

0948 119598

0955965109

2021/1/17/2023

IN THE LOCAL GOVERNMENT ELECTION TRIBUNAL
HOLDEN AT LUSAKA
LUSAKA

(Constitutional Jurisdiction)

IN THE MATTER OF:

ARTICLE 47 (3), 153 (1) and 159 (3) of the
Constitution of the Republic of Zambia
(Amendment) Act No. 2 of 2016.

And

IN THE MATTER OF:

SECTION 72 (4) (B), 96 (1) (C) (I), 98 (C), 99
AND 100(3) of the Electoral Process Act No.35

And

IN THE MATTER OF: The Local Government Elections Tribunal Rules, 2016
Statutory Instrument No.60 of 2016

And

IN THE MATTER OF: Local Government Election for John Howard Ward 3 in
the Constituency, Chawama held on the 12th August,
2021

BETWEEN:

GABRIEL MWALE

PETITIONER

AND

PONSILIO PHIRI

1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2ND RESPONDENT

PETITION

**ELECTION FOR JOHN HOWARD WARD 3, CHAWAMA HELD ON THE 12th DAY
OF August, 2021.**

The Petition of **GABRIEL MWALE** whose address for service is House No: 102/16,
off Chifundo Road, John Howard **SHOWS THAT**:

1. Your Petitioner is a person who was a candidate at the aforesaid election.
2. And your Petitioner states that the election was held on the 12th day of August, 2021 when Ponsilio Phiri, Lukama Dorothy and Gabriel Mwale were candidates and the returning officer has returned Ponsilio Phiri, the 1st Respondent, as being duly elected.
3. Your Petitioner says that the 1st Respondent was not duly elected as the 1st Respondent and his agents committed the following illegal acts –
4. Your Petitioner says that between 5th and 10th July, 2021, the Petitioner and his agents had made a camp in their Command Centre-Patuka House used as a base by the UPND from 2015.

5. The person in charge of the food for people at Patuka House, a Mr. Godfrey Chitalu Simombe was in town buying plates and when he returned he found members of the 1st Respondent's campaign team Innocent Kalimanshi and Nathan Phiri. When he confronted them they drove off.
6. On the same day around 13:00 to 14:00 hours, the Petitioner's agents and campaign team which included Emma Mangala were cooking for the youths when they heard the members of the 1st Respondent's campaign team knocking including Innocent Kalimanshi. They then jumped the wall and opened the gate, broke windows of Patuka House where the cooking was being done they then grabbed all the pots and food, whilst Kalimanshi Innocent was in a car watching. The 1st Respondent's campaign team were saying that: "we do not want UPND in Chawama Constituency".
7. Your Petitioner further says that Andrew Zulu, the Constituency Chair for UPND was also present when the ordeal occurred and went with Godfrey Chitalu Simombe to report the incident at Chawama Police.
8. Your Petitioner says his agents later on saw the 1st Respondent's campaign team and agents who were acting with the consent and under the direction of the 1st Respondent with machets, hammers and slashers on their premises and told them to leave camp. The 1st Respondent's agents and campaign team got pots, broke glass, spilled soup on the walls and broke iron asbestos roofing sheets.
9. A lame person at the camp named Petro Siafunta had his wheel chair grabbed by the 1st Respondent's agents and campaign team as well as his bag which had his National Registration Card and other important documents depriving him of the opportunity to vote. They also grabbed a grinder and a mattress.
10. A week before elections, the 1st Respondent's agents and campaign team went with pangas near the UPND base led by Leonard, a PF cadre. The Petitioner's agents then ran to the police with the Petitioner and they failed to campaign that day even though on the time table it was their day to campaign.
11. The Petitioner, his agents and campaign team as well as the UPND members were not free to go on ground to campaign as on 14th July, 2021 a mob of PF members acting with the knowledge and consent and under the direction of the 1st Respondent wearing regalia approached the Petitioner's team when they were going on the ground and hit a man in the head with a stone, they also assaulted and beat up UPND members at Balmoral near Shonga Farm, some of the people assaulted were Ricky Habwato, Choolwe Malambo and Nchimunya.
12. Your Petitioner also says that on 14th July, 2021, PF members acting with the knowledge and consent and under the direction of the 1st Respondent attacked the Petitioner's agents when they were putting up posters for the

UPND President, The Petitioner and Potipher Tembo and one of the PF members who was throwing stones was apprehended. A further group of cadres came and punched Ericky Habwato on the mouth.

13. On 12th August, 2021 as the Petitioner was going round the polling stations, he went to Crawford Polling Station in John Howard around 07:00 where he found the former Head of State leaving after voting. At that particular station he found PF campaign fliers littered everywhere. They were also PF cadres campaigning as well as the 1st Respondent's agents, they were telling people to vote for the 1st Respondent and the PF President and they were chased by police and there were also people giving voters money from a bag.
14. Your Petitioner says that there were PF members acting with the knowledge and consent and under the direction of the 1st Respondent who were cooking for people after they had delivered Sacks of mealie meal, one 50kg Sack of meat and 14 chickens on 11th and 12th August, 2021 and they promised to continue until results were announced.
15. PF members acting with the knowledge and consent and under the direction of the 1st Respondent also distributed bags of mealie meal to many people within Chawama Constituency including John Howard Ward 3.
16. Mr. Nambula Mashebe, the UPND John Haward's Ward 3 Youth Chairman's car was badly damaged by members of the 1st Respondent's campaign team acting with the knowledge and consent and under the direction of the 1st Respondent during the filing in of nominations.
17. Your Petitioner states that they were unable to continue campaigning as each time they did, the 1st Respondent and his agents and campaign team would stone them.
18. **WHEREOF** your Petitioner prays that it may be determined that the said **1st Respondent** was not duly elected or returned and that the election was void.
19. And your Petitioner prays for –
 - (a) A declaration that the illegal practices committed by the 1st Respondent and his agents materially affected the election result.
 - (b) A declaration that the 1st Respondent was not duly elected.
 - (c) A declaration that the Petitioner was duly elected.
 - (d) An Order that the costs of the Petition be borne by the Respondents.

Dated at Lusaka this day of.....2021



PETITIONER

This Petition was settled by: _____

Messrs P N P Advocates

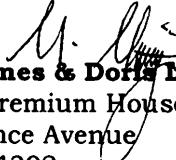
Plot No. 28

Mpulungu Road

Olympia Park

pnpadvocates1@gmail.com

LUSAKA



Messrs James & Doris Legal Practitioners

9th Floor, Premium House

Independence Avenue

P.O. Box 34302

jamesdoris.lus@gmail.com

LUSAKA

(Co Advocates for the Petitioner)