

IN THE SUPREME COURT OF ZAMBIA SCZ JUDGMENT NO. 49 OF 2008  
HOLDEN AT LUSAKA/NDOLA APPEAL NO. 175/2007

(Civil Jurisdiction)

**IN THE MATTER OF:** SECTION 93, 94, 95, 96 OF THE ELECORAL ACT  
NO. 12 OF 2006

AND

**IN THE MATTER OF:** PARLIAMENTARY ELECTIONS FOR THE BWANA  
MKUBWA CONSTITUENCY IN NDOLA IN THE  
COPPERBELT PROVINCE OF THE REPUBLIC OF  
ZAMBIA HELD ON THE 28<sup>TH</sup> SEPTEMBER, 2006

**BETWEEN:**

**BARBARA BWALYA CHIBULU**

Appellant

AND

**JOSEPH ZULU**

1<sup>st</sup> Respondent

**THE ELECTORAL COMMISSION OF ZAMBIA**

2<sup>nd</sup> Respondent

**Coram:** Chirwa, Mumba, Chitengi, Silomba and Mushabati, JJS

On 25<sup>th</sup> June, 2008 and 19<sup>th</sup> August, 2008

**For the Appellant** : Mr. K. Msoni of Messrs J.B. Sakala & Co.

**For the 1<sup>st</sup> Respondent:** Mr. M. Chitabo of Messrs Chitabo Chinga &  
Associates

**For the 2<sup>nd</sup> Respondent:** Mr. M. Lungu - State Advocate

**JUDGMENT**

Chitengi, JS, delivered the Judgment of the Court.

Case referred to:



1. *The Attorney-General V Marcus Kampumba Achiume*  
(1983) ZR 1

This is an appeal by the Appellant against the judgment of the High Court which dismissed her petition against the election of the first Respondent as Member of Parliament for the Bwana Mkubwa Constituency.

The Appellant stood on the ticket of a political party called the Movement for Multi - Party Democracy (MMD) while the first Respondent was the candidate for another political party called Patriotic Front (PF). In addition, to the Appellant and the first Respondent, there were three other contenders for the Bwana Mkubwa Constituency seat, two belonging to two other political parties and one an independent candidate.

Two weeks before the elections were held, the Appellant and the other candidates attended a meeting at Twikatane Basic School organized by the Catholic Committee for Justice and Peace (CCJP). At this meeting the candidates had to present their manifestos to the electorate. The Appellant was the first to speak. She introduced herself as the widow of the late Mbaso and that she had children and grandchildren; that she has never worked in her life time and that she was a very successful business woman. There were many people present at the meeting. According to the Appellant, as she spoke a crowd of people stood up flashing the PF fist symbol shouting and asking the Appellant whether she was a widow. Thereafter, the crowd shouted and sung a song called "*Mukamfwilwa Bwelela*". The



organizers tried to calm down the crowd but in vain. The crowd insulted the Appellant calling her a bitch who had killed her children by bitching. The Appellant appealed to the first Respondent to tell the crowd to stop what they were doing but the first Respondent did nothing and the crowd became uncontrollable. But after pleas by CCJP officials the crowd stopped shouting. After the crowd had calmed down, the first Respondent spoke and when the crowd heard that the first Respondent was a widower the crowd remained calm.

From the day of the meeting organized by CCJP, the Appellant's campaign, to use her own words, became rough. The song, *Mukamfwilwa*, which was composed and song by one John Mwansa, in 1979, when the Appellant was expecting her last child, was sung every day. The message in the song is that the woman who had caused the death of her husband never went for cleansing but went bitching. The song is a plea to the woman to go for cleansing. Patriotic Front cadres were singing this song throughout the campaign period and accused the Appellant of assuming the false names of Barbra Bwalya Chibulu when her real name is Barbara Mbaso. The first Respondent also sang the song. The Patriotic Front cadres also said if the Appellant could not look after her children how would she look after the electorates.

According to the Appellant, the playing of the song badly affected her campaign and the result of the election. Two weeks before the election day, the Appellant was brought a letter (document at



page 72 of the record of appeal with PF markings) by her young brother, Vincent **Nelson Chibulu (PW1)**, the contents of which the Appellant said affected the results because people reading the document could not vote for her. The Appellant also complained of campaigning by Patriotic Front cadres after 18:00 hours on 27<sup>th</sup> September, 2006 and campaigning within 100 meters of the polling stations on the polling day contrary to the directives given by the Electoral Commission. The Patriotic Front cadres were showing people the boat which is the symbol for the Patriotic Front. The Appellant made a complaint to the Police officers manning the polling stations. Patriotic Front cadres also bought votes; the cadres were in control of the polling stations and they were showing voters the Patriotic Front symbol in the polling stations. At one of the polling stations at the Mushili Training Centre, voters were using Munali Constituency ballot papers between 06:00 hours and 12:30 hours and this affected the result.

~~After voting the Appellant observed irregularities in the manner the votes were being counted and announced. There was no electricity at some polling stations and candles were being used. Agents were seated far and were not able to see properly. The Appellant also said that she was not happy with the manner the results were compiled and she complained to the returning Officer who showed her the results. She polled 8,295 while the first Respondent polled 11,095. Later, she was called to attend verification.~~



PW1, who was also the Campaign Manager of the Appellant, confirmed finding the document the Appellant talked about and said he found similar documents at Twashuka and Mushili Markets which he burned. PW2 also confirmed campaigning by Patriotic Front cadres within the prohibited area on the polling day. At Mushili Council offices polling station people were drinking and dancing to the Mukamfwila song at a house some 120 metres from the polling station. At the polling station people were campaigning for the Patriotic Front. At the Training Centre Polling Station one, Mrs Mulembe, an agent was caught showing voters where to mark a cross. This incident was reported to the Police. During the campaign the Patriotic Front cadres had four motor vehicles with loud speakers playing the Mukamfwilwa song. A motor vehicle registration number ACH 2848 driven by the first Respondent would stop at the house of **Charles Jacob Chilandu (PW2)** who was leading the MMD campaign and where there was displayed a big portrait of the Appellant, and play the Mukamfwilwa song. Later the cadres would reduce the loud speaker volume and address the people saying, do not vote for Barbara Mbaso; she is the one the song talks about; she caused her husband's death; up to now her late husband's relatives have not cleansed her because she is a prostitute; do not vote for a person who has no name; vote for Zulu because he has a wife. This incident took place on five occasions.

On 9th September, 2006 the first Respondent addressed campaign meetings in Bwana Mkubwa constituency. At a



meeting held at a certain building, the first Respondent was heard by **Chrispine Mfula (PW3)** call the Appellant a prostitute who would do nothing for the people and that the first Respondent would solve the people's problems. The first Respondent said that if the people gave him their voters and registration cards he was going to work.

The first Respondent then gave the people K5,000.00 each and the people were happy. At a meeting held at Kantolomba the first Respondent was heard by **Matthews Chileshe (PW4)** repeat the words he said about the Appellant at the earlier meeting and said the people should write their voters and registration numbers. After that the first Respondent gave the people K5,000.00 each.

There were other meetings where the first Respondent and his supporters said bad things about the Appellant. On a date she could not recall in September, 2006, **Fridah Chipembele (PW5)** attended a meeting at Twikatane School where the first Respondent called the Appellant a prostitute before the Appellant could say much to the gathering as to what she could do for the people if elected. On hearing what the first Respondent said, PW5 remonstrated with the first Respondent. Thereafter people started shouting calling the Appellant a prostitute who had lost a husband. The shouting was so much that one could not hear what the Appellant was saying. PW5 protested to the first Respondent and the first Respondent chased her. (This meeting appears to be the same meeting called by the CCJP). **Agnes Anza (PW6)** also witnessed an incident in September, 2006.



On her way to Twikatane School she saw two motor vehicles, a saloon and a van in which there was a boat. People were shouting on the microphone that people should not vote for the Appellant because she was a woman; that she was a widow who had caused the death of many people. Children who had gathered were shouting that they had nominated a prostitute.

Thereupon, PW6 went to the van to ask whether the campaign was one of insults. She peeped in the saloon car and she saw the first Respondent. As PW6 crossed the road and continued with her journey she heard the Mukamfwilwa song being sung. PW6 told the Appellant of the insults. On 6<sup>th</sup> September, 2006 the first Respondent went to Mushili Ward where he was seen by **Joackim Bwalya (PW7)**. The first Respondent who was on campaign told the people who gathered that the Constituency was too big for the Appellant who was unmarried and that unmarried people do not perform well.

On the polling day, 28<sup>th</sup> September 2006, **Pola Kunda (PW8)**, who was an agent for the MMD at Mushili Training Centre, went to the polling station at 05:40 hours in readiness for the voting at 06:00 hours. However, the polling station opened at 06:30 hours and it turned out that the ballot papers were for Munali Constituency. PW8 brought this to the attention of the Presiding Officer who telephoned the Returning Officer. Later, the correct ballot papers were brought and voting started and went on up to 22:30 hours. The lighting in the polling station was poor. They were using only two candles as there was no electricity. Electoral



Commission of Zambia Officers were standing along the table while the ballot papers were on the table. During counting the votes were not being shown to the Party agents, most of whom were dozing. **Morgan Mupinga (PW9)** who also voted at Mushili Training Centre saw a female polling assistant who followed a young man in the polling booth and told him to vote on the boat because they had suffered a lot. On seeing this PW9 went outside and rang the Appellant who advised him to report to the Presiding Officer. After reporting to the Presiding Officer, the Presiding Officer made efforts to contact the Returning Officer but in vain. However, the polling assistant was called but did not give any explanation for what she did. At Lubwa polling station, **Nelly Mbewe (PW10)**, saw polling assistants get illiterate voters from the queue and take them in the polling booths to vote. Party agents complained and reported the matter to the Police who promised to act. **Inspector Vincent Chembo (PW11)** who was manning Mushili Main Polling Station on the polling day arrested four persons who were shouting "Amaka, Amaka" around the polling station despite being told to leave. "Amaka, Amaka" was a Party slogan for the Patriotic Front.

A week before the polling day **Kafeni Sashe (PW12)** met one Bwalya Chikwamo who informed him that there were people who had an assignment to collect voters' cards and national registration cards. On the polling day he met the same Bwalya Chikwamo at the St. Nicholas Catholic church, which was about 100 metres from Ndeke polling station. Bwalya Chikwamo



produced a bundle of voters and national registration cards which he gave to the owners with some money. Bwalya

Chikwamo told the voters concerned to go to Mandaliso shop after voting to get some more money. Mandaliso shop belongs to, the Patriotic Front Local Government candidate. At Mushili's Porter House polling station, **Joseph Chanka (PW14)** saw people in the voting queue lifting their fists and saying vote on the boat and not for the woman because she is a prostitute. PW14 reported this incident to the Police Officer at the polling station but the officer did nothing saying he was alone and the people were many.

The evidence of the first Respondent and his witnesses was to deny all the allegations against the first Respondent. The first Respondent formed a campaign management committee which had two sub committees, one for accounts and the other for operations. As a candidate, the first Respondent was not allowed to carry money in his pockets. For his campaign the first

Respondent used two motor vehicles one of which was mounted with loud speakers. Before the campaign started the first

Respondent was inducted by his Party on what to do and not to.

Among the things the first Respondent was told not to do were, to

give out money during campaign and to talk to anyone who had attended a meeting. The first Respondent was also told that

whenever he addressed a meeting he should talk about issues.

The first Respondent did not give K5,000.00 to anyone at

Kantolomba as alleged by PW4. In fact, the first Respondent lost



badly in Kantolomba. At the meeting organised by the CCJP at Twikatane Basic School, the first Respondent was the last speaker. Before the candidates started to speak the organizers of the meeting warned the candidates not to speak about individuals but only about issues. What caused confusion at the meeting was that as the Appellant was about to speak one woman dressed in MMD attire shouted at the Appellant saying the Appellant should pay them before she spoke. However, the master of ceremonies sorted out this problem. In her speech the Appellant said, inter alia, that her children's father was the late Mbaso and that her children were in the United States of America. That was when people, including those clad in MMD attire who were supporting one Paul Katema, started chanting Mukamfwilwa. The situation was bad. When the crowd calmed down, the Appellant continued with her address until she finished. The Appellant ended her speech by promising to pay for all those whose electricity had been disconnected.

After the speeches there was question time. When the Appellant stood up the crowd again became rowdy and started chanting Mukamfwilwa. At that stage the Appellant appealed to the first Respondent to speak to the people. As he was not the chairman, the first Respondent did not react. The first Respondent also denied ever using a saloon car registration ACH 2848. He said his check at the Road Traffic revealed that the motor vehicle was registered in Ndola by Missionaries staying in Luanshya and produced a report to that effect.



According to the first Respondent the only music being played during his campaign was Mwemakufi song by Nathan Nyirenda.

He denied publishing any defamatory statement about the Appellant. Contrary to the evidence of PW7 the first Respondent was never driven in a motor vehicle that was mounted with loudspeakers and playing the Mukamfwilwa song.

But according to RW2, during the campaign, they wanted to finish the Appellant. In addition to the song Mwemakufi, they also sang the song Mukamfwilwa. The first Respondent told RW2 that the appellant was a widow and that RW2 should be playing the song. The first Respondent told RW2 that while playing the Mukamfwilwa song he should interpose the insulting words "**Barbara Bwalya Chibulu was sleeping with dogs**". Because of this evidence which was in favour of the Appellant, RW2 was declared a hostile witness.

Document No.1 in the Appellant's bundle of documents was not the first Respondent's document and was not distributed by his Party. The first respondent's election materials were in English and had the boat symbol. Contrary to what PW14 said, the first Respondent and his Party cadres did not collect voters' cards and national registration cards. The first Respondent said during the campaign period he met the Appellant at church where they greeted each other and chatted. If there was any complaint against the conduct of the campaign by the Patriotic Front, the Appellant would have told him when he telephoned her on 24<sup>th</sup> September, 2006. The first Respondent got a report about the



Munali ballot papers in Bwana Mukubwa but these ballot papers were for Local Government elections and not Parliamentary ballot papers. The first Respondent lost in two wards and won in five wards. After the election there was verification on 13<sup>th</sup> October, 2006.

Contrary to what PW3, said there was no campaigning at Chonto polling station at Mushili Council offices. According to **Musenge Collins Bwalya, (RW3)**, who was the first Respondent's polling agent, the elections at this polling station went on well and there was no campaigning in the polling station and there was no shouting that people should not vote for the Appellant because she was a prostitute. At Porter' House polling station the election also went on well and **Lawrence Malama Chola (RW4)** the first Respondent's polling agent did not observe anything that went wrong during the voting. At Mushili Training Centre polling station, there was no incident as described by PW9 because **Joseph Chitundi (RW5)** who was poling agent for the first Respondent did not observe it. **Lawrence Chanda (RW6)** who was the Patriotic Front Branch Chairman for Kantolomba refuted the evidence by PW3 that after a meeting at Kantolomba on 9<sup>th</sup> September, 2006, the first Respondent gave K5,000.00 to each of the people who attended the meeting. RW6 also refuted the evidence that the first Respondent told the people not to vote for the Appellant because she was a woman and a prostitute. Further, PW6 said that there were no instructions from the first Respondent to record people's voters card and national



registration card numbers. And **Kephas Kaumba Saili (RW7)** who was the first Respondents polling agent at Itawa Polling station refuted the evidence of PW12 that there was collection of voters' cards and distribution of money.

After considering all the evidence, the learned trial Judge found none of the fifteen grounds on which the Appellant's petition was based proved. Accordingly, the learned trial Judge dismissed the Appellant's petition. The learned trial Judge found the evidence on behalf of the first Respondent more credible than that given by the Appellant and her witnesses. In short, the learned trial Judge basically decided this petition on credibility.

The Appellant now appeals to this court against the judgment of the learned trial Judge dismissing her petition. The Appellant advanced six grounds of appeal.

Counsel for the Appellant and the Respondents filed detailed written heads of argument on which they relied.

We propose to deal with grounds three and four first and together.

Ground three reads that the court below misdirected itself in law and fact when it held that the first Respondent did not refer to the Petitioner as a prostitute who should not be voted into Parliamentary office and that the first Respondent was not playing the Mukamfwilwa song and further that nothing



offensive was said about the Petitioner while the song was being played.

Ground four reads that the learned trial Judge misdirected himself in law and fact when he dismissed the evidence of the Petitioner regarding the first Respondent's publication of false statements of fact in relation to the Petitioner's personal character.

The arguments by counsel for Appellant and the first Respondent are to support and challenge the findings of fact made by the learned trial Judge on the issues in these grounds of appeal. Counsel recited the evidence of witnesses bearing on these grounds. Counsel for the second Respondent, quite properly, did not submit on these grounds of appeal, saying these grounds of appeal do not concern the second Respondent.

As an appellate court we cannot interfere with findings of fact made by a trial Judge unless it is established before us that: -

1. The findings in question were either perverse or made in the absence of any relevant evidence; or
2. The findings were made upon a misapprehension of the facts; or
3. The findings were which on a proper view of the evidence, no trial Court acting correctly can reasonably make: See

*The Attorney-General v Marcus Kampumba Achiume*<sup>(1)</sup>.



The Appellant has not shown to us that any of these above factors upon which an appellate court may reverse findings of fact made by a trial Judge exist in this case. What the arguments on behalf of the Appellant amount to is that the learned trial Judge should have accepted the evidence given on behalf of the Appellant. But the learned trial Judge who heard and observed the witnesses when they gave evidence found the first Respondent and his witnesses more credible than the Appellant and her witnesses. As an appellate court we have no basis in this case upon which we can reverse the findings of fact made by the learned trial Judge. In the event, ground three and four fail and we dismiss them.

We now deal with the first, second fifth and sixth grounds of appeal.

The first ground of appeal is that the learned trial Judge misdirected himself in law and fact when he held that the Appellant did not specify illegal practices and misconduct in her evidence.

The second ground of appeal is that the learned Judge in the court below erred in fact when he held that if there were anomalies in the counting of votes then all the candidates were affected. It was also a misdirection when the learned Judge held that the difference between the votes on the second Respondent's master sheet and what was declared was not in issue.



The fifth ground of appeal is that the learned Judge misdirected himself on point of fact when he found that the evidence of the first Respondent from Road Traffic Commission regarding motor vehicle ACH 2848 was not disputed.

The sixth ground of appeal is that the learned Judge's attack on Appellant's petition and regarding an affidavit verifying the contents of the petition is not supported by law.

Before we deal with the first, second and fifth grounds of appeal we can dispose of sixth ground without even considering the arguments from counsel on this ground. We are at a loss to understand why the learned trial Judge's comment, which in our view was apt, on the manner the petition was pleaded, should be made a subject of appeal. The learned trial Judge's judgment properly read leaves it beyond all reasonable doubt that the learned trial Judge did not dismiss the Appellant's petition on ground of bad pleading. This ground of appeal is totally unmeritorious and it is dismissed.

The argument on the first ground by Mr. Msoni, learned counsel for the Appellant, is that contrary to the learned trial Judge's finding that the Appellant did not specify the illegal practices and misconduct, the Appellant and her witnesses provided evidence to that effect. In that regard, Mr. Msoni referred to the playing of the Mukamfwilwa song and superimposition of the Appellant's name; campaigning at polling stations and unpleasant campaign materials which were being distributed by the first Respondent.



The thrust of Mr. Msoni's submissions on the second ground of appeal is that the learned trial Judge did not address his mind to the discrepancy between the votes cast and those officially announced by the second Respondent. Mr Msoni pointed out that the second Respondent announced that the first Respondent polled 6615 votes against the Appellant's 5139. This meant that the margin was 1476. But Mr. Msoni, surprisingly, put the word "only" after the figure "1476". 1476 is a wide margin and cannot be characterised as negligible. Further, Mr. Msoni pointed out that during the trial the evidence was that the total votes cast were 19390 and not 14429. Mr. Msoni then, referred to the evidence of PW1 and PW2 explaining the discrepancy in the number of votes. It was Mr. Msoni's submission that more people than the total number of votes announced voted in Bwana Mkubwa Constituency. According to Mr. Msoni, the 5000 votes which the first Respondent admitted in his Answer, was the margin with which he beat the Appellant but was not explained by the second Respondent and by all means could have been in favour of the Appellant.

With respect to the fifth ground, it is not necessary for us to restate the arguments by counsel on this ground. This ground raises the issue of using motor vehicle ACH 2848. As we understand the Appellant's case as pleaded on this issue, the complaint was not the use of the motor vehicle per se. The complaint was the use of the motor vehicle to broadcast invectives about the Appellant in order to discredit her during the



election. The learned trial Judge in his judgment found that there was no vilification of the Appellant by the first Respondent and her supporters. We have already dealt with this issue in the third and fourth grounds of appeal and it is not necessary for us to repeat what we have already said. There is no merit in this ground and we dismiss it.

Mr. Chitabo, learned counsel for the first Respondent, submitted on the first ground that non specification of the illegal practices and misconduct suggests that no such practices actually occurred because if they did happen a report would have been made to the Police. Mr. Chitabo pointed out that the evidence of singing Mukamfwilwa and corruption was rejected by the learned trial Judge. As regards the unpleasant material, Mr. Chitabo submitted that the document complained of had no party symbol or logo and was not signed and that any member of public could have written it.

Mr. Lungu, the learned State Advocate, submitted that the Appellant was not specific in her pleading of illegal practices and corruption but made general averments. Mr. Lungu pointed out that there was no report made to the Police about these malpractices. In the circumstances, Mr. Lungu submitted that the alleged illegal practices and corruption did not take place. Further, Mr. Lungu submitted that the Appellant and her witnesses gave unreliable evidence of corruption and illegal practices, As regards the playing of the song Mukamfwilwa, Mr. Lungu submitted that the learned trial Judge found the evidence



on this issue contradictory and unreliable. On the unpleasant material allegedly circulated by the first Respondent, Mr. Lungu repeated Mr. Chitabo's submissions.

We have considered the evidence and the submissions of counsel on this ground of appeal. The learned trial Judge's finding that the alleged corrupt and illegal practices were not specified cannot be faulted. As the learned trial Judge properly observed in his judgment and as Mr. Chitabo and Mr. Lungu rightly submitted, the alleged corrupt practices, illegal practices and misconduct were not specified.

The relevant paragraph in the petition is paragraph 5 and it reads: -

*"5. Your Petitioner is not satisfied with the final result of the elections because there were corrupt and illegal practices and other misconduct committed in connection with the election."*

This pleading does not specify the acts of corruption, illegal practices and other misconduct, where they were committed, by who and on what dates. In the event, we are constrained to say, and to concur with, the learned trial Judge's observation that this Petition was badly pleaded. In fact, this is a Petition where the Respondents were entitled to ask for further and better particulars.

Mr. Msoni submitted further that the learned trial Judge misdirected himself because the Appellant adduced evidence of corruption and illegal practices and other misconduct. This



submission lacks force because the learned trial Judge in his judgment in fact said that the Appellant called evidence of the alleged corruption, illegal practices and other misconduct. However, after considering the evidence of the Appellant and her witnesses on these issues the learned trial Judge disbelieved it. This was a finding of fact. We cannot interfere with the learned trial Judge's finding of fact, for the reasons we have already given. On our part we find the evidence about the first Respondent distributing K5,000.00 to each person at the meeting at Kantolomba, which was attended by many people, not only unbelievable but also too fantastic. This ground of appeal has no merit and we dismiss it.

Mr. Chitabo's submissions on ground two are that the learned trial Judge was on firm ground when he held that the anomalies on counting the votes affected all the candidates. Mr. Chitabo then recounted that initially the first Respondent polled 6,615 votes while the Appellant got 5,139 votes; after verification the 1<sup>st</sup> Respondent got 11,095 votes while the Appellant got 8,295 votes; ~~both the Appellant and the first Respondent's votes were adjusted upwards. The 5000 votes the Appellant talked about were not the difference between the votes of the first respondent and the Appellant, but the difference between the initial votes of the first Respondent and his verified result. Mr. Chitabo pointed out that the total number of 19,390 recorded was not in dispute.~~



Mr. Lungu for the second Respondent submitted that this ground is an appeal against a hypothetical finding as the learned trial Judge in fact found that there were no anomalies in the counting.

Mr. Lungu then referred to other issues which had somehow been already taken care of by Mr. Chitabo's submissions.

We have considered the evidence and submissions of counsel on this ground. We find no merit in this ground. It is clear to us that the learned trial Judge carefully considered the oral and documentary evidence on this issue and found that the first Respondent got more votes than the Appellant. The learned trial Judge could not conceivably be expected, for no strong reasons, to prefer the results collected by a Party polling agent to the official results from the Electoral Commission of Zambia. Mr. Msoni talked about 5000 votes which he said by all means could have been in favour of the Appellant. The evidence is clear. As Mr. Chitabo indicated in his submissions there were no unexplained 5000 votes lying about. There is a complaint that when the learned trial Judge said that if there were anomalies in counting of votes then all candidates were affected, he misdirected himself. We are startled by this argument because the implication of the sentence complained of is that the learned trial Judge was, as Mr. Lungu submitted, saying that there were no anomalies in the counting of votes. There is no merit in this ground of appeal and we dismiss it.

All the grounds of appeal having failed the whole appeal fail. We accordingly affirm the judgment of the learned trial Judge and

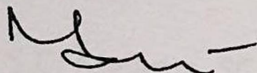


Dismiss this appeal. We declare that Joseph Zulu was duly elected as Member of Parliament for the Bwana Mkubwa constituency.

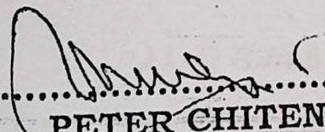
The Respondents will have their costs in this court and in the court below to be agreed upon and in default to be taxed.



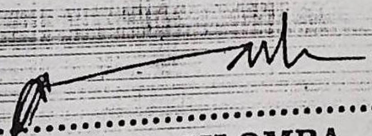
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**D. K. CHIRWA**  
**SUPREME COURT JUDGE**



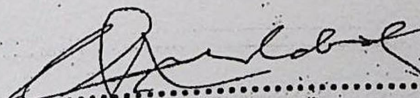
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**SUPREME COURT JUDGE**



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**PETER CHITENGI**  
**SUPREME COURT JUDGE**



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**S. S. SIOMBA**  
**SUPREME COURT JUDGE**



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**C. S. MUSHABATI**  
**SUPREME COURT JUDGE**