the petitioner endeavoured to ask almost everyone of the petitioner's witnesses how many people would be present during the time it was alleged that the respondent and her agents were dishing out money and other materials, an act that was considered vote buying. The answers for almost all of them was without precision. Most of them said "more than 200", "between 400 and 500". It was only **PW10** who testified with precision concerning the numbers in his village. His testimony was that there were 332 registered voters in his village and each of the five GOZA members registered 50, this amounted to 250 voters and only leaving 82 unregistered. However, **PW10** only spoke of his village, not a ward, district or indeed, the constituency.

In my opinion, this second threshold is even harder to surmount. I know that it is not intended that the petitioner must state with mathematical precision the number of those who were influenced but should nonetheless show that the majority of people were or may have been prevented from voting for a candidate of their choice.

Compared to the numbers of registered voters in the respective wards, numbers of 200 or 300, 400 to 500 can hardly be considered the majority. In any case, these are just estimated numbers of people who were said to have been in receipt of money, food stuffs and other materials from the respondent and her agents, or indeed those registered by GOZA representatives.

Although all the petitioner's witnesses testified that they voted for the respondent because of the money they received, their testimonies cannot be generalized. There are people who understand that their vote is a secret, whatever they may be told, they may still vote for a candidate of their choice. I, however, understand that it is possible that some people may have been intimidated and coerced into voting for the respondent because of the presence of GOZA representatives in the polling stations.

Having looked at the evidence in totality and having found that there is cogent evidence to prove that bribery and undue influence has been proven the issue remains with whether it was at a high scale that would be seen to have adversely affected the election

Furthermore, a turnout of 29,688 voters out of 41,504 registered voters, does not say much about the kind of aggression portrayed to ensure that the respondent was voted into power.

It is apparent that the bribery and the undue influence of voters was not widespread as it was often restricted to a small group of people whose size the court was left to speculate. In my view it has

no significant bearing on the result of the constituency, the district or the wards.

I am of the view that the petitioner did not meet this threshold in convincing this court that the majority of the voters were prevented from voting for a candidate of their choice.

Therefore, the requirement that the majority of voters were or may have been influenced by the malpractice of the respondent or her agent has not been proved.

***3) Whether the petitioner is entitled to the reliefs sought.***

I fully understand and appreciate that voting should be such that it should be without unreasonable restrictions and violence or threat of violence and undue influence which has characterised our elections in the recent past. All these restrict the enjoyment of exercising a citizen's right as envisaged in our Constitution and regional and international instruments which we have ratified. For all its worth, elections must be conducted fairly and freely within a framework of laws guaranteeing the effective exercise of voting rights. Further in order for elections to be free and fair *Article 45(2)(b) of our Constitution* provides that "elections should be free from violence, intimidation, undue influence and corruption." The nation should strive to ensure this.

Being free from violence, intimidation and undue influence speaks to the environment under which elections are held or ought to be held.

To state that citizens should enjoy the freedom to exercise their political rights in my view demands that there is still much to be done to ensure that the environment in which citizens exercise this right is conducive. In terms of electoral systems, electoral procedures there is still much that must be done to ensure that not only detailed methods, procedures and routines are created to carry out certain activities, but also there should be the performance of duties imposed on all to ensure that the citizen enjoy the freedom to exercise their political rights. A series of actions or steps must be taken in order to achieve a particular end. This includes but not limited to a closer look at the Electoral Act, the actions of political parties and the performance of the ECZ.

In the present case I am of the view that the Petitioner having failed to prove the second threshold of demonstration that the misconduct and malpractices carried by the respondent and her agent were widespread in Chifunabuli Constituency has not discharged the burden of proof imposed on him. The will of the people of Chifunabuli Constituency was expressed by the number of votes secured by the winning candidate Honourable Julien Nyemba and my primary duty is to sustain that will by giving full effect to the decision of the people of Chifunabuli.

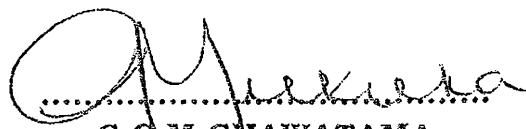
In choosing the respondent as their Member of Parliament it is left for me to say that she was validly elected as Member of Parliament in the election held on the 12<sup>th</sup> August, 2021.

I will make no order as to costs, as stated in the case of *Akashambatwa Mbikusita Lewanika and Others V Fredrick Titus Jacob Chiluba (1998) ZR<sup>17</sup>* concerning costs in Presidential elections and Parliamentary elections by extension, where it was stated by the Supreme Court that:

*"However, it is clearly in the proper functioning of our democracy that challenges to the election of President which are permitted under the Constitution and which are not frivolous should not be inhibited by unwarranted condemnation in costs.*

Leave to Appeal granted.

DELIVERED AT MANSA ON THIS 19<sup>TH</sup> OF NOVEMBER, 2021.

  
G.C.M CHAWATAMA  
HIGH COURT JUDGE