

**IN THE LOCAL GOVERNMENT ELECTIONS TRIBUNAL
HOLDEN AT MKUSHI NORTH
MKUSHI DISTRICT**

IN THE MATTER OF: THE ELECTORAL PROCESS ACT NUMBER 35 OF 2016
IN THE MATTER OF: THE LOCAL GOVERNMENT ELECTIONS FOR
MKUSHI COUNCILLOR CHALATA WARD HELD ON
12TH AUGUST 2021
IN THE MATTER OF: THE ELECTION OF BALM MWENYA AS WARD
COUNCILLOR

BETWEEN:

FELIX BEMBA

And

BALM MWENYA

ELECTORAL COMMISSION OF ZAMBIA



Petitioner

1st Petitioner

2nd Petitioner

**BEFORE THE LOCAL GOVERNMENT ELECTIONS TRIBUNAL FOR MKUSHI
NORTH**

F. KAOMA, N. M SIMACHELA, C.B MAIMBO

FOR THE PETITIONER: IN PERSON

FOR THE 1st RESPONDENT: E. KHOSA, BCM LEGAL PRACTITIONERS

FOR THE 2ND RESPONDENT: N/A

JUDGMENT

Legislation

1. The Electoral Process Act Number 35 of 2016

Cases

1. Abuid Kawanga v Elijah Muchima CCZ Appeal Number 8 of 2017

2. Steven Masumba v Elliot Kamondo Constitutional Court Selected Judgment Number 53 of 2017
3. Nkandu Luo, Electoral Commission of Zambia v Doreen Sefuke Mwamba and Attorney General, Constitutional Court Selected Judgment Number 51 of 2018
4. Jonathan Kapaipi v Newton Samakai, CCZ Judgment Number 114 of 2007
5. Mubika Mubika v Poniso Nseulu Constitutional Court Selected Judgment Number 114 of 2017
6. Richwell Siamunene v Gift Sialubalo Constitutional Court Selected Judgment Number 58 of 2017
7. Herbert Shabula v Greyford Monde Constitutional Court Appeal Number 13 of 2016

On 20th August 2021, the Petitioner filed a Petition before this Tribunal seeking the following relief;

- i) A declaration that the 1st Respondent was not duly elected as Ward Councilor and that his election is null and void;
- ii) Costs to be borne by the 1st Respondent;
- iii) Any other relief the Court may deem fit.

The Petitioner made the following allegations in his Petition:

- a) **During the campaign period, the then ruling party Patriotic Front (PF) through their Branch Chairman for Chibwemukunga Ward confirmed that the PF members went round the branches collecting voters' cards and national registration card numbers from the electorate who were promised to be given 2 x 50 kg bags of fertiliser if they vote for PF. The voters were told to vote for PF candidates because the fertiliser would be coming through the Councillor, then given to them. This gave the PF undue advantage**

because it is a rural area where the electorate depend on peasant farming and coupled with the current harsh economic conditions people turned up in large numbers to submit their national registration cards and voters card numbers.

- b) That on 3rd August 2021, the 1st Respondent gave out K200 at Mr. Moyenda's funeral house which was meant to mitigate the funeral costs
- c) On 11th August 2021 a cow was slaughtered to feed the electorate on 12th August 2021 and everyone was told that the criteria for someone to participate in eating, was that one should vote for PF. The feeding was done at Bana Chingele's house in *Chibwemukunga*, at *Victoria Mukwamba's house in Namabo*, at *Alineti's house in Kandao*, at Chikuba's house in Malali, at Chalata traditional gathering site for the chiefs advisors and at Bana Poti's house. This fact was witnessed by Mr. Kabwe and Bashi Mpundu who were beneficiaries of said food.
- d) On 12th August. 2021 during elections, the 1st Respondent using a motor vehicle registration number BCB 454 driven by Steward Kaloso and Japhet as the conductor was ferrying electorates to Kafwa polling station. This fact was witnessed by Collins Muzunga, Nchenje Ceed, Mr. Zulu a UPND Polling agent and the police office charged to man the station.
- e) Further on polling day between 13:00 hours and 14:00 hours, the PF Ward Chairman Mr. Mwansa was spreading falsehoods at Malali Polling Station where he announced to voters that the Petitioner was arrested by the police for being found in possession of pre-marked ballot papers. The defamatory statement was meant to erode confidence in the voters for the Petitioner and all UPND candidates. This fact was witnessed by Ebina Changwe.
- f) Mr. Kennedy Malunga a PF member continued campaigning on polling day by going to Chalata Polling station flashing his fist and holding a paper which was showing the

electorates and indicating to them to vote on the boat which are both PF symbols. This fact was witnessed by Morgan Mwiinga and Roy Bwalya.

The 1st Respondent filed her answer to the Petition on 27th August 2021 where she denied all the allegations. She averred that she did not participate in any malpractice and urged this Tribunal to dismiss the Petition with costs.

The Tribunal set the Petition down for hearing on 15th September 2021. At the hearing, the Petitioner called six witnesses.

The Petitioner's Case

The Petitioner testified that on 5th August 2021, there was a funeral at a place called Moyenda where an eight-year-old child named Diana Musonda had passed away. The Petitioner told the Tribunal that the uncle to the deceased gave the deceased's life-history and in that address proceeded to acknowledge and thank the 1st Respondent for giving K200 to the bereaved family. His evidence was that the speech by the uncle to the deceased was cut short when someone took the paper that he was reading from away.

He also told the Tribunal that on 11th August 2021, the PF party slaughtered a cow and shared the meat at Bana Marriot's house. It was his evidence that the person sharing the meat was Lawrence Mwansa, who was PF Ward Chairperson for Chalata Ward and that the said Mr. Mwansa was the 1st Respondent's campaign manager.

The Petitioner also told the Tribunal that on 12th August 2021, the 1st Respondent ferried voters from various places to the polling stations. It was his evidence that the 1st Respondent used Toyota Noah registration number BCB 454. He told the Tribunal that the person who was driving the said motor vehicle was the late Steward Chisenga, who passed away on 5th September 2021 in a road traffic accident with the same vehicle and it was destroyed in the accident.

It was the Petitioner's evidence that on 12th August 2021, Lawrence Mwansa who was the campaign manager and polling agent for PF at Malali Polling Station, told voters that the Petitioner had been caught with pre-marked ballot papers and had been detained by the police. Further, he said that on the same date, Kennedy Malunga, a member of the PF was campaigning at Chalata Polling Station. The Petitioner told the Tribunal that Kennedy Malunga was holding up a sticker with PF campaign material which he was showing to people that were in the queue and asking them to vote for the PF. It was his evidence that when the 1st Respondent arrived at the Polling Station, Kennedy Malunga went to her vehicle and they sat down together. The Petitioner told the Tribunal that among the people that the 1st Respondent ferried to the Polling Station was a lady named Finnes Chikubi who was unwell and is still unwell as at the hearing of the Petition.

In cross-examination, the Petitioner told the Tribunal that he was present at the funeral of the late Diana Musonda. He told the Tribunal that he did not know the names of her parents as they lived in another ward at Chungulo but were laying their daughter to rest at Chalata. It was his evidence that the parents of the late Diana Musonda were members of the UPND. When the Petitioner was questioned about people rendering assistance to bereaved families in the community, he accepted that it was a normal occurrence but it should not be announced to mourners gathered there.

When the Petitioner was cross-examined about the cow that was slaughtered, it was his evidence that the meat was given to members of the general public and not only PF members. He told the Tribunal that the meat was cooked at various points near Chalata Polling Station including the 1st Respondent's house and the place where traditional leaders meet. He said the meat was also prepared in Chibwemukunga, Nambo and Kandayo areas. It was his evidence that not all the places that mentioned were homes of members of PF.

When the Petitioner was asked whether he personally saw the 1st Respondent ferry voters to Kafwa, Malali and Chalata polling stations, he told the Tribunal that he did not see her but his witnesses did.

He also told the Tribunal that he was not physically present at Malali Polling Station when it was reported there that he had been arrested. He also told the Tribunal that he did not see Kennedy Malunga personally flash the PF symbol at the Polling Station.

PW 2 was Ebina Changwe. She told the Tribunal that she was a polling agent for the UPND at Malali Polling Station. Her evidence was that at around 12:00 hours on 12th August 2021, she saw a car belonging to a Mrs. Kaloso outside. She said three (3) people disembarked from that car namely the 1st Respondent, a Mr. Chikuba and a Mrs. Finess Mukubi who was unwell. The witness told the Tribunal that Mrs. Mukubi had been picked up and brought to the Polling Station so she could vote. She also told the Tribunal that between 14:00 hours and 15:00 hours, she was sitting with a Lawrence Mwansa who was the polling agent for the PF. His phone rang and when he answered his phone, he mentioned the name of the Petitioner. Upon her inquiry, Lawrence Mwansa told her that the Petitioner had been found with pre-marked ballot papers at Chalata Polling station. She said Lawrence Mwansa then went outside whilst talking on the phone. She said that when she followed him outside, the voters who were in the queue to cast their vote told her that they had been told by Lawrence Mwansa that the Petitioner had been detained by the Police for being in possession of pre-marked ballot papers. She then called the Petitioner to verify the information, She said the Petitioner asked her to go outside and put the phone on loud- speaker so that the voters in the queue could hear that he had not been detained. She said when she confronted Lawrence Mwansa, he insisted that the Petitioner had been detained that he was lying to her.

In cross-examination, she told the Tribunal that Mrs. Finess Chikubi was unwell and could not have managed to walk to the Polling Station to vote. She also told the Tribunal that she did not personally hear Lawrence Mwansa tell voters in the queue that the Petitioner had been arrested. It was her evidence that at Malali Polling Station there were 416 registered voters and that the 1st Respondent had obtained the highest number of votes at that Polling Station.

PW 3 was Pauline Stephenson. She told the Tribunal that at a funeral on 5th August 2021, she saw the 1st Respondent and Lawrence Mwansa bring three bags of mealie-meal, weighing 12.5 kilograms each, to the kitchen area. Her evidence was that this mealie-meal was relief food from the Office of the Vice-President, Disaster Management and Mitigation Unit (DMMU). She said that when the speeches were being given at the funeral service, the uncle to the deceased thanked the Respondent for assisting the bereaved family with K200 towards the funeral expenses. The speaker also mentioned that the 1st Respondent was a member of the Patriotic Front (PF). When the speaker wanted to continue with his speech, mourners got the notes from him.

In cross-examination, she told the Tribunal that the bags of mealie-meal were brought to the funeral house by Lawrence Mwansa and two other people she did not know. She testified that there were at least three hundred (300) people at that funeral. There was no re-examination.

PW 4 was Ceed Nchenje. He told the Tribunal that on polling day, 12th August 2021, he noticed that there was a Toyota Noah registration number BCB 454 driving around. He said after voting at Chalata Polling Station, he took food to the polling agents at Kafwa Polling Station. He said as he arrived at Kafwa, he met with the 1st Respondent and she was inside the vehicle in issue. PW 4 said he asked the 1st Respondent what she was doing at the Polling Station and she responded that she was waiting for voters who she was going to take back to their respective homes after voting. PW4 told the Tribunal that he asked the Presiding Officer whether the 1st

Respondent's presence there was lawful. His evidence was that the 1st Respondent was asked to move and she moved the car about a hundred (100m) away and parked it again. His evidence was that when he was going to vote at 05:00 hours, he also got a lift from the 1st Respondent in the same vehicle.

In cross-examination, PW4 told the Tribunal that he lives about two-hundred metres from the 1st Respondents home and that their houses are about four hundred metres from the Polling station. His evidence was that he did not flag down the Toyota Noah but the person driving offered him a lift.

The witness was not re-examined.

PW 5 was Godfrey Chibuye. He told the Tribunal that on 11th August 2021, a canter which was carrying the carcass of a cow came to the area where he lives. He told the Tribunal that this was at one of the feeding camps belonging to the PF.

His evidence was that the next day, on 12th August 2021, there was some cooking done in the feeding camps and only people who had voted and had the ink mark on their right thumbs could eat there. He told the Tribunal that he saw Lawrence Mwansa and Fanwell Chibesa, among other people present there. PW 5 told the Tribunal that he partook of the meat although he was not a member of the PF.

In cross-examination, he told the Tribunal that the meat was being shared at a feeding camp run by the PF. His evidence was that he did not know the number of feeding camps that were in Chalata Ward.

PW 6 was Martha Ngámbi. She told the Tribunal that there was a funeral at Moyenda Village on 5th August 2021. She said whilst she was at the funeral she heard the uncle of the deceased thank the 1st Respondent publicly for bringing K200 to the funeral.

In cross-examination, she told the Tribunal that her estimation was that there more than two hundred (200) people in attendance at the funeral.

PW 7 was Roy Bwalya. He told the Tribunal that on Polling Day, 12th August 2021, he was a Polling agent for the UPND at Chalata Polling Station. He said that when he went outside briefly, he met Kennedy Malunga holding a paper which had the PF party symbol which is a sailing boat. His evidence was that Kennedy then asked him to vote for the PF. His evidence was that when he left the Polling Station again between 15:00 hours and 16:00 hours, he found Kennedy Malunga again near the voters in the queue. He was raising his fist with the PF symbol. His evidence was that when Kennedy Malunga saw him, he moved away and stood next to the 1st Respondent.

In cross-examination, PW 7 told the Tribunal that both he and PW 3 were polling agents for the UPND. It was his evidence that he did not know if Kennedy Malunga was the registered election agent for the 1st Respondent.

Respondents Case

The 1st Respondent testified on her own behalf. She denied all the allegations made in the Petition.

Regarding the allegation that she gave the family of the late Diana Musonda K200 towards funeral expenses, she told the Tribunal that it was customary to assist bereaved families in the community and that one could not visit a funeral house empty-handed. She told the Tribunal that she did not take any mealie-meal belonging to the Disaster Management and Mitigation Unit (DMMU) to the funeral house.

On the allegation by PW 4 that she was ferrying voters around 05:00hours, she told the Tribunal that it was not true because she was voting at Chibwemukunga whilst PW 4 was in Chalata. She further testified that she had an obligation to ensure that polling agents were fed and that

was the reason that she was going around the Polling stations. She testified that on her way to Malali Polling Station she met a lady who was unwell and she was being carried on a bicycle to go and cast her vote. The 1st Respondent told the Tribunal that she thought it wise to give the woman a lift in her car. She told the Tribunal that she dropped the lady about 100 meters from the Polling station and she was assisted by others to go in and vote.

The 1st Respondent also stated that Kennedy Malunga was not her election agent. She told the Tribunal that her sponsoring party the PF created feeding camps in different wards to feed those who were going out into the community for door-to-door campaigns.

In cross-examination, the 1st Respondent admitted that a non-civil servant could not distribute mealie-meal or any other government resources. She told the Tribunal that she did not take any mealie-meal to the funeral home at Moyenda village and further, that it was against Electoral Commission of Zambia guidelines to ferry voters to Polling stations.

The 1st Respondent then closed her case.

When this Tribunal asked parties for their submissions, the Petitioner opted to rely on the evidence on Record whilst Counsel for the 1st Respondent made oral submissions.

Counsel for the 1st Respondent submitted that the Petitioner's evidence and that of his witnesses showed that the allegations in the Petition fell short of the minimum standard of proof required in an election Petition. Counsel submitted that the Petitioner's witnesses hailed from the Petitioner's political party, UPND and were therefore witnesses with an interest to serve. Counsel also submitted that the evidence of the Petitioner's witnesses had been discredited in cross-examination and could not therefore aid the Petitioner. It was Counsel's submission that the provisions of section 97 of the Electoral Process Act Number 35 of 2016 had not been satisfied to warrant the election of the 1st Respondent as Councillor for Chalata Ward to be

nullified. Counsel urged the Tribunal to confirm the election of the 1st Respondent as Councillor for Chalata Ward.

We are grateful to Counsel for his submissions which we shall consider as we distill the issues that the Petition raises.

It is important at this stage to set out the law that applies to election petitions;

Section 97 (2) of the Electoral Process Act number 35 of 2016 provides as follows;

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;

In 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**, the Constitutional Court stated as follows:

"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..."

The Court further said 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."

What constitutes illegal and corrupt acts in connection to elections are contained in Part VIII of the same Act in particular sections 81, 83, 84, 85, 86 and 87 as well as The Electoral Code of Conduct.

In particular Rule 15(1) (h) of the Electoral Code of Conduct provides as follows;

(1) A person shall not

(h) offer any inducement, reward or bribe to any person in consideration of such person—

(iii) voting or not voting

In proving his case, the Petitioner has the burden of proving his allegations of electoral malpractice to a degree of convincing clarity in order for this Tribunal to annul the election.

As the Tribunal considers this Petition, it is also important for the Tribunal to remind itself about evidence from witnesses from the same political party as the Petitioner or Respondent.

In the case of **STEVEN MASUMBA V ELLIOT KAMONDO SELECTED JUDGMENT NO. 53 OF 2017** the Constitutional Court offered the following guidance on the matter;

Witnesses from a litigant's own political party are partisan witnesses whose evidence should be treated with caution and require corroboration in order to eliminate the danger of exaggeration and falsehood

The Tribunal further reminds itself on the standard of proof required to be adduced by the Petitioner. In the case of **AUSTIN LIATO V. SITWALA SITWALA, SELECTED JUDGMENT NO. 23 OF 2018** the Constitutional Court stated as follows;

"We also reiterate that in any election Petition, just as in any civil matter, the burden of proof is on the petitioner to establish the electoral offence complained of. However, the standard of proof in an election petition is higher than that required in an ordinary civil action. A consideration of Zambian jurisprudence reveals that the evidence adduced in support of allegations made in an election petition must establish the issues raised to a fairly high degree of convincing clarity."

Having addressed our minds to the legal requirements, we now turn to an evaluation of the evidence before the Tribunal,

The Petitioner and his witnesses led evidence on five (5) allegations of the allegations in the Petition namely that:

- i) On 3rd August 2021, the 1st Respondent gave K200 to a bereaved family at Moyenda to mitigate funeral costs.

- ii) On 11th August 2021, a cow was slaughtered to feed the electorate on polling day and that for someone to partake of the meat they must vote for PF.
- iii) On 12th August 2021, the 1st Respondent ferried voters to the polling station using vehicle which had registration number BCB 454.
- iv) On 12th August 2021, the PF Ward Chairman Mr. Mwansa spread falsehoods at Malali polling Station where he announced that the Petitioner had been arrested by the police because he was found in possession of pre-marked ballot papers.
- v) A PF member, Kennedy Malunga continued campaigning on polling day at Chalata Polling Station by putting his hand in a fist which is the PF Party symbol and showing voters a picture of a boat, which is the PF Party symbol.

In order to annul the election of the 1st Respondent, the Tribunal must be satisfied that the 1st Respondent personally committed an illegal practice, corrupt practice or other misconduct or that the said illegal practice, corrupt practice or misconduct was committed with her consent or approval or that of her election agent or polling agent. If this is so established, the Tribunal must then consider whether the said misconduct was so widespread that it may have prevented the electorate from choosing a candidate whom they preferred. We will consider the evidence led on each allegation in turn below.

In the first allegation, the Petitioner alleged that on 3rd August 2021, the 1st Respondent gave the family of the late Diana Musonda K200 towards funeral expenses and that this was announced to mourners by the uncle to the deceased at the funeral service. This was confirmed by evidence from PW 3 and PW 6. The 1st Respondent did not deny the fact that she did give this money to the bereaved family and she added that it was customary to render assistance to bereaved families in the community. It was her evidence that she could not go to a funeral house empty handed and that is why she gave the family K200. PW 3 also told the Tribunal that the 1st Respondent brought mealie meal to the funeral house and that this mealie-meal was

brought to the kitchen area where she was, by a Lawrence Mwansa and two other people she did not know. On this allegation, we find that the 1st Respondent did give the bereaved family this sum of money but there was no evidence on Record that she influenced or procured the announcement of her donation to the mourners present by the uncle to the deceased. There was also no evidence of any message to mourners to vote for the 1st Respondent. By reason of the aforesaid, it is our finding that the 1st Respondent did not commit any corrupt practice, illegal practice or other misconduct and this allegation fails.

The second allegation was that on 11th August 2021, a cow was slaughtered to feed the electorate and the criteria for participating in the meal was that one had to vote for PF. The Petitioner told the Tribunal that the person who was sharing out the meat was Lawrence Mwansa. This allegation was confirmed by the evidence of PW5 who told the Tribunal that he saw a Canter bring a slaughtered cow to the area and that this meat was shared amongst the feeding camps in the area. He also told the Tribunal that on 12th August 2021, Lawrence Mwansa was present when voters were being fed after they had cast their votes. The 1st Respondent on the other hand denied having slaughtered the cow.

The law in section 81 of the Electoral Process Act and rule 15 1(h) (ii) proscribes the giving of any inducement, reward or bribe in consideration of a person voting and deems such as a corrupt practice or electoral misconduct.

According to Section 97 (2) of the Electoral Process Act, the first element that this Tribunal must satisfy itself with in order to annul an election is that a corrupt practice, illegal practice or other misconduct was committed by either the candidate or with the consent or approval of that candidate or of that candidate's election or polling agent.

In the case of RICHWELL SIAMUNENE V SIALUBALO GIFT (Constitutional Court Selected Judgment number 58 of 2017) the Constitutional Court stated as follows;

"In order for the candidate to be liable for the illegal practice or misconduct, it must be shown to be that of his official agent; there must be proof to the required standard that he had both knowledge of it and approved or consented to it or that his election or polling agent had knowledge and consented to or approved it."

The Constitutional Court also stated in the case of **HERBERT SHABULA V GREYFORD MONDE** (Constitutional Court Appeal Number 13 of 2016) that

Section 97(2) (a) (ii) of the Act as stated above is very clear as to when a misconduct can be attributed to a candidate. This where the candidate has knowledge of the misconduct and consents or approves of it or if the misconduct complained of was done by his election agent or polling agent.

The 1st Respondent denies the allegation of slaughtering and distributing meat in Chalata Ward the day before the polls and on polling day. This Tribunal must then address its mind to the role that Lawrence Mwansa played. The Petitioner gave evidence that Lawrence Mwansa was the Ward Chairperson for Chalata Ward for the PF and that he was the 1st Respondent's campaign manager. PW 2 also told the Tribunal that Lawrence Mwansa was also a polling agent for the PF at Malali Polling station. The 1st Respondent did not rebut this evidence. In fact, two persons were named by the Petitioner and his witnesses as carrying out certain activities on behalf of the 1st Respondent, namely the said Lawrence Mwansa and Kennedy Malunga. In her evidence, the 1st Respondent denied that Kennedy Malunga was her election agent but said nothing about Lawrence Mwansa. The Tribunal therefore draws the inference from the evidence on Record that Lawrence Mwansa was in fact the 1st Respondent's campaign manager, election agent and/or polling agent. It therefore follows that the corrupt practice and electoral misconduct of distribution of meat to voters was committed with the knowledge and

approval of the 1st Respondent's election and/or polling agent. We shall return to this issue shortly.

The third allegation in the Petition is that the 1st Respondent ferried voters to and from the polling station using motor vehicle number BCB454. The Petitioner told the Tribunal that the 1st Respondent ferried a lady named Finess Chikubi who was unwell at the time and was still unwell at the time of the trial. This was confirmed by PW2. The 1st Respondent's version of the event was that on her way to Malali Polling Station, she met a lady who was being carried on a bicycle to the polling station. She told the Tribunal that she learnt that the lady was unwell and since the 1st Respondent was carrying only food in her car, she offered this lady a lift to the Polling station. The evidence of PW 2 confirmed that she saw only two people disembark from the car, namely Finess Mukubi who was unwell and a Mr. Chikuba.

We accept the evidence of the 1st Respondent and find that she offered humanitarian aid to Finess Chikubi who was unwell and was being carried to the Polling Station on a bicycle. By reason of the above, it is our view that the Petitioner's allegation that the 1st Respondent was ferrying voters to the Polling Station was not proved.

The fourth allegation is that on 12th August 2021, the PF Ward Chairman Mr. Lawrence Mwansa, spread falsehoods at Malali Polling Station, that the Petitioner had been detained by the Police for being in possession of pre-marked ballot papers. PW 2 told the Tribunal that she sat with Lawrence Mwansa, who she described as a polling agent for PF. Her evidence was that Lawrence Mwansa's phone rang and when he answered he mentioned the Petitioner. She said when she inquired Lawrence Mwansa informed her that the Petitioner had been found with the pre-marked ballot papers. Her evidence was that when she went outside the voters in the queue told her that they had been told about the Petitioner's detention by Lawrence Mwansa. When she was cross-examined, PW 2 told the Tribunal that she did not hear Lawrence Mwansa

tell the voters about the Petitioner's alleged detention but the voters in the queue said they heard this from Lawrence Mwansa. The view of this Tribunal is that a witness who was on the queue at that time should have been called to testify as to what they had been told by Lawrence Mwansa. In the absence of that evidence, the Tribunal finds great difficulty in ascribing this statement to the 1st Respondent or her polling agent. This allegation therefore fails.

The last allegation was that a PF member, Kennedy Malunga continued campaigning on polling day at Chalata polling Station by putting his hand in a fist which is the PF Party symbol and showing voters a picture of a boat, which is the PF Party symbol. PW 7 gave evidence on this allegation and told the Tribunal that whilst at Chalata Polling Station as a polling agent for the UPND he observed a man who he knew as Kennedy Malunga who had a paper with a sailboat on it which sailboat is a known symbol for the PF. His evidence was that he observed this again around 15:00 hours. In the absence of corroboration of this evidence by way of a voter who was in the queue at the time, our finding is that this allegation has not been proved to the required standard. Further the evidence from the Petitioner and his witnesses was that Kennedy Malunga was a merely member of the PF. The 1st Respondent told the Tribunal that Kennedy Malunga was not her election agent and we accept her evidence on this issue. This allegation also fails.

We now return to the Petitioner's allegations regarding the slaughtering of a cow and the distribution of meat in Chalata ward. This Tribunal found above that this was a corrupt act and electoral misconduct intended to procure the votes of voters as provided for in Section 81 of the Electoral Process Act and the Rule 15 (1) (h)(ii) of the Electoral Code of Conduct.

Having made this finding, we now turn to the second question for determination under Section 97 (2) of the Electoral Process Act. This is whether the proven corrupt act prevented voters

in the ward from electing the candidate they preferred. We repeat the guidance of the Constitutional Court in the **NKANDU LUO** matter cited above where the Court stated 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.”

In the case before this Tribunal, PW 1 the Petitioner told the Tribunal that the meat was distributed to the general public and prepared at various points near Chalata Polling Station, including the place where the Chiefs and traditional leaders meet. He also told the Tribunal that the meat was also prepared near Malali Polling Station at various points and some of these places were not the homes of PF members. This evidence went unchallenged and was further confirmed by the evidence of PW 5 who told the Tribunal that he was among the group of people that partook of the meat. The presence of these places where food was being prepared and served in Chalata Ward was also confirmed by the 1st Respondent in her evidence.

We therefore find that the distribution of meat to voters in Chalata Ward on 11th August 2021 and on polling day 12th August 2021 with the participation, approval and concurrence of Lawrence Mwansa, the 1st Respondent's election agent and/ or polling agent was widespread. The view of this Tribunal is that this widespread distribution of meat to voters in the Ward may have prevented voters in that Ward from choosing a candidate whom they preferred.

We have also considered the provisions of **Section 97(3) of the Electoral Process Act** and find that the 1st Respondent's evidence did not demonstrate that she or her agent Lawrence Mwansa made any attempt to stop the distribution of meat to voters in Chalata Ward or to disassociate themselves from the activity.

By reason the matters aforesaid, the Tribunal finds that this Petition is successful and that the election of the 1st Respondent as Councillor for Chalata Ward in Mkushi North is null and void.

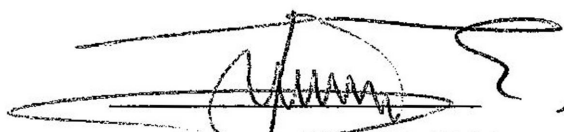
We make no order as to Costs.

The 1st Respondent is hereby informed of her right to appeal to the Constitutional Court within **fourteen (14)** days of this Judgment.

Dated at Mkushi this

day

2021



HONOURABLE F. KAOMA

Tribunal Chairperson



MRS C.B MAIMBO

Member



MRS. N.M SIMACHELA

Member