

**IN THE LOCAL GOVERNMENT ELECTIONS
TRIBUNAL HOLDEN AT LUSAKA**

2021/P/LGET/001

**IN THE MATTER OF: ARTICLE 47,153, 159 OF THE
CONSTITUTION OF THE REPUBLIC OF
ZAMBIA**

**IN THE MATTER OF SECTION 83 OF THE ELECTPRAL
PROCESSS ACT NO.35 OF 2016**

**IN THE MATTER OF SECTION 97, 98 AND 99 OF THE
ELECTPRAL PROCESSS ACT NO.35 OF
2016**

**IN THE MATTER OF THE LOCAL GOVERNMENT ELECTIONS
TRIBUNAL RULES 2016 (STATUTORY
INSTRUMENT) NO.60 OF 2016**

**IN THE MATTER OF THE SCHEDULE TO THE ELECTPRAL
PROCESSS ACT NO.35 OF 2016**

**IN THE MATTER OF THE ELECTROL (CODE OF CONDUCT)
REGULATIONS 2011 STATUTORY
INSTRUMENT NO.52 OF 2011**

**IN THE MATTER OF MAYORAL ELECTION FOR THE LUSAKA
DISTRICT OF THE LUSAKA PROVINCE**

BETWEEN:

VICTOR NYASULU

PETITIONER

AND

CHILANDO CHITANGALA

1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2ND RESPONDENT

CORUM:

**D. Makalicha, Chairperson
B. Mpalo, Member
F. Kamfwimbi, Member**

For the Petitioner:

Mr. L. Mwanabo and G. Haakainsi of Messrs
LM Chambers;
Mr. C. Mwiinga, Mr. Mutwene and D Banda of
Messrs Mark Partners

For the 1st Respondent Mr M.Zulu, J.Zimba and F.Daka of Messrs
Makebi Zulu Advocates
For the 2nd Respondent Mr. R. Mwala and S. Musonda of Messrs
AMW &Co. Legal Practitioners

JUDGEMENT

Cases referred to:

1. Abiud Kawangu v Elijah Muchima, Appeal No. 8 of 2017
2. Austin Liato v. Sitwala Sitwala, Selected Judgment No. 23 of 2018,
3. Brelsford James Gondwe v Catherine Namugala, SCZ Appeal No. 129 of 2012
4. Chrispin Siingwa v Stanely Kakubo, CCZ Appeal No.7 of 2017
5. Christabel Ng'imbu v Prisca Chisengo Kucheka, CCZ Appeal No.16 of 2017
6. Giles Chomba Yambayamba v Kapembwa Simbao, Selected Judgment No. 6 of 2018.
7. Lewanika and Others v Chiluba (1998) ZR 49
8. Mubika Mubika v Poniso Njeulu, SCZ Appeal No. 114 of 2007;
9. Nkandu Luo and the Electoral Commission of Zambia v. Doreen Sefuke Mwamba and the Attorney General, Selected Judgment No. 51 of 2018
10. Sibongile Mwamba v Kelvin M. Sampa, CCZ Appeal No.2 of 201

Legislation referred to:

1. The Electoral Process Act No.35 of 2016;
2. The Local Government Elections Tribunals Rules, Statutory Instrument No. 60 of 2016; and
3. The Electoral (Code of Conduct) Regulations, Statutory Instrument No.90 of 2016 as amended by the Electoral (Code of Conduct) (Amendment) Regulations, Statutory Instrument No. 35 of 2020.

Introduction

1. This is a Judgement for the Election Petition filed by Victor Nyasulu (herein after called ‘the petitioner’) against Chilando Chitangala (hereinafter called the 1st Respondent) and the Electoral Commission of Zambia (hereinafter called the 2nd Respondent) in which the Petitioner is seeking to annul the election of the 1st Respondent as Mayor for the Lusaka District.

Allegations

2. The petition and affidavit verifying the election petition were filed on the 23rd August, 2021. The allegations contained in the petition and affidavit verifying the petition can be summarised as follows:

Pre-poll day allegations

- (i) The first and only road show in Mandevu was disturbed by suspected PF supporters in Lusaka.
- (ii) Lack of free access to the Public Service Broadcaster, the Zambia National Broadcasting Corporation (ZNBC); and
- (iii) A number of incidences which negatively affected the Petitioners campaign. The following specific incidences were cited:
 - a) Attack of young men tasked to paste campaign posters in Kamwala South/Libala by Patriotic Front supporters;
 - b) Violence in Kabwata and Kanyama constituencies;
 - c) Pulling down of the petitioner’s billboard which affected the petitioner’s visibility to his potential voters; and
 - d) Obstruction of the roadshow in Matero;

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Poll day allegations

3. Violence and power outage on the evening of 12th to 13th day of August, 2021 at Mandevu totalling center.
4. Violence in Chawama resulting in the shooting of a UPND Youth Chairman

Post-poll day allegations

5. Irregularities and delay of results for the Mandevu constituency;
6. A request for a recount/verification which was ignored.
7. Other incidences in wards and constituencies across Lusaka district that negatively affected the mayoral results including at Nakatindi hall where a man was caught tempering with the mayoral votes.

Reliefs Sought

8. In light of the above allegations, the Petitioner prayed for the following reliefs:
 - (i) That the election of the 1st Respondent be declared void; and
 - (ii) That costs of and incidental to the petition.

Petitioner's Evidence

9. The Petitioner testified before the tribunal and called 10 other witnesses.
10. When the petitioner took the stand as PW1, he told the tribunal that he was relying on his petition and his affidavit in support.
11. In cross examination, PW1 conceded that the people he mentioned in his petition were suspected PF supporters and further conceded that the names of the said PF supporters were not given.

12. In further cross examination PW1 told the tribunal that there are 38 wards and 7 constituencies in Lusaka district and that he got this information from the Electoral Commission of Zambia statistics. When asked further questions, PW1 testified that a lot of people were congratulating him on social media and that on the basis of this he believed he had won the elections. However, he conceded that on the basis of ECZ results he had lost the elections.
13. When asked how many constituencies he had won in Lusaka, PW1 told the tribunal that he won three and that the 1st Respondent had won four of the seven constituencies. He mentioned the constituencies he had won are Kanyama, Kabwata and Lusaka central. He also agreed that the voter turnout was good and that it was about 60%. He further agreed that the majority of Zambians in Lusaka voted.
14. When asked about the wards in which the road show was conducted PW1 told the tribunal that it was in Kabanana, Chaisa, Roma, Mulungushi, Mpulungu and Justine Kabwe wards and that they were passing through all these wards. He conceded that he was only disturbed in Roma ward. When probed further PW1 conceded that the disturbance did not prevent the road show and that the road proceeded through the whole of Mandevu constituency and that it was a success. He testified that he was complaining about the road show because it was supposed to be free but it was disturbed. He testified

further that the UPND councilor won in Roma ward and he believes he won as well in that ward.

15. When asked whether he had complained to ZNBC for lack of coverage, PW1 responded that he wrote to ECZ. He further testified that he never wrote to ZNBC requesting to be covered but conceded that he was invited by ZNBC to feature on a program where all the seven candidates including the 1st Respondent were present.

16. When asked to confirm that there was load shedding in Lusaka, PW1 responded in the affirmative and further confirmed that all the candidates were affected by the load shedding.

17. The Petitioner's second witness was Phineas Kazonga, PW2. In his testimony PW2 stated that he was employed as a Presiding Officer for Matero Ward 1 and was stationed at Matero Community Hall Polling station. He testified that on the day before voting, around 22.00hrs to 23.00hrs PW2 was approached by a Mr. Lee Mukupa who told him that there were people who wanted to see him. He told the tribunal that he went to meet the said people who were in a black Range Rover. He went on and testified that when he entered the car, he noticed that there were three people inside and that among those he managed to identify one of them and he greeted him by his name. He testified that this person was GBM.

18. PW2 further told the tribunal that Mr. GBM told him that he had a parcel for him and handed him a box and when he looked inside he noticed that there were marked ballot papers. He stated that he compared with the ballot papers he had received from the Returning Officer and noticed that they were the same. He went on to tell the tribunal that he was told that the ballot papers were 8000 in total.
19. PW2 testified later that the pre-marked ballot papers were in three batches of mayor, presidential and Member of Parliament. He testified that he was told to fuse the pre marked ballot papers at the centre. He stated that he was told by GBM that 3000 of them were for mayoral and upon checking the ballot papers noticed that they marked for one candidate, that is, the PF candidate. He narrated that he was later handed a brown envelope which contained a bunch of K100 notes and told that if he accepted the deal he would get the money and in addition sent abroad.
20. PW2 informed the tribunal that he rejected that offer and upon rejection he was slapped on the face by GBM and ordered to get out of the car. He also informed the tribunal that one of the people in the Range Rover who sat in the back seat threatened to shoot him with a pistol. He said he later went back to his centre and briefed a police officer who was on duty.
21. PW2 also told tribunal that during the voting the following day, everything went well and after closing the polling station, the votes were counted and announced to the polling Agents

who were there and later he proceeded to the totaling center where he was cleared and later went home.

22. He testified that he was later called by the Returning Officer, Shepe Marglorious, because there was problem of man power at the totaling centre.

23. He told the tribunal that he was called to help out with recording the votes on the wall. He said the first center which he recorded was Galco- A-1 and that after recording the results for Mayor and MP, some party agents went to him and complained that some figures were wrong. He said he informed the Returning Officer and thereafter cancelled the votes for the Petitioner and wrote a new figure. He testified that after entering the new figure the UPND group went to him and told him that the results he had entered were wrong and another group came with a Gen 20 form which had a higher figure. He referred them to the Returning Officer who later instructed him to cancel and put a new figure.

24. PW2 further told the tribunal that there was another problem with Muchinga primary school in Muchinga ward where the Mayoral results were lost as they were not at the centre but that the Returning Officer used plan B and entered results from a Gen 20 which was presented by someone who was at the center at the time. He testified that at Olympic-4 the results could not balance but it was later clarified and corrected and that there was a similar problem at Cambridge.

25. It was PW2's further testimony that 3 days later the Returning Officer called him again and they met at Nakatindi Hall where he was given new forms to fill in as the old ones were not tallying and that he was told that these were the instructions from above. He testified that they wrote new forms and the old Gen 20 were torn and thrown into the bin. Later they were surrounded by the party officials and the police and taken to Lusaka Central Police where statements were recorded and they were later released.
26. In cross examination PW2 reiterated that he was the Presiding Officer at Matero Community Hall and further told the tribunal that there 1000 registered voters at that polling station and he had 1000 ballot papers for each category. When asked if he wanted the tribunal to believe that he was given 3000 pre marked ballot papers to put in a ballot box for a polling station with 1000 registered voters, PW2 responded in the affirmative.
27. PW2 further conceded that he could not vouch for the correctness of results at Moseni polling station because he was not there at the time of voting and further conceded that only presiding officer could confirm. When referred to the Record of Proceedings at the Totalling of the Votes for Mayor, exhibit 'VN1', PW2 confirmed that the results for Olympic-4 were balancing and further confirmed that the report shows that the results for all the candidates at Moseni 7 were recorded for all the candidates and did not reflect only results for PF and UPND candidates.

28. The witness was referred to the pre-poll day allegations of the petition and asked whether the allegations relating to GBM and threats to his life were there and he responded in the negative. When asked whether his allegations about Gulco, Olympic and all the polling stations were contained in the petition, PW2 responded in the negative. When further asked whether he had reported the alleged encounter with GBM to ECZ, the witness answered in the negative.

29. The next petitioner's witness was Elithia Monica Bwalya Mulenga, PW3. She testified that on 12th August, 2021, on the Election Day, at around 17.50hrs she was at Ngómbe Primary School when PF cadres came in two big busses and started making noise and wanted to beat people who were there. She testified that these people were trying to give a transparent bag which contained what looked like papers to a person called the chair. She told the tribunal that she called a police officer and later soldiers also came and that is how they managed to chase those people away.

30. PW3 further told the tribunal that on the 14th August, 2021 she was at the totaling centre in Mandavu as a local observer representing an organization called Universal Peace Federation. She testified that whilst observing the proceedings, she noticed that after the results were printed the results for councilor, presidential and MP for UPND and PF were swapped. She testified further that she asked a Mr. Chirwa why the results were changed but he did not respond. A person called Frank

came and asked PW3 why she was giving pressure to ECZ officials.

31. She also told the tribunal that later on that day, Ms. Chilando, the 1st Respondent, and Mr. Shakafuswa came with PF cadres and one cadre called Mika produced a gun and threatened to shoot PW3. Later they started spraying and beating everyone. Later police officers came and removed everyone from the center.

32. PW3 explained further that she was able to notice that results were being swapped because she had Gen 20 forms and she was able to compare the results on the print out of the records of proceedings with the Gen 20. She told the tribunal that she was the coordinator of all the monitors under Universal Peace Federation and all the monitors were handing over the Gen 20 to her. She explained further that after the changes, she approached Mr. Chirwa who said it was a mistake and that it would be corrected.

33. In cross examination PW3 confirmed that she was an observer and conceded that an observer is not an active participant in the electoral process. When asked whether she had brought before the tribunal the Gen 20 she was referring to, PW3 responded in the negative.

34. In further cross examination PW3 testified that she could not remember the number of wards whose results were swapped but that she was only able to remember the result for Mutambi

ward I. She further told the tribunal she could not remember the figures which were swapped. She however testified that Mr. Nyasulu won at Mutambi ward I.

35. Asked whether she compiled a report to her organisation, PW3 responded in the negative.

36. The next witness for the Petitioner was Domicious Mweene, PW4. He testified that he was fixing posters for UPND in Libala. He went on to state that there was time when the President for UPND was coming from Eastern Province and they met him somewhere in Chongwe and escorted him to his residence in New Kasama. This was on 30th July, 2021. That as he was going back home and when he reached the traffic lights along Ring Road near ZESCO waterworks he saw a vehicle in front of their vehicle and another one behind. He testified that the people inside the two vehicles were wearing PF regalia and they were saying “beware, beware” whilst hitting their vehicle. The witness testified that he was so scared that he jumped out of the car through the window and the moment he did that he was hit with a panga on the shoulder. He said he sustained a deep cut and later showed the tribunal a scar of the wound on the back shoulder.

37. PW4 further testified that police officers later went to the scene and took photos of a piece of cloth which had fallen down.

38. In cross examination PW4 conceded that the only reason why he suspected his assailants were PF cadres is because of the PF

regalia they were wearing. He also confirmed that he was able to vote on the Election Day from Kabwata and further conceded that he did not report the matter to the Electoral Commission.

39. PW5 was Benjamin Phiri whose evidence was presented through an affidavit wherein he deposed that he was part of the security wing for the UPND during and after the campaigns. He further deposed that on 12th August, 2021, on the voting day he went to the polling station around 03.30hrs in the company of eight other UPND supporters. He stated that he managed to vote around 10.00hrs and that around 14.00hrs, Tasila Lungu, the Patriotic Front parliamentary candidate for Chawama Constituency arrived in the company of four other people. That on their way out Tasila Lungu was escorted by one of the police officers who was given something that was wrapped in a black plastic bag.

40. The witness deposed that together with other people he became curious and followed the police officer so that they could find out what was in that bag. They discovered that the bag contained 3 PF branded T-shirts and they dropped the t-shirts on the ground for everyone to see. He stated that the incident was witnessed by a Mr. Banda who is a PF official.

41. The witness went on to state that a short while later, a vehicle arrived with cadres inside and spoke to the said Mr. Banda and later started advancing in their direction and asked whether there was someone by the name of Benja. PW5 deposed that he

was beaten and pepper sprayed together with the people he was with.

42. PW4 deposed that he later confronted Mr. Banda together with his colleagues and asked him why he had called PF cadres to intimidate them. He stated that in response Mr. Banda removed a gun and fired in the sky and later aimed at PW5 and fired but missed. He testified that Joseph Chomba Lwimba was in the process shot twice in the stomach. A medical reported marked **"BP1"** was exhibited.

43. It was also PW5's evidence that as a result of the shooting incidence, a good number of the voters who were on the queue at the polling station left out of fear and most of them did not come back.

44. In cross examination PW5 stated that he lives in Chilanga but votes from Chawama at JICA offices. He conceded that on the date of voting they were deployed to all the polling stations and they were about 30 at his polling station. He further confirmed that he did not leave the polling station after voting because he was protecting his vote. He also agreed that he was very alert at every suspicious thing and that this was the reason why they followed the police officer who had a black plastic bag.

45. When asked whether there was a fight between the PF and UPND supporters, PW5 responded in the affirmative and further confirmed that it was during the fight that gunshots were fired. When referred to exhibit **"BP1"** the witness

conceded that the same was not signed by a Doctor and when asked who won at JICA, PW5 responded that it was UPND. PW5 also testified during cross examination that he did not report the incident to ECZ.

46. The sixth witness for the petitioner was Athene Kanema, PW6 whose evidence was also presented through an affidavit. She deposed that she was appointed as Presiding Officer by the Electoral Commission of Zambia for Humanism-02 Polling station in Matero constituency. She deposed further that the results which were polled by each candidate were recorded in Gen 20a and Form ECZ 18 which were produced as exhibit “KA1a” and “KA1b” respectively. She stated that in the record of proceedings, the results for the UPND Candidate Mr. Victor Nyasulu were given to Chombela Clergy of the Democratic Party and that this information is contained in the Record of Proceedings marked “VN1” in the affidavit in support of Election Petition.

47. In Cross examination, PW6 stated that she did not know what transpired at the totalling centre.

48. Eunice Sakala was the petitioner’s seventh witness. Her evidence was also presented an affidavit. She deposed that on 6th June, 2021 whilst going for a UPND road show driving a Toyota Regius Plate number ACX 1999. That when the convoy reached an area called shilo in a place commonly known as Mai Chola, a number of vehicles for the Patriotic Front supporters came from behind and caught up with their procession and

blocked them. She stated that she was able to identify two of the PF supporters known by the names DAGI and TUTA.

49. She further deposed that the PF supporters disembarked from their vehicles with assorted weapons such as pangas, knobkerrie, etc. and started hitting vehicles which were on the UPND trail. That after the PF supporters had extensively damaged the car she was driving, they proceeded to open the tank and set the car on fire. She exhibited pictures of the said motor vehicle marked as "ES1". She stated that the event left her traumatised and scared that that she could not freely campaign for the UPND candidates including the Petitioner.

50. In cross examination PW7 confirmed that her vehicle was damaged by Dagi and Tuta and that she was not happy that her vehicle was damaged. She also told the tribunal that she went to state house but she did not report the matter to ECZ.

51. PW8 was Joseph Kabengele whose evidence also came through an affidavit. His evidence was that he was assigned the role of fixing posters in the Petitioners campaign team. He deposed that on 3rd June, 2021 while in the course of fixing posters at a place called Maria dams yellow shop area, a Toyota corolla, an altezar and two Toyota Hiace minibuses came and parked near PW8. Patriotic Front supporters came out of the buses and one of them stood facing him while another stood on his right and the other one was behind.

52. He deposed that he was beaten and asked if he was the team leader for those fixing posters. He stated that he was ordered to stop fixing posters since that was a PF territory. He said he was later picked in the bus which started driving towards a place called precious moments. That along the way he managed to escape from the moving bus through the window and dashed home.
53. He further stated that he was followed home and among the people that followed him the two of them were known by nicknames RB and Bwabwa who is also known as prince. He stated that these people stood guard against him but he managed to push RB and escaped through the wall fence. That he was immensely scared and stopped fixing posters for fear of being killed and that he later fled to Chipata in the Eastern Province of Zambia.
54. In cross examination, PW8 conceded that his medical report was not signed by a medical officer. He also testified that he was assaulted around 22.00hrs and confirmed that there was no one in court who assaulted him. He told the tribunal that he was assaulted by Prince, Boyd, Mika and RB. When asked whether he managed to vote, PW7 confirmed that he voted from Kamwala South and that no one stopped him from voting.
55. PW8 also confirmed during cross examination that the Petitioner won in Kamwala South and also conceded that during the voting day it was peaceful and there was no confusion. On further cross examination, PW8 conceded that he was campaigning for UPND and that he was brought by the

59. The next witness was Moses Kaluba, PW10. His evidence was also offered via affidavit. The evidence of this witness was mainly hearsay. The relevant aspect of his evidence was that he was a UPND member and that on 10th August, 2021 a meeting for UPND polling agents and monitors was convened at Pamodzi Christian School. It was his evidence that Gift Mwale was assigned the role of an usher for their meeting as polling agents and that at about 15.00hrs he saw four PF supporters clad in PF regalia approaching Gift Mwale. He deposed that the incident became hostile prompting the attendants of the meetings to come out. He further deposed that when they came out of the classroom the four PF supporters called their colleagues who were at a distance. They came with all sorts of offensive objects and charged at them and they scampered in all directions. He exhibited a medical report for Gift Mwale marked 'MK1'.

60. In cross examination PW10 confirmed that he was not Gift Mwale and conceded that he was not a police officer nor a medical officer and further conceded that only Gift Mwale could talk about the medical report. He also testified that he does not know the four PF supporters who went to the scene and further confirmed that he did not report the matter to the conflict Management Committee.

61. PW11 was Cassius Akapelwa who also swore an affidavit stating that he was the Petitioner's Elections Manager who assigned Joseph Kabengele (PW8), Jonathan Kasonde and Damiano Mwenya to be fixing posters. He deposed that on 3rd

June, 2021 PW8 and his colleagues were attacked and abducted by Patriotic Front officials by the name of Micah and Bwabwa at a place called Maria Dams of yellow shop. He also deposed that the said Micah and Bwabwa are currently undergoing trial for abduction and assault.

62. When cross examined PW11 told the tribunal that he was present when PW8 and the others were attacked but did not report the matter to the Conflict Management Committee of the Electoral Commission. He also told the tribunal that the Petitioner won the elections in Kabwata and that the turn out was good. He also told the tribunal during cross examination that the people who attacked PW8 and his colleagues were PF thugs and that he did not care whether they were police agents or not as long as they belonged to the PF.

63. PW11's testimony marked the close of the Petitioner's case.

Respondents Evidence

64. The 1st Respondent took the stand as RW1 and called five witnesses. She told the tribunal that she was relying on her Answer to the Petition and affidavit in support. In the said Answer to the Petition the 1st Respondent denied nearly all the allegations contained the petition and stated that she was declared as the duly elected candidate having received the highest number of votes cast.

65. Whilst on the stand the 1st Respondent also denied the allegation by PW9 stating that the meeting alleged by PW9 did

not take place. She also denied the allegation by PW3 stating that it was not true that PW3 met and spoke to her at Mandevu totalling centre. She also told the tribunal that she does know the people mentioned by the petitioner and his witnesses such as Micah and Bwabwa and that these were not her polling agents.

66. In cross examination the 1st Respondent told the tribunal that she was able to reach out to the electorate through posters, bill boards and flyers and that she also did presentations. She further told the tribunal that she had people who were assisting her by the name of Anna Minyoyi and chisanga, including her campaign Manager by the name of Mulenga Nkhata.

67. When asked whether she knew the people that her Campaign Manager was using, the 1st Respondent responded in the affirmative. She told the tribunal that the party did not give her people to work with but she was relying on the ones who were accredited by ECZ for the party. When asked whether she had any accreditation form from ECZ, the 1st Respondent answered in the negative.

68. In further cross examination, the 1st Respondent conceded that she did not encounter any problems and when asked whether she was affected by lack of media coverage, she told the tribunal that she was using facebook.

69. The 1st Respondent also admitted during cross examination that she was aware of the delay to announce the results for

Mandevu constituency for all the categories and confirmed that Kanyama results were announced earlier. When asked whether she was able to find out what caused the delay the witness responded in the negative. She also confirmed that she went to Mandevu totalling centre on Saturday and Sunday nights after the voting day. When asked what prompted her to go there, she told the tribunal that she had gone there just to check as she was a candidate. She further told the tribunal that she did not see any fighting or shooting as alleged by PW3. She however conceded that she was not at the totalling centre throughout until the announcement of the results.

70. The 1st respondent also confirmed during cross examination that her party had campaign centres in all the seven constituencies but stated that she did not know the names of the people that were in those centres. When asked whether she was aware that her party was distributing mealie meal, she responded in the negative but conceded that there was PF branded mealie meal in the country.

71. The second witness called by the 1st Respondent was Lee Kabaso Mukupa, RW2. His evidence was a rebuttal to the evidence given by PW2. He told the tribunal that he had never met PW2 on 11th August, 2021 as alleged and that during the alleged time he was not in Matero but at Honorable Miles Sampa's residence in Ibex Hill. He testified that he did not meet GBM on the material day and that in fact he had not seen him the whole year.

72. RW2 also told the tribunal that he was at the residence of Honourable Sampa because there was a meeting and there discussing several issues regarding elections on the following day. He testified that the people who attended the meeting included Crispin Kabole and Mike Gula.

73. In cross examination the witness was asked whether he had asked PW2 if he was the person PW2 was talking about during his testimony and he responded in the negative. When asked how he knew that his name was mentioned by PW2, the witness responded that he was informed by the 1st Respondent.

74. In further cross examination RW2 testified that he was a PF member which is the party he stood for as councillor for Muchinga ward 2. When asked whether he held any position in the party, RW2 testified that he is the Constituency Chairman for Matero North. He also testified that he was at Honourable Miles Sampa's residence from between 18hrs to 19hrs until around 03.00hrs the following day.

75. The next witness for the Respondent was Crispin Kabole, RW3. His evidence was that on 11th August, 2021 they had a program in Matero where the Party President was visiting the constituency. After the meeting he went to Honourable Miles Sampa's residence in the evening. He told the tribunal that they had gone there to finalise preparations for elections and the meeting ended early in the morning the following day. He further stated that RW2 was also in the meeting. He said he

would not agree if anyone said that RW2 was in Matero around 23.00hrs.

76. In cross examination RW3 confirmed that he was a PF member and said he was able to confirm that he was with RW2 on 11th August, 2021. He also testified that he never met GBM during the campaigns and could not even remember the last time he saw him. He further told the tribunal that he is the Party Constituency Chairman for Matero West. Asked whether he was also a candidate, RW3 responded in the affirmative and told the tribunal that he was a candidate for Mwembeshi ward 1.

77. The next witness was for the 1st respondent was Mr. Geoffrey Bwalya Mwamba, RW4. He told the tribunal that he got the information pertaining to PW2 from Camnet TV. He stated that he couldn't believe what he was listening to and hearing. He testified that on the day he was alleged to have met PW2, he was in Kasama where he had camped for more than three months after he was appointed by the Party President Dr. Edgar Chagwa Lungu as his Northern Province Coordinator. He testified that the only time he came to Lusaka was when he contracted Covid-19 and this was a month before election. He stated that he was in Lusaka for only 7 days and thereafter returned to Kasama.

78. RW4 told the tribunal that on 11th August, 2021, the day he was alleged to have met PW2, they were preparing to dispatch food to the polling agents in the entire province. He stated that

it was not possible for him to have travelled at night to come and meet PW2 as alleged. He testified further that besides Kasama airport has no lighting and no aircraft flies from that airport in the night and wondered what mode of transport he could have used to come and meet PW2.

79. RW4 also told the tribunal that though he has a black Range Rover, the said vehicle was in the garage at Alliance Motors during the alleged incident and was only released after payment was made on 23rd August, 2021. He produced as his evidence an Invoice issued by the towing company, a quotation from Alliance Motors and a receipt for payment from Alliance Motors which were marked as exhibits **R3**, **R4** and **R5** respectively.

80. In cross examination, RW4 told the tribunal that he was unhappy to be associated with the story of pre-marked ballot papers because it was fake and confirmed that he would not want to be associated with that allegation. When asked whether it was possible to be in Lusaka at 22.00hrs and vote the following day in Kasama using a helicopter, RW4 responded that it was not possible because a helicopter does have lights and that there is no lighting at Kasama airport.

81. The next witness was Christopher Shakafuswa, RW5 who testified that on the 14th August, 2021 he was at home waiting for the election results the whole day as he was a candidate in the just ended elections. He also told the tribunal that he was never in the company of the 1st Respondent on that particular day as alleged by PW3.

82. RW5 also told the tribunal that between 17th and 30th June, 2021 he was battling with Covid-19 and stated that it could not be true that he was engaging in campaigns during that period. He stated that he went to CFB Medical Centre on 17th June, 2021 where he paid for consultation and lab tests for Covid-19 and Malaria. He testified that he was put on oral drugs until 25th June, 2021 after which he was put on injections until 30th June, 2021.

83. He produced into evidence a receipt and a Covid-19 report from CFB Medical Centre which were marked as **R1** and **R2** respectively.

84. In cross examination RW5 conceded that he is a prominent figure in Mandevu and confirmed that the 1st Respondent and himself are from the same party and that they used to interact during the campaigns and they interacted about twice. The first time they interacted was when the 1st Respondent accompanied RW5 to Justine Kabwe ward. He testified that the second time he interacted with the 1st Respondent was when they met at the Raphael Chota ward when the Secretary General was meeting councillors and other party officials.

85. When asked how he was conducting his campaigns, RW5 testified that he had flyers for MP, mayor, councillor and presidential and that he was asking people to vote for them. He also confirmed that they had a campaign centre in Mandevu

and it was in Raphael Chota ward in Northgate Housing Complex.

86. When RW5 was asked on which date he tested positive for Covid-19, he told the tribunal that it was on 17th June, 2021 and that he quarantined himself thereafter. He denied that he was at the totalling centre on the 14th August, 2021.

87. RW6 was Prince Chama who told the tribunal that on 11th August, 2021 he left Ndola proceeding to Kasama to vote and that as he was starting off he phoned GBM informing him that he was on his way to Kasama. He told the tribunal that at that time GBM was in Kasama. He testified that he arrived late in the night in Kasama and that the following day he proceeded for voting. He testified that after voting on 12th August, 2021 he went to GBM's house but he was told that he had not come back from voting.

88. In cross examination, RW6 was asked to confirm that he was called to testify in order to confirm RW4's alibi and he responded in the affirmative stating that he was surprised when he heard the news on ZNBC suggesting that RW4 was in Lusaka on the 11th August, 2021. This was the last witness for the 1st Respondent.

89. The 2nd Respondent called two witnesses. The first witness was Mr. Alex Mwansa, RW7. He told the tribunal that he was the town clerk for Lusaka city and that he was testifying on behalf of the Electoral Commission of Zambia in his capacity as

District Electoral Officer and Returning Officer for the Mayoral Election. He told the tribunal that he was relying on the affidavit in support of the 2nd Respondent's Answer in which he denied the allegations against the 2nd Respondent and deposed that the elections were free and fair and not marred with irregularities as alleged.

90. In cross examination RW7 testified that tempering with bill boards, posters of a candidate in an election by an opponent amounts to an irregularity if it is reported to him. He also confirmed that distributing mealie meal in an election is an irregularity.

91. RW7 also confirmed that he received a letter from the petitioner requesting for a recount. He conceded that the letter was dated 16th August, 2021 and further confirmed that it was before the announcing of the results. He testified that he referred the said letter to the Chief Electoral Officer and copied the petitioner. He further told the tribunal that ECZ responded but that he did not receive a copy. He also confirmed that by the time the letter from ECZ was written he had announced the results.

92. When asked whether he was aware of the fracas at Mandevu, RW7 responded in the negative. In further cross examination RW7 told the tribunal that the Mayoral results were announced on 17th August, 2021 and when asked to confirm that the announcement of results went beyond 72 hours, he responded in the affirmative.

93. When asked whether he knew PW2, RW7 responded that he had heard about him but denied to have worked with him at Nakatindi Hall.
94. RW7 was asked to confirm that entering wrong results in the record of proceedings was an irregularity and he responded in the negative stating that it is a mistake and went further to state that where there is mistake there is process of verification.
95. When referred to exhibit "KA1a" and "KA1b" and exhibit "VN1" and asked to explain the inconsistencies, RW7 told the tribunal that he could not comment on "VN1" unless the official results which are prepared under his charge. He further testified that he could only confirm whether the verification was made if he checked from his official records and that he could not tell if "VN1" was before or after verification. He also told the tribunal that he could not vouch for the authenticity of "VN1".
96. The last witness for the 2nd Respondent was Shepe Maglorious, RW8 who testified that she was a Returning Officer for Matero constituency. RW8 testified about the process of conducting an election at the Polling Station and the computation of results at the totalling centre.
97. RW8 further told the tribunal that she never instructed PW2 to alter any results at the totalling centre.
98. In cross examination RW8 told the tribunal that she was superintending over the whole constituency and was going

round all the polling stations. She also confirmed that PW2 was one of the presiding officers in her constituency. She denied that there was ever a situation where she could not trace a Gen 20 at the totalling centre. She further confirmed that she was at Nakatindi Hall where the results were being verified. She confirmed that it is wrong to change information on the Gen 20 after submission by a Presiding Officer and added that it is not even possible to alter results because the results are announced at the polling stations and posted on the wall outside the polling station. She added that whatever one may do after that would differ with the results at the polling station.

99. RW8 further testified that she did not call PW2 to go to Nakatindi Hall stating that a message was sent by the Assistant Returning Officer to all presiding officers to go to Nakatindi because that was the day payments were expected. She denied the allegation that she called PW2 to go and change any information.

100. RW8 was the last witness for the 2nd Respondent and that marked the close of the Respondents' case.

Decision

101. We have considered the grounds of the Petition as contained in the petition and also the Answers filed by both the 1st and the 2nd Respondents. We have further considered the evidence adduced by all the parties and the submissions made in support of their respective cases. We now proceed to make a decision in this matter

102. The grounds upon which the election of a candidate as a mayor may be nullified by a tribunal are set out in section 97 (2) paragraphs (a), (b) and (c) of the Electoral Process Act No. 35 of 2016. Section 97 (2) provides as follows:

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

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

(i) by a candidate; or

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

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

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

the principles laid down in such provision and that such non-compliance affected the result of the election; or

(c)the candidate was at the time of the election a person not qualified or a person disqualified for election.

103. According to the above provisions there are three grounds upon which the election of a mayor may be declared void as prayed by the petitioner in this matter. The first ground is based on a *corrupt practice, illegal practice or other misconduct*. The second ground is *non-compliance with the provisions of the Electoral Practice Act relating to the conduct of elections*; and the third is based on *non-qualification of the Candidate*.

104. It is clear from the allegation contained in the petition and the submissions filled by the Petitioner that this petition is anchored on the first and the second grounds. We will therefore consider these two grounds and the evidence before the tribunal in arriving at the decision whether or not to declare the election of the 1st Respondent void as prayed.

105. At the outset we remind ourselves that the burden of proof in an election petition lies on the Petitioner who must establish the electoral offence complained of. We further remind ourselves that the standard of proof in an election petition is higher than that required in an ordinary civil action.

106. In the case of **Austin Liato v. Sitwala Sitwala, Selected Judgment No. 23 of 2018**, the Constitutional Court cited with approval the sentiments of the Supreme Court in the case of **Lewanika and Others v Chiluba (1998) ZR 49** wherein the Court asserted that it could not be seriously disputed that parliamentary election petitions have generally long required to be proved to a standard higher than on a mere balance of probabilities and that it followed that the issues raised were required to be established to a fairly high degree of convincing clarity.

107. In the case of **Brelsford James Gondwe v Catherine Namugala, SCZ Appeal No. 129 of 2012**, the Supreme Court reiterated that:

“the burden of establishing the grounds lies on the person making the allegation and in election petitions, it is the petitioner in keeping with the well settled principle of law in civil matters that he who alleges must prove. The grounds must be established to the required standard in election petitions namely fairly high degree of convincing clarity:”

108. The Constitutional Court in the case of **Abuid Kawangu v Elijah Muchima Appeal No. 8 of 2017** held with regard to the standard of proof that:

“The standard remains higher and distinct from that required in an ordinary civil matter but lower than the standard of beyond reasonable doubt required in

criminal matters. As the Supreme Court opined in the case of Lewanika and Others parliamentary election petitions are required to be proved to a standard higher than on a mere balance of probabilities and issues raised to be established to a fairly high degree of convincing clarity.”

109. With for the foregoing in mind, we will now consider the ground under section 97 (2) (a) of the Act.

110. Firstly, the Petitioner has alleged an illegal act in form of violence which is alleged to have happened before and during the poll day. As proof of the said violence the Petitioner produced a number of medical reports marked “VN3” and a letter from the Zambia Police marked “VN5” confirming two cases of malicious damage to property. Further the Petitioner called a number of witnesses to prove the allegation of violence. These included **PW3** Elithia Monica Bwalya Mulenga; **PW4**, Domicious Mweene, **PW5** Benjamin Phiri, **PW7** Eunice Sakaka; **PW8** Joseph Kabengele; **PW10** Moses Kaluba and **PW11** Cassius Akapelwa.

111. In terms of section 97(2) (a) of the Electoral Practice Act in order for this tribunal to nullify the election of the 1st Respondent as mayor the petitioner must not only prove that a corrupt practice or an illegal act or other misconduct was committed in connection with the preceding election but it must also be proved that the illegal act or misconduct complained of

was committed by the 1st Respondent or by her election agent or polling agent or with the 1st Respondent's knowledge, consent or approval.

112. Furthermore it is also a requirement under section 97 (2) (a) that where it is proved that a corrupt practice or illegal practice or other misconduct was committed by a candidate or with the knowledge and consent or approval of the candidate or that of the candidate's election or polling agent, the petitioner must further prove that as a result of that corrupt or illegal practice or misconduct, the majority of the voters in the constituency were or may have been prevented from electing the candidate in that constituency whom they preferred.

113. In **Nkandu Luo and the Electoral Commission of Zambia v. Doreen Sefuke Mwamba and the Attorney General, Selected Judgment No. 51 of 2018**, the Constitutional Court affirmed that:

“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...

114. The court went on to state that:

“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.”

115. In the case of **Mubika Mubika v Poniso Njeulu, SCZ Appeal No. 114 of 2007**, the Supreme Court stated that:

“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.”

116. This tribunal is bound by the principle of stare decisis and must strictly follow and apply the law as enunciated in the above authorities. Therefore in this matter the tribunal has considered firstly whether the petitioner in this matter has proved to a fairly high degree of convincing clarity that there was violence connected to the preceding elections of mayor for the Lusaka district. The tribunal has considered the evidence of PW5 Benjamin Phiri, PW7 Eunice Sakala, PW8 Joseph Kabengele and PW10 Moses Kaluba. It is clear from the evidence of these witnesses that there was violence associated with the election on 12th August, 2021. Although some medical reports exhibited as proof of the said violence were not signed by a Medical Officer, we are convinced that on the totality of the evidence, the Petitioner has established to a fairly high degree of convincing clarity that there was violence in connection with the preceding general elections including the mayoral election in which the 1st Respondent emerged as the winner.

117. The next issue to consider in line with the provisions of the law and the authorities cited above is whether the Petitioner has also satisfied the second requirement which is that illegal act (in this case the violence) was committed by the 1st respondent or by her election agent or polling agent or with the respondent's knowledge, consent or approval.

118. We have looked at the affidavit evidence of the Petitioner and also the evidence of all the witnesses for the petitioner and we have noted that apart from PW3, there is no evidence linking the 1st Respondent or poling or election agents to the violence alleged by all the petitioner's witnesses. For example, PW4 conceded in cross examination that the only reason why he suspected his assailants were PF cadres is because of the PF regalia they were wearing. PW5 Benjamin Phiri in his affidavit stated that a vehicle arrived with cadres inside and spoke to a Mr. Banda and that later he was beaten and pepper sprayed and a gun was fired by a Mr. Banda and in the process Joseph Chomba Lwimba was shot. PW7 Eunice Sakala stated that PF supporters disembarked from their vehicles with assorted weapons such as pangas, knobkerrie, etc. and started hitting vehicles which were on the UPND trail. She stated that she was able to identify two of the PF supporters known by the names DAGI and TUTA. PW8, Joseph Kabengele stated that while in the course of fixing posters at the place called Maria dams yellow shop area, a Toyota corolla, an altezar and two Toyota Hiace minibuses came and Patriotic Front supporters came out of the buses and started beating him and he was later picked in the bus which started driving towards a place called precious moments. PW10 Moses Kaluba told the tribunal that he saw four PF supporters clad in PF regalia approaching Gift Mwale and finally PW11 told the tribunal during cross examination that the people who attacked PW8 and his colleagues were PF thugs and that he did not care whether they were poling agents or not as long as they belonged to the PF.

119. It is clear from the above that there is no evidence to prove that the violence alleged by PW5, PW7, PW8, PW10 or PW11 was perpetrated by the 1st Respondent or her election agent or polling agent or with the respondent's knowledge, consent or approval.

120. Section 2 of the Electoral Process Act defines a candidate's 'election agent' and 'polling agent' as follows:

"election agent" means a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate's nomination paper."

"polling agent" means an agent appointed by a candidate in respect of a polling station."

121. Further, the Constitutional Court in the case of **Chrispin Siingwa v Stanely Kakubo, CCZ Appeal No.7 of 2017** held that regulation 55(1) of the Electoral Process (General) Regulations is clear in its provisions and requires that an election agent must be specifically appointed and named in the candidate's nomination paper.

122. The evidence of the Petitioner and nearly all of his witnesses is that the alleged violence was committed by Patriotic Front supporters or members. No single perpetrator of the alleged violence was identified as 'election agent' or 'polling agent' within the meaning of section 2 of the Act. The spirit of the law is that a candidate should not be held liable for acts of other

members of his/her political party or other persons who are not his election or polling agents.

123. We will now consider the evidence of PW3. The Petitioner has submitted that PW3 **“narrated how patriotic front cadres went and caused confusion at Ngombe basic school on 12th August, 2021. She narrated how she fled the polling station and went home for fear of falling victim to the violence.”** It is clear from the foregoing that PW3 does not place the 1st Respondent at the scene of the violence. It is also clear that none of the PF cadres were identified as being the election agent or polling agent of the 1st Respondent neither is there evidence that the alleged conduct of the cadres was with the knowledge and consent or approval of the 1st Respondent.

124. It was PW3’s further evidence that on 14th August, 2021 the 1st Respondent and Mr. Shakafuswa in the company of cadres went to the totalling centre in Mandevu and that whilst at the centre one cadre called Mika produced a gun and threatened to shoot PW3. We note that this evidence was disputed by both the 1st Respondent and RW5 Christopher Shakafuswa. Furthermore though PW3 testified that she was an independent observer representing an organisation called Universal Peace Federation, her role went beyond that of an ordinary election observer. This is evidenced by her active participation in the election process during and after the poll day and the extent to which was she able to engage with both electoral officials as well as political cadres. In view of the foregoing we find that

PW3 was a suspect witness whose evidence requires corroboration in order to exclude the danger of exaggeration or falsehood by such witnesses. In cross examination PW3 testified that she did not submit a report to her organization nor did she report the alleged violence to the Electoral Commission of Zambia and in the absence of such evidence we find that there was no corroboration to buttress her testimony.

125. Furthermore, notwithstanding our observation on the credibility of PW3, we have difficulties in finding that the evidence of PW3 is sufficient to prove to a fairly high degree of convincing clarity that the alleged threats by MIKA to shoot PW3 was with the knowledge and consent or approval of the 1st Respondent.

126. In view of the foregoing the allegation of violence has failed to pass the test under section 97(2) (a) and it is accordingly dismissed.

127. We have also considered the allegation of vote buying and Electoral Malpractice as submitted on behalf of the Petitioner. Although the Petitioner has not cited the specific ground under section 97(2) upon which this allegation is anchored, it is our view that vote buying and electoral malpractice maybe categorised as a corrupt practice or misconduct and therefore within the purview of section 97(2)(a) of the Act.

128. The evidence the petitioner is relying on for this allegation is that of PW2, Phineas Kazonga and PW9 Brian Malaza Phiri. We note that this evidence was strongly disputed by the Respondent's witnesses.

129. We will start with the allegation by PW2. Firstly the demeanour and evidence of PW2 fell below the standard required to prove a corrupt practice, illegal practice or other misconduct as prescribed under section 97(2) (a) of the Act. The tribunal noted that the demeanour of this witness was not good at all in terms of responses to counsel during cross examination. Further, the inconsistencies in his testimony relating to the alleged events of 11th August, 2021 did not help the petitioner's case. For example, on 10th September, 2021 he testified that he was given a "box" where there were pre marked ballot papers. Later when he took the stand for continued evidence in chief on 11th September, 2021, he testified that he was given a "brown envelope" which when he checked he found ballot papers.

130. We therefore find that the evidence of PW2 requires proper corroboration in the absence of which it is not safe to rely on his uncorroborated testimony. In addition, though the demeanour of PW2 has undoubtedly tainted his credibility, there is no evidence to show that the alleged conduct by GBM was with the knowledge and consent or approval of the 1st Respondent or that the said GBM was the 1st Respondent's election agent or polling agent.

131. We move on to consider the evidence of PW9 who testified that between 18th and 24th June, 2021, the 1st respondent together with Mr. Christopher Shakafuswa and with Elijah Mwenya convened a meeting at which he was directed to continue with the campaigns despite the suspension by ECZ and to distribute mealie meal and giving out money to the electorates. This evidence was disproved by RW5, Christopher Shakafuswa, who testified that during the alleged period he was battling with Covid-19 and produced evidence to that effect. However, since RW5 and the 1st Respondent are from the same political party their evidence must be treated with caution. Although naturally, the documentary evidence produced by RW5 in form of a receipt and Covid-19 report from CFB Hospital (exhibit R1 and R2) may suffice as corroborative evidence, we are inclined to reluctantly accept the evidence of PW9 and find that the vote buying using mealie meal and money was carried out on the instruction of the 1st Respondent and RW5.

132. Notwithstanding, we find that there is no evidence on record to prove that this specific malpractice or misconduct in one ward was also prevalent in the other 37 wards in Lusaka District or the said ward itself. We thus find the allegation of voting buying was not so widespread in that it swayed or may have swayed the majority of the electorate in Lusaka district from electing the candidate of their choice. In view of the foregoing, the allegation fails and it is also accordingly dismissed.

133. We will now consider the allegation of irregularities and changing or tempering of figures. The Petitioner has argued that there is overwhelming evidence of irregularities and changing of figures by the 2nd Respondent in favour of the 1st Respondent. Clearly this allegation cannot pass the requirements of section 97(2)(a) as there is no evidence that such irregularities and changing or tempering of figures was committed by the 1st Respondent and since the claim is that it was perpetrated by the 2nd Respondent, we will assess this allegations under section 97(2)(b) of the Act.

134. The requirements for nullification of an election under section 97 (2) (b) of the Act was addressed by the Constitutional Court in the case of **Christabel Ng'imbu v Prisca Chisengo Kucheka, CCZ Appeal No.16 of 2017** and also in the case of **Giles Chomba Yambayamba v Kapembwa Simbao, Selected Judgment No. 6 of 2018**.

135. The Court reiterated in the case of **Sibongile Mwamba v Kelvin M. Sampa, CCZ Appeal No.2 of 2017** that for the Court to nullify an election based on the fact that the election was not conducted substantially in conformity with the law, the non-compliance with the law should be such that it affected the outcome of the election.

136. In the petition before us the Petitioner is relying on the evidence of PW2 Phineas Kazonga and that of PW3 Elithia Monica Bwalya Mulenga, who both testified about the alleged alteration of results at the totalling centre in Matero and

Mandevu Constituencies respectively. The Petitioner is also relying on the evidence of PW6 Athene Kanema who testified about the discrepancy in results for Humanism-02 Polling station in Matero constituency as reordered in the Gen 20a and ECZ form 18 and the results appearing at the totalling centre as reflected in the Record of Proceedings at the totalling of the votes marked "VN1".

137. In addition, the Petitioner is relying on the allegation of the alleged refusal for a recount or verification of the results of Mandevu Constituency Mayoral results and also the alleged failure by the 2nd Respondent to safeguard Ballot papers during the power outage.

138. The question we must determine is whether, the alleged irregularities can lead to the nullification of the election of the 1st Respondent on basis that said the election was not conducted substantially in conformity with the law and that the non-compliance with the law affected the outcome of the election.

139. Firstly we have considered the fact that alleged irregularities relate only to two constituencies namely Mandevu and Matero constituencies from seven constituencies in Lusaka district. Secondly we have also taken into account the evidence of the Returning Officer for Mayoral Election, Mr. Alex Mwansa RW7 who stated that he could not confirm whether exhibit "VN1" was before or after verification.

140. In view of the foregoing we have difficulties in finding that that the Petitioner has satisfied the required threshold for proving substantial non-conformity with the law and also have further difficulties accepting that the alleged irregularities affected the outcome of the election as required under section 97(2) (b) of the Act.

141. As regards, the allegation relating to the 2nd Respondents failure to order a recount and verification of the results for Mandevu constituency, we have considered section 70 of the Electoral Process Act and we agree with the 2nd Respondent's submission that the procedure for making such a request was not followed as the Petitioner did not write to the specific Presiding Officer to ask for the recount or verification.

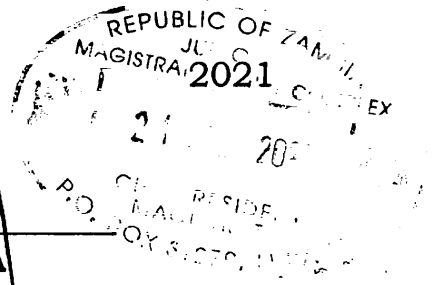
142. In view of the foregoing the allegation of non-compliance with the provisions of the Act relating to the conduct of elections has also failed and it is accordingly dismissed.

143. We therefore find that the Petition has failed on all grounds and declare that the 1st Respondent was duly elected as Mayor for the Lusaka District.

144. Each party to bear their own costs. Leave to appeal to the Constitutional Court if dissatisfied with this decision is hereby granted

Dated at Lusaka this

day of



A handwritten signature in black ink, appearing to be "D. Makalicha", written over a horizontal line.

HON. D. MAKALICHA
CHAIRPERSON

A handwritten signature in black ink, appearing to be "F. Kamfwimbi", written over a horizontal line.

F. Kamfwimbi
MEMBER

A handwritten signature in black ink, appearing to be "B. Mpalo", written over a horizontal line.

B. Mpalo
MEMBER