

IN THE LOCAL GOVERNMENT ELECTIONS TRIBUNAL

2021/P/LGET/006

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)

IN THE MATTER OF: THE LOCAL GOVERNMENT ELECTION RELATING TO JUSTIN KABWE WARD 24 HELD ON 12TH AUGUST, 2021.

AND IN THE MATTER OF: ARTICLE 159 OF THE CONSTITUTION OF ZAMBIA AS AMENDED BY THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016

AND IN THE MATTER OF: SECTION 81, 82, 83, 84, 86, 87, 89, 91, 92, 94, 96, 97, 98, 99, 100 AND 110 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016

AND IN THE MATTER OF: THE ELECTORAL PROCESS ACT NO. 35 OF 2016

BETWEEN:

ETHEN SAMSON PHIRI

PETITIONER

AND

ELIJAH M. MWENYA

RESPONDENT

Before the Honourables F.M. Hamaundu (Chairperson), H. Mdala (Member) and K.S. Banda (Member)

For the Petitioner: Mr. M.G. Nyumbwa of Mesdames Mushipe and Associates

For the Respondent: Mr. T. Gausi of Sukwana Mweemba and Partners

JUDGMENT

Cases cited

1. Anderson Kambela Mazoka and Two Others v. Levy Patrick Mwanawasa and Two Others (2005) ZR 138
2. Mabenga v Sikota Wina (2003) ZR 10
3. Lewanika and others v. Chiluba (1998) ZR (S.C.)
4. Kamanga v. Attorney General and another (2008) ZR 7
5. Austin Liato v Sitwala Sitwala Selected Judgment No. 23 of 2018
6. Richwell Siamunene v Sialubalo Gift Selected Judgment No. 58 of 2017

Legislation referred to

1. Local Government Election Tribunal Rules, Statutory Instrument No. 60 of 2016
2. Electoral Process Act No. 35 of 2016.

This is a Petition relating to the local government election for Justin Kabwe Ward 24 held on 12th August, 2021. The Petitioner filed a Petition and Affidavit verifying facts on 26th August, 2021 and subsequently filed a Further Affidavit verifying facts on 15th September, 2021. The Respondent filed an Answer and an Affidavit in support of Answer on 10th September, 2021 denying the Petitioner's claims.

The Petitioner presented his Petition seeking the following remedies:

- i. A declaration that the election of the Respondent as Councillor for Justin Kabwe Ward 24 is void;
- ii. An Order that the declaration making the Respondent winner was null and void and must be set aside;
- iii. A declaration that the election is invalid by the reason of non-compliance with the Constitution, Electoral Process Act and the procedure for the conduct of elections prescribed by the Electoral Commission of Zambia (ECZ) pursuant to the provisions of the Electoral Process Act No. 35 of 2016 (the Electoral Process Act);
- iv. An Order that the Respondent be disqualified from being a Candidate in the by-election for not complying with the provisions of the Constitution and the Electoral Process Act;
- v. An Order that the Respondent bears the costs in this cause; and
- vi. Any other relief the Tribunal deems fit.

We wish to state that Rule 20 (3) of the Local Government Election Tribunal Rules, Statutory Instrument No. 60 of 2016, (Tribunal Rules) allows the Tribunal, at any stage of the proceedings, to make an order requiring evidence to be adduced by Affidavit. During the scheduling conference of the matter, the Tribunal ordered the

parties to adduce all evidence of the witnesses to be called by way of Affidavit. The witnesses were then subjected to cross examination.

At trial, the Petitioner, Ethen Samson Phiri was PW1 and he called 8 other witnesses and the Respondent did not call any witnesses. It was PW1's testimony that it was on 14th August, 2021 when the Returning Officer declared the Respondent as winner for the Justin Kabwe Ward 24 local government election after he polled 8, 158 votes and the Petitioner polled 4, 174 votes. He testified that he believed that the declaration of the Respondent as duly elected Councillor for Justin Kabwe Ward 24 was invalid for the following reasons:

1. That the Petitioner was greatly disadvantaged as a result of the Respondent campaigning during the ban declared by ECZ of 15th June, 2021 to 28th June, 2021; and further that the Respondent campaigned in contravention of the Covid 19 guidelines as declared by ECZ in relation to road shows and door to door campaigns;
2. The Respondent's agents or cadres murdered the Petitioner's agent known as Joram Leta while he was putting up the Petitioner's billboard on 20th July, 2021 which incident the Petitioner alleges brought fear to the electorate in the Ward;

3. The Respondent and his agents or cadres , without lawful authority, destroyed and defaced all the Petitioner's campaign posters, placards and billboards;
4. The Respondent was seen bribing voters by the distribution of mealie-meal and the giving of money to the electorate in exchange for votes;
5. That on polling day, 12th August, 2021, the respondent and his gents or cadres:
 - a. were seen changing figures at the Mandevu Constituency totalling center (OlympAfrica Sports Centre);
 - b. were campaigning despite the campaign period ending on 11th August, 2021 at 18:00 hours as declared by ECZ; and
 - c. prevented many of the Petitioner's supporters from voting by threatening violence against them.

The Petitioner stated that as a result of the above stated incidences, he believes that the Respondent committed corrupt practices, illegal acts or other misconduct which acts and practices prevented the majority of voters in Justin Kabwe Ward 24 from voting for the candidate they preferred.

his agents have not been charged with assault as the police are still investigating the matter.

The petitioner stated that there were long queues when he arrived at Justin Kabwe Primary School polling station to vote and he was not stopped from voting by any person. He said that he did not agree that there was a large turnout of voters. The Petitioner states that he did not ask anyone who they voted for nor did he ask anyone who they intended to vote for as a vote is a secret.

There were no questions in re-examination.

PW2 was Given Kunda. She testified that on 19th July, 2021, she was at old Ngoma Market in Justin Kabwe Ward 24 when she saw Patriotic Front (PF) cadres carrying machetes, steel bars and other dangerous weapons. She said that the cadres were following a youth who belonged to the UPND by the name of Joram Leta who was hiding in one of the shops at the market. She said that the cadres found him and beat him to his death. She stated that this incident brought fear to the people who witnessed it and many of them said that they would not turn up to vote on 12th August, 2021. In cross examination, PW2 stated that she knew the Respondent but that he was not at the market on 19th July, 2021 when Joram Leta was killed.

PW3 was Gift Zinyembe who testified that on 12th August, 2021, he went to cast his vote at Justin Kabwe Primary School polling station. He said that after voting, he went to organise food for polling agents. When he returned to the polling station with the food, he was attacked by PF cadres. He stated that he recognised one of them, namely, a Mr. Songo who he said was a close ally to the Respondent. He said that he managed to run away and he stated that some voters ran away as well for fear of being assaulted. He stated that he reported the matter to the police. In cross examination, PW3 stated that he was assaulted by 5 people and the Respondent was not among them.

PW4 was Agness Sianyaka. She testified that on 12th August, 2021, she went to cast her vote at Justin Kabwe Primary School. She said he went to organise food for polling agents together with PW3. When she returned to the polling station with the food, she was attacked by PF cadres in full view of the electorate. She said that voters ran away from the polling station and never came back to vote. In cross examination, PW4 said that she was attacked by many people and she wouldn't know if the Respondent was among the attackers or not.

PW5 was Brian Malaza Phiri. It was his testimony that was a member of the PF for 10 years and he was the secretary of a campaign group called insaka iyamano

situated in Justin Kabwe Ward 24. He said that as a member of the Respondent's campaign team, he was given the task to distribute mealie meal and give the electorate money in exchange for votes. He stated that between June 2021 and July 2021, the Respondent and other party members would hold meetings where they would promise the electorate that they would distribute mealie meal in exchange for votes. He stated that this promise would be fulfilled the day following the meeting. PW5 also said that the PF party continued campaigning during the ban. In cross examination, PW5 confirmed being a member of the PF.

PW6 was Lameck Lungu. He said that he was treasurer in insaka iyamano campaign team in Justin Kabwe Ward 24. He said that between June 2021 and July 2021, the Respondent and other PF party members held a political gathering where PW6 was given K1000. He stated that the said money was given to the electorate and the Respondent promised that he would distribute mealie meal the following day and emphasised that all beneficiaries must vote for him. In cross examination, PW6 stated that he was a member of the PF.

PW7 was Besam Phiri who said that between June 2021 and July 2021, the Respondent and other party members held a political gathering where PW7 was given K1000. He stated that the said money was given to the electorate and the

Respondent promised that he would distribute mealie meal the following day and emphasised that all beneficiaries must vote for him. In cross examination, PW7 stated that he was a member of the Patriotic Front.

PW8 was Eve Niwangu who testified that she was a recipient of a 12.5kg bag of mealie meal distributed by the Respondent and other party members. She stated that before this, the Respondent and his party members held a meeting where they made promises to distribute mealie meal and pleaded with the electorate to vote for them. In cross examination, PW8 said that she voted in Justine Kabwe Ward 24.

PW9 was Pythias Kaswende who said that he received a call from the Respondent on 12th August, 2021 asking him to vote for him. He stated that he met the Respondent at Justine Kabwe Primary School who gave him K50. PW 9 said that he got the money and voted for the Respondent. He said that a lot more other electorates were meeting the Respondent the same way he did and were given K50 too. In cross examination, PW9 said that he voted at Justin Kabwe Primary School at 13:00 and there was no violence at that time at the polling station.

At the conclusion of PW9's testimony, the Petitioner closed his case.

The Respondent relied on the Answer and the Affidavit in support of Answer to the Petition filed on 10th September, 2021 and did not call any witnesses. The

Respondent denied all the claims raised by the Petitioner and stated that the declaration that he was the duly elected Councillor for Justin Kabwe Ward 24 was valid. The Respondent stated that his election to the office of Councillor for Justin Kabwe Ward 24 was free, fair and conducted in compliance with stipulated election laws.

In cross-examination, the Respondent said that he did not know PW5 and PW6. The Respondent stated that the PF does not issue its members with membership cards but that the names of members are listed in a document called a data form.

The Respondent said that he did not conduct any form of campaigns during the campaign ban. When referred to picture exhibit "ESP5", in the Further Affidavit Verifying Facts, the Respondent said that the ban was from 15th June, 2021 to 28th June, 2021. He stated that the date appearing on exhibit "ESP5" is 17th June, 2021. The Respondent insisted that he did not campaign during the ban. The Respondent also said that the PF did not campaign in contravention of Covid 19 guidelines, as directed by ECZ, when conducting door to door campaigns and roadshows.

The Respondent said that he only heard of Joram Leta's death on social media and that he did not know where the said death occurred.

The Respondent said that he voted at Mutambe Primary School and immediately after voting, he went home. The Respondent said that he was at the totaling center on 13th and 14th, August, 2021. He stated that while he was there, he did not witness any violence. He said that he did not remember any incidents of violence in Justin Kabwe Ward 24.

After his testimony, the Respondent closed his case.

At the time of writing of this Judgment, both parties filed written submissions, as directed by the Tribunal, on 20th September, 2021 reflecting its position on the Petition using relevant authorities. We are indebted to both Counsel.

The Petitioner seeks to nullify the election of the Respondent as Councillor for Justin Kabwe Ward 24. The Petitioner claims that the Respondent and his agents involved themselves in corrupt, illegal practices or other misconducts committed in relation to the Justin Kabwe Ward 24 elections held on 12th August, 2021 against the Constitution of Zambia and the Electoral Process Act.

Therefore, the issue that is for determination before us is whether on the facts and evidence before us, the Petitioner has proved the allegations raised in the Petition to the required standard to warrant the nullification of the Respondent's election as Councillor for Justin Kabwe Ward 24.

The law that governs the circumstances upon which a local government election can be nullified is as contained in **Section 97 (2)** of the **Electoral Process Act**. Section 97 (2) provides as follows:

“97. (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.”

According to **Section 97 (2)** above, it is not enough for the Petitioner to show that there was electoral malpractice or misconduct committed by the Respondent. The malpractice or misconduct must be attributed to the candidate or his election or polling agent. Further, it must be shown that as a result of the malpractice or misconduct, the majority of the voters were or may have been prevented from electing a candidate whom they preferred.

As regards the standard of proof required in election petitions, in the cases of **Anderson Kambela Mazoka and Two Others v. Levy Patrick Mwanawasa and Two Others (1)**; **Mabenga v Sikota Wina (2)**; **Lewanika and others v. Chiluba (3)**; and **Kamanga v. Attorney General and another (4)**, the Supreme Court stated that election petitions are required to be proven to a standard higher than on a mere

balance of probabilities and that the issues raised are required to be established to a fairly high degree of convincing clarity.

Having warned ourselves of the standard of proof in election petitions, this Tribunal will now examine whether the evidence provided by the Petitioner is sufficient to prove to the required standard that:

1. the Respondent (or an agent of the Respondent with the consent or knowledge of the Respondent) committed a corrupt practice, illegal practice or other misconduct and;
2. as a result of such corrupt practice, illegal practice or other misconduct, the majority of voters in Justin Kabwe Ward 24 were or may have been prevented from electing the candidate whom they preferred; or
3. there has been non-compliance with the provisions of the Electoral Process Act relating to the conduct of elections, and it appears to this 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.

We shall now turn to consider the grounds raised by the Petitioner in the manner that they have been presented in the Petition and apply the law as set out above.

A. Allegations of conducting campaigns - during the ban; in contravention of Covid 19 guidelines; and outside the gazetted campaign period.

These allegations are contained in paragraphs 8, 9, 10, 16 and 19 in the Further Affidavit Verifying Facts. It is not in dispute that the ECZ declared a campaign ban from 15th June, 2021 to 28th June, 2021. It is the Petitioner's claim that the Respondent conducted campaigns during the said campaign ban. The Respondent referred the Tribunal to picture exhibits "ESP5" and "ESP6" in the Further Affidavit Verifying Facts. When asked about the date appearing on exhibit "ESP5", the Respondent stated that the date was 17th June, 2021 though no year was indicated. In relation to exhibit "ESP6", the Respondent stated that it was dated 3rd August but he did not appear in the picture and the picture related to a roadshow. No other witness was called to prove this allegation; only PW1 testified to this allegation.

Under exhibit "ESP5", the Respondent admitted to appearing in the picture dated 17th June which date the Petitioner alleged to be within the period of the campaign ban. We find that even though it turned out to be true that the Respondent campaigned during the campaign ban, the Petitioner did not adduce any evidence to show that the said act was so widespread as to affect his election result by the

majority of voters in Justin Kabwe Ward 24 being prevented from voting for him. In the case of **Austin Liato v Sitwala Sitwala (5)**, the Supreme Court held:

"...it is not sufficient for a petitioner to prove only that a candidate committed an illegal or corrupt practice or engaged in other misconduct in relation to the election without proof that the illegal or corrupt practice or misconduct was widespread and prevented or may have prevented the majority of the voters in the constituency, district or ward from electing a candidate of their choice."

The Petitioner also exhibited "ESP6" and "ESP13" in support of these allegations. "ESP6" shows a roadshow by the PF and "ESP13" shows a group of people at a meeting. We find that the Petitioner has not adduced evidence to link the Respondent to the incidents as seen in the picture exhibits. The exhibits do not show that the Respondent or his duly appointed agents were present at the said events. We hold that the Petitioner has failed to adduce evidence to the required standard to prove that the Respondent or his duly appointed agents committed an illegal or corrupt practice or misconduct.

In relation to the allegation, in paragraph 19 in the Further Affidavit Verifying Facts, that the Respondent was campaigning outside the gazetted campaign period, we find that the Petitioner did not adduce any evidence to prove this allegation. This is especially so as the Petitioner did not call any witnesses to prove this allegation. The Petitioner failed to prove that the Petitioner or his duly appointed agents committed an illegal act, corrupt practice or other misconduct by campaigning outside the gazetted campaign period.

B. Allegations of violence and mutilation of billboards

The Petitioner alleges that the Respondent and his duly appointed agents committed violent acts as follows:

i. Death of Joram Leta

It was the Petitioner's testimony that his agent by the name of Joram Leta was murdered by the Respondent's cadres or agents. He exhibited "ESP7" to "ESP11" to prove this allegation. Further, he called PW2 who testified that she witnessed the said murder at old Ngoma Market in Justin Kabwe Ward 24. The petitioner testified that as a result of the said murder, he was denied an opportunity to disseminate his campaign message to the electorate as many of them feared for their lives.

A scrutiny of the exhibits filed by the Petitioner in support of this allegation shows that the Respondent is not connected to the murder. **Section 2** of the **Electoral Process Act** defines "election agent" as:

"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."

We state that it was pertinent for the Petitioner to show that the persons involved in the murder were legitimate election agents of the 1st Respondent as defined by the **Electoral Process Act**. We find that the Petitioner did not do so.

PW2 testified that she did not see the Respondent at the market where Joram was murdered. She stated that she saw a group of people who she alleged as being PF cadres beating up the deceased. We state that in a situation where cadres or supporters of the party the Respondent belongs to are implicated in the incidences, it is not enough to attach responsibility to the Respondent or his duly appointed election agents and to annul the election on the basis of **Section 97(2) (a)(ii)** of the Act. In **Richwell Siamunene v Sialubalo Gift (6)**, the court said:

"Mere proof that the UPND supporters were indeed involved in the said acts does not warrant an inference being drawn that the Respondent had

directly or indirectly incited the UPND supporters to act as they did. To so hold would amount to speculation and it is not the duty of this Court to make assumptions based on nothing more than party membership and candidacy in an election.

Therefore, it is the finding of the Tribunal that the Petitioner has failed to adduce evidence sufficient to link the Respondent or his duly appointed agents to the murder of Joram Leta. This is especially so because PW2 said that she did not see the Respondent at the market where the deceased was murdered. Further, in relation to paragraph 12, we find that the petitioner failed to provide evidence showing that a majority of voters were unable to or prevented from voting for a candidate of their choice as a result of the said murder.

ii. Assault of the Petitioner's supporters

In paragraphs 14 and 21 of the Further Affidavi Verifying Facts, the Petitioner alleges that his members were assaulted by the Respondent. The Petitioner called PW3 and PW4 to prove this allegation. PW3 testified that he was attacked by 5 people at Justin Kabwe Primary School polling station and he produced exhibit "ESP15" which was his medical report; he testified that the Respondent was not among his assailants. PW4 did not produce any medical report and she stated that she did not

know if the Respondent was part of the group of people who assaulted her as the group composed of many people.

A scrutiny of "ESP15" shows that PW3 was assaulted by a group of unknown persons. PW3 also testified that the Respondent was not among these persons. PW4 testified that she did not know if the Respondent was part of the group which attacked her or not.

In relation to paragraph 14 of the Further Affidavit Verifying Facts, the Petitioner alleges that his agent by the name of Vincent Chongo, and other persons were assaulted by the Respondent at the totalling center for Mandevu Constituency. The said Vincent Chongo and any other person the Petitioner alleges to have been assaulted at the totalling centre was not called as a witness before the Tribunal.

Regarding this allegation, we find that the Petitioner has not adduced any evidence that PW3, PW4, Vincent Chongo or any other person were assaulted by the Respondent or his duly appointed agent. We further find that the Petitioner failed to adduce sufficient evidence to show that the Respondent or his duly appointed agents committed an illegal practice, corrupt practice or other misconduct by assaulting the Petitioner's supporters.

iii. Allegations relating to the mutilation or destruction of campaign posters, placards and billboards

According to paragraphs 17 and 18 of the Further Affidavit Verifying Facts, the Petitioner stated that his campaign posters were pulled down by the Respondent and his agents without lawful authority. The petitioner further stated that this move by the Respondent and his agents was calculated to misrepresent the Petitioner as an unserious candidate who should not be voted for. No evidence was adduced apart from that of PW1 in support of this allegation.

This Tribunal finds that the Petitioner adduces no evidence to show that the Respondent actually committed these acts or that his duly appointed agents did so. It is our finding that the Petitioner has not connected the Respondent or his duly appointed agents to acts of mutilation and destruction of campaign materials. This Tribunal therefore finds that the Petitioner has failed to prove the allegation that the Respondent committed a corrupt practice, illegal act or other misconduct by the destruction and mutilation of campaign materials.

C. Allegations of bribery

This allegation is contained in paragraph 20 of the Further Affidavit Verifying Facts. The Petitioner alleges that the Respondent was seen, during the campaign period,

bribing voters with mealie meal and money in exchange for votes. The Petitioner called PW5, PW6, PW7, PW8 and PW9 to prove this allegation.

PW5 testified that he was a PF member for more than 10 years and was part of the Respondent's campaign team. He said that he was given mealie meal and money to distribute to the community in exchange for votes. PW6 and PW7 gave similar evidence; they stated that they were both members of the PF and that they were each given K1000 to share among the people in exchange for votes. PW5 testified that she was a beneficiary of a 12.5kg of mealie meal given to her by the Respondent in exchange for her vote. PW9 said that he received K50 from the Respondent in exchange for his vote and that indeed he voted for the Respondent. When cross-examined, PW5, PW6 and PW7 failed to produce evidence that they were indeed members of the PF. In his testimony, the Respondent denied knowing PW5 and PW6.

To start with, we find that the Petitioner failed to adduce convincing independent evidence to support his allegations when PW5, PW6 and PW7 failed to prove their membership to the PF. In relation to PW8 and PW9, we wish to reiterate that an election will be nullified under section 97 (2) (a) of the Electoral Process Act where cogent evidence is provided to show that a candidate or the candidate's election

or polling agent committed an electoral offence or that the offence was committed with their knowledge and consent or approval. Further, that the offence prevented the electorate from choosing a candidate of their choice.

We find that with regard the corrupt act of bribery, the Petitioner was supposed to adduce evidence to demonstrate that the act complained of prevented or may have prevented voters of Justin Kabwe Ward 24 from voting for the candidate they preferred. In this case, we find that the Petitioner adduced no evidence to show the number of people in Justine Kabwe Ward 24 who received the said mealie meal and money. Further, the Petitioner produced no evidence to show how widespread the alleged acts of bribery were in Justin Kabwe Ward 24. At this point, we reiterate the case of **Austin Liato v Sitwala Sitwala (5)** stated above. This Tribunal finds that the allegations of bribery were not proved to the required standard in terms of Section 97 (2) (a) of the Electoral Process Act.

D. Allegations of changing figures at the totalling centre

These allegations are contained in paragraphs 13 and 15 of the Affidavit Verifying Facts. The Petitioner alleges that the Respondent and his duly appointed agents were seen changing figures at the totalling centre for mandevu constituency. Further, that ballot papers were sneaked in and out of the said totalling centre. It is our finding that the Petitioner has failed to prove this allegation to the required

standard as he did not exhibit the documents he claimed to have been tempered with. The Petitioner did not call any witness from ECZ or indeed any other witness to prove this allegation. Further, the Petitioner did not bring any action against ECZ regarding these allegations. The Tribunal cannot therefore find as a fact that the alleged changes to the results did in fact occur.

In conclusion, this Tribunal finds that the Petitioner has failed to prove to the required standard that the Respondent was not a duly elected Councillor of Justin Kabwe Ward 24 as he has failed to provide evidence that the Respondent or his agent (with the knowledge and consent of the Respondent);

1. Committed a corrupt practice, illegal practice or other misconduct and as a result of which the majority of voters of Justin Kabwe Ward 24 were or may have been prevented from electing the candidate they preferred; and
2. That there was any non-compliance with the provisions of the Electoral Process Act relating to the conduct of elections.

We therefore find that the Respondent was duly elected to the office of Councillor for Justin Kabwe Ward 24.

On the issue of costs, we are guided by the case of *Anderson Kambela Mazoka v Levy Patrick Mwanawasa (3)* in which the Supreme Court said the following:

“As we have always said on costs in matters of this nature, it is in the interest of the proper functioning of our democracy that challenges to the election of the President, which are permitted by the Constitution and which are not frivolous should not be inhibited by unwarranted condemnation in costs. In the event, it is only fair that each of the parties should bear their own costs.”

We adopt the reasoning as our own and order that each party bears their own costs.

Petition is dismissed.

We direct the parties' attention to Rule 24 of the Tribunal Rules allowing an appeal to the Constitutional Court within 14 days of this decision.

Dated the day of September 2021.



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Hon. F Hamaundu

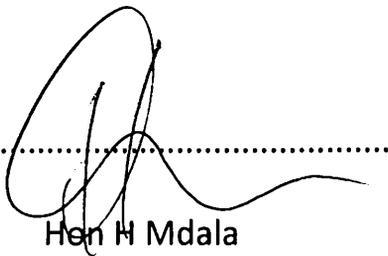
Chairperson



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Hon K Banda

Honourable Member



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Hon H Mdala

Honourable Member