

## **SCZ Judgment No. 2 of 2013**

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**IN THE SUPREME COURT FOR ZAMBIA**  
**HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**Appeal No.135/2012**  
**SCZ/8/115/2012**

**IN THE MATTER OF: SECTION 72 (1) (a) OF THE CONSTITUTION OF THE  
REPUBLIC OF ZAMBIA**

**AND**

**IN THE MATTER OF: SECTION 93 (1) OF THE ELECTORAL ACT NO. 12 OF  
2006**

**AND**

**IN THE MATTER OF: CHIPATA CENTRAL PARLIAMENTARY CONSTITUENCY  
ELECTIONS HELD IN ZAMBIA ON THE 20<sup>TH</sup> DAY OF  
SEPTEMBER 2011**

**BETWEEN:**

**REUBEN MTOLO PHIRI (MALE)**

**APPELLANT**

**AND**

**LAMECK MANGANI (MALE)**

**RESPONDENT**

Coram: ***Mwanamwambwa, Chibomba, Phiri, Wanki, and  
Muyovwe, JJS***

*On the 17<sup>th</sup> October 2012 and 7<sup>th</sup> May 2013*

*For the Appellant: Mr. E.S. Silwamba, S.C., with him: Mr. J. Jalasi and  
Mr. L. Linyama, of Messrs E. Silwamba and  
Company*

*For the Respondent: Mr. N. Nchito, Ms. S.N. Kateka and Mrs. M.N.  
Simachela, all of Messrs Nchito and Nchito*

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## **J U D G M E N T**

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**Mwanamwambwa, JS, delivered the Judgment of the Court.**

### **Cases referred to:**

1. Lewanika & Others v Chiluba [1998] Z.R.79.
2. Mumba v Daka Appeal No. 31 of 2003.
3. Mabenga v Wina & Others [2003] Z.R.110.

4. Mazoka (& Others) v Mwanawasa [2005] Z.R. 138.

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5. Mlewa v Wightman [19995/1997] Z.R. 171.  
No.15 of 2003

6. Jere v Ngoma [1969] Z.R.106.

7. Limbo v Mututwa (*Unreported*)

**Legislation referred to:**

1. The Electoral Act, 2006. Sections 79 (1) (c), and 93 (2) (a) and (c).

2. Statutory Instrument No. 52 of 2011: The Electoral (Code of Conduct) Regulations 2011.

This is an appeal against a Judgment of the High Court of 12<sup>th</sup> April 2012. By that Judgment the High Court held that the Respondent was not duly elected, as a Member of Parliament and ordered nullification of his election, with costs against him.

The facts of this matter are that both parties were candidates in the Parliamentary General Elections, held on 20<sup>th</sup> September 2011, for the Chipata Central Constituency. The Appellant stood on the ticket for the Movement for Multiparty Democracy (*hereinafter referred to as "THE M.M.D."*). The Respondent stood on the ticket of the Patriotic Party (*hereinafter referred to as "the P.F."*). At the end of the counting of votes, the Appellant was declared as the Winner with 13,763 votes. The Respondent polled 10,521 votes.

The Respondent petitioned the High Court, to declare the election of the Respondent, null and void, on the ground of illegal practices, which affected the election results. In his

Petition, the Respondent stated that the Appellant and his agents committed

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several corrupt and illegal practices, in connection with the election. These were contained in paragraphs 6 a-z of the Petition. Among the acts complained of and proved were three.

**One** was that the Appellant made a gift of K1,000,000 to Katopola Reformed Church of Zambia, situated in the Constituency.

**Second** was that the Appellant made a gift of K500,000 to Msamaria Choir of the Chipata Reformed Church of Zambia Congregation. It was stated that on both occasions, the Appellant stood before the congregations and openly donated the amounts of money, followed by an express request to the congregations to vote for him.

**Third** was the issue of boreholes. It was alleged that about a week after nominations were filed, the Appellant sank boreholes in about six places within the Constituency, in a bid to procure votes from the residents of the areas in question. The Respondent gave oral evidence and called 26 witnesses to support the allegations.

In defence to the Petition the Appellant filed an answer, denying the allegations and responding to them. The Appellant

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also gave oral evidence and called three (3) witnesses in support of his answer. With specific regard to the donation of money to the Church, the Appellant admitted that as a member of the congregation at the Church, he made philanthropic donations. But that the philanthropic donations were made in response to a request by the Church to its members for donations. He added that the donations were not directed to the Church members as voters.

The Appellant denied having sank the boreholes. He said that they were sank by the Government, during the time the Respondent was the Member of Parliament for the area.

After evaluating the evidence, the learned trial Judge found that a number of the allegations were not proved. He found that some were proved but did not affect the outcome of the elections, because they were not so widespread as to prevent the majority of voters from electing a candidate whom they preferred. This is as per **Section 93 (2) (a)** of **the Electoral Act, 2006**. He also found as a fact that the Appellant had donated money to the Reformed Church of Zambia. That the donation was an illegal or corrupt practice under **Section 93 (2) (c)** of **the Electoral Act, 2006**. On the evidence, he found that the boreholes were not sank by the

Appellant, but by the Government, as an ongoing programme, under the Office of the District Commissioner. However, on the evidence, he found that the Appellant used the timing and

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sinking of boreholes for his own campaigns. The learned trial Judge observed that the Appellant confirmed having addressed a gathering at the site of the borehole and urged them to vote for him. He had found the District Commissioner addressing the gathering there. So he took advantage of the occasion and addressed the gathering too. The learned trial Judge observed that the Appellant's conduct breached **Regulation 7 (1) (L) of the Electoral (Code of Conduct) Regulations**. That Regulation prohibits the use, by a person, of Government or Parastatal Transport or facility, for campaign purposes. He then referred to **Levison Mumba v Peter Daka**, an unreported decision of this Court of 2002, wherein the election of the Appellant was nullified, for his delivery of drugs and an ambulance, to a clinic, on the eve of an election. He then held that the breach of **Regulation 7 (1)L** constituted an illegal practice, under **Section 93 (2) (c) of the Electoral Act, 2006**. Accordingly, he nullified the election of the Appellant with costs.

Dissatisfied with the Judgment, the Appellant has appealed to this Court, raising five grounds of appeal. These are as follows:-

**“Ground 1**

The learned trial Judge erred in law and fact when he held that the group donations made by the 1<sup>st</sup> Respondent to the Katopola congregation of the Reformed Church in Zambia brought his conduct within the definition of an illegal or corrupt practice as defined in Section 79 of the Electoral Act No. 12 of 2006 when in actual fact it is trite law that group philanthropic donations even during the

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campaign period are not proscribed at law and was pleaded as a defence by the Appellant in his answer.

**Ground 2**

Alternatively, that the learned trial Judge erred in law and fact when he held that the donations made by the 1<sup>st</sup> Respondent to the Katopola congregation of the Reformed Church in Zambia was an illegal or corrupt practice but failed to make a determination on the evidence on record as to whether the act of donations resulted in the majority of the electorate in Chipata Central Constituency being prevented from voting for a candidate of their choice.

**Ground 3**

That the learned trial Judge erred in law and fact when he held in total disregard of the evidence on the record and the defence of Government programmes pleaded in the Appellant's answer that drilling of boreholes by Government in Chipata Central Parliamentary Constituency was used by the 1<sup>st</sup> Respondent to further his campaign when in actual fact the drilling of boreholes was a continuing Government programme despite the Honourable Court having made a finding of fact that it was indeed a continuing Government programme.

**Ground 4**

Alternatively, that the learned trial Judge erred in law and fact when he held that drilling by Government of boreholes was used by the 1<sup>st</sup> Respondent to further his campaign but failed to direct his mind as to whether the evidence on

**the record was widespread in nature and resulted in the majority of registered voters in Chipata Central Constituency from being prevented from electing the candidate they preferred.**

**Ground 5**

**That the learned trial Judge erred in law and fact when it relied on a wrong standard of proof to establish that corrupt or illegal practices had been committed by the Appellant as defined by the Section 79 of the Electoral Act No. 12 of 2006."**

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We note that grounds 1 and 2 are related. They stem from the church donations. Therefore, we shall deal with them together. Grounds 3 and 4 are interrelated. Both stem from the Government borehole programmes. For convenience's sake, we shall start with grounds 3 and 4.

On grounds 3, Counsel for the Appellant make lengthy submissions. The gist of their submissions is that the learned trial Judge failed to adjudicate conclusively upon all aspects of the case; particularly his total disregard of the evidence on record. They submit that it is trite law that a trial Judge must take into consideration and adjudicate on all aspects of a case, so as to ensure every issue in contention is determined, definitely. In support of their submission, they cite the following:-

- (a) Zulu v Avondale Housing Project Limited [1982]  
**Z.R.172.****

**(b) Attorney General v Tall and Zambia Airways Corporation Limited [1995/1997] Z.R. 54.**

**(c) Sentor Motors Limited and 3 Other Companies Limited [1996] S.J. (S.C.**

**(d) Mobile Motors (Z) Limited v Mulwila John M & Attorney General (Appeal No. 13 of 2009).**

They submit that the learned trial Judge even after making a finding of fact, still failed to regard evidence on record and the

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defence in the Appellant's answer, averring that the drilling of boreholes in Chipata Central Constituency was in fact part of continuing Government programme. That there was evidence that the borehole drilling programme was launched by the District Commissioner. They submit that the learned trial Judge erred in law when he nullified the Appellant's election on the ground of the Appellant's reference to Government drilled boreholes.

In response on ground 3, Counsel for the Respondent raised two arguments.

Firstly, they argue that it was a finding of fact by the learned trial Judge that the Appellant in one instance, used a borehole, a Government facility, to enhance his campaign.

That the finding of fact is supported by evidence and not perverse. Therefore, it cannot be reversed by the appellate Court. In this regard, they cite **Zulu v Avondale Housing Project Limited (1982) Z.R. 172**. Further, on this leg, they argue that no appeal in an election petition can lie to this Court on a question of fact. They refer to **Article 72 (2) of the Republican Constitution**.

Secondly, they argue that it is not in dispute that the Appellant addressed the electorate at a Government borehole. By so doing he used a Government facility to enhance his campaign,

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in breach of **Regulation 7 of the Electoral (Code of Conduct) Regulations**. That Regulation prohibits use of a Government facility. They argue that the Court below was on firm ground when it found that the breach of **Regulation 7** fell under **Section 93 (2) (c) of the Electoral Act, 2006**.

We have examined the pleadings and the judgment in the Court below and have considered the submissions and arguments by Counsel. As stated above, the learned trial Judge based his decision on breach of **Regulation 7 (1) (L) of the Electoral (Code of Conduct) Regulations**, as read with **Section 93 (2) (c) of the Electoral Act, 2006**. Unfortunately, he did not specify the year in which the Regulations were made. These Regulations are usually made

by a Statutory Instrument. The latest Regulations that governed the 2011 Parliamentary elections were made by **Statutory Instrument No. 52 of 2011**. They are titled **“The Electoral (Code of Conduct) Regulations, 2011”**. **Regulation 7 (1)** of this Statutory Instrument does not deal with prohibited conduct in relation to elections. It deals with duties of the Electoral Commission. And it only goes as far as 7 (1) (K). It does not reach (L). The only **Regulation 7 (1) (L)** we found that deals with prohibited electoral conduct, is that made by **Statutory Instrument No. 179 of 1996. (The Electoral (Code of Conduct) Regulations, 1996)**. It reads as follows:-

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**“7 (1) A person shall not :-**

**(a)**

**(b)**

**(c)**

-

-

-

**(l) use Government transport or facility for campaign purposes or to ferry voters to polling Stations.”**

We have also looked at the **Electoral (Code of Conduct) Regulations, 2006. Statutory Instrument No. 90 of 2006**). Under these, the one that prohibits use of: “*Government transport or facility for campaign purposes,*” is **Regulation 7 (1) K**. So far, it appears that the learned trial Judge relied on **Regulation 7 (1) (L)** of **Statutory Instrument No. 179 of 1996**. We note that **Statutory Instruments No. 179 of 1996** and **No. 90 of 2006**, were revoked. They have been replaced by **Statutory Instrument No. 52 of 2011: The Electoral (Code of Conduct) Regulations 2011**.

These are the ones that applied to the 2011 Parliamentary elections. Under these, it is **Regulation 21 (K)** that prohibits a Parliamentary candidate from using: “*Government or parastatal*

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*transportation or facilities for campaign purposes*”. However, we must state here that mere reference to a wrong regulation does not, on its own, affect the trial Court’s verdict. No prejudice has been occasioned by the error. The wording of the revoked Regulation and the current one is the same.

In paragraph 5 (vii), the Appellant pleaded in his answer that the sinking of boreholes was an ongoing government developmental project, in conjunction with various community based organisations, which started when the Respondent was still Member of Parliament for Chipata Central Constituency. It

was the Appellant's contention in the Court below that on the authority of **Lewanika & Others v Chiluba** <sup>(1)</sup>, the project was a philanthropic activity and hence, not a ground on which to nullify an election. The learned trial Judge found as a fact the boreholes were sank by the Government, under the District Commissioner's office. But we note, as correctly argued by Counsel for the Appellant, the learned trial Judge did not consider whether the boreholes issue was a philanthropic activity. Philanthropic activities is the practice of helping the poor and those in need, especially by giving money and services: **See Oxford Advanced Learner's Dictionary (7<sup>th</sup> Edition)**, page 1089. In Zambia, philanthropic activities include developmental projects. As the electoral law stood in 1998, philanthropic activities, even when they had some influence on voters, did not

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constitute corruption or an illegal practice, and hence not petitionable:- **See:-**

**(a) Lewanika & Others v Chiluba** <sup>(1)</sup>;

In that case, this Court said at length as follows:

**“There was evidence from some of the petitioners who complained that various Ministers and the respondent donated public funds to public causes, which donations were widely reported in the media. The donations have taken place before the elections, during and since. They continue to date. We have anxiously examined the Regulations in which various kinds of**

conduct or misconduct is prohibited or made an offence. We have tried to see where the allegation in the petition and in the evidence of various political leaders donating to community projects might fit in, without success. The timing of such public philanthropic activity must have had some influence on the affected voters yet the Regulations are silent on such matters and on any possibly improper donations when not directed at individual benefit. As at the present movement, public philanthropic activity is not prohibited by the Regulations and we can do no more than to urge the authorities concerned to address this lacuna so that there can be a closed - season at election time for an activity suggestive of vote buying; including any public and official charitable activity involving public funds and related to emergencies or any life saving or life threatening situations.”

The **Chiluba case** was decided in 1998. Since this Court’s observations in that case, the electoral law, in relation to philanthropic activities, has not changed. Philanthropic activities were not petitionable in 1998, despite the wording of **Regulation**

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**7 (1) (L) of the Electoral (Code of Conduct) Regulations, 1996**. They were not petitionable in 2011, despite the wording of **Regulation 21 (1) (K) of Statutory Instrument No. 52 of 2011**. In our view, the boreholes in this matter, being an ongoing developmental project, under the office of the District Commissioner, fell under philanthropic activities. Reference to

them and use of them, by the Appellant, in his campaign, is not an illegal or corrupt practice under **the Electoral Act 2006**. Hence, it is not a petitionable ground.

In **Mumba v Daka (Appeal No. 36 of 2003)**, the Appellant, who was then the Minister of Health, was seen personally driving a Government Ambulance. He delivered it to a clinic. The clinic was not operational for five (5) years. It was re-opened about a day before the election. The Appellant had staff, drugs and an ambulance delivered to the very clinic. After these were delivered, the Appellant addressed a meeting at the clinic and openly asked people to vote for him. A Government motor vehicle, registration number GRZ 468BN, was seen ferrying people for campaigns. Additionally, the Appellant was seen in his Ministerial car, GRZ 746BN, during the period of political campaigns. His election was nullified, inter alia, for breach of Regulation 7 (1) (L) of **the Electoral (Code of Conduct) Regulations, 1996 (Statutory Instrument No. 179 of 1996)**. That Regulation prohibited use of Government transport or facility, for campaign purposes or to carry voters to polling

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stations. This Court upheld the nullification and dismissed the appeal.

In **the Mumba case**, the re-opening of a clinic and delivery of an ambulance, drugs and staff there, about a day

before election day, coupled with an address of a campaign meeting there by the Appellant, went beyond philanthropic activities. The Appellant's conduct was a pure breach of **Regulation 7 (1) (L) of the Electoral (Code of Conduct) Regulations, 1996**, and hence petitionable.

In **the Mumba case**, the Appellant personally initiated and executed activities complained of. He did so, using Government transport and facilities. Having done so, he then used them to ask for votes. That is what distinguishes **the Mumba case** from this case.

For the foregoing, we hereby reverse and set aside the learned trial Judge holding on the borehole issue. Accordingly, we allow ground **3** of appeal.

Ground **4** directly emanates from the boreholes. And it is inter-related to ground **3**. Having allowed ground 3, and for the

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reasons we have given above for doing so, we do not find it necessary to consider ground **4**.

We now move to ground **one**. On this ground, on behalf of the Appellant, Mr. Silwamba, Mr. Jalasi and Mr. Linyama,

make lengthy submissions. The gist of their submissions is that the donations were made to the Church and choir, as a group. They were not made to individuals or directed to them as voters. That since it was donations to a group and not individuals, they fall under the definition of “*philanthropic activity*” which as the law and regulations stand now, is not petitionable. They add that unless a donation is directed at individual benefit, it cannot amount to an electoral malpractice. In support of these submissions, they refer us to **Lewanika & Others v Chiluba** <sup>(1)</sup>.

In response on behalf of the Respondent, Mr. Nchito, Ms. Kateka and Mrs. Simachela, in summary submit that the Appellant’s donation was a bribe within Section 79 (1) (c) of **the Electoral Act**, and not a philanthropic donation. They submit that this is so because the donation was coupled with an open request for a vote, when he was introduced to the Church congregation, as a candidate for the Parliamentary seat. They argue that a philanthropic donation is a contribution to the community, not coupled with any ulterior intention. They further submit that even if the Court be of the view that the donations were a philanthropic nature, being coupled with an appeal for

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votes, they were so severe as not to fall in the category of exempted philanthropic activity as was the case in **Lewanika v Chiluba** <sup>(1)</sup>. In support of their submissions, they refer us to

**Mabenga v Wina** <sup>(3)</sup>. Therefore, they argue that the learned trial Judge was on firm ground in finding and holding as he did over the donation.

We have considered the submissions on both sides and have looked at **S.79 (1) (c)** of **the Electoral Act, 2006** and the cases cited. **Section 79 (1) (c)** reads as follows:

**“79. (1) Any person who corruptly either directly or indirectly, by oneself or any other person -**

**(c) makes any gift, loan, offer, promise, procurement or agreement to or for any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election; .....**

**Shall be guilty of the offence of bribery.”**

We have already dealt with philanthropic activity above.

In **Mabenga v Wina & Others** <sup>(3)</sup> this Court held that the Appellant’s conduct and activities went beyond philanthropic activities. That they constituted misconduct and hence upheld nullification of his election. The activities and conduct in question involved:

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**(1) Him requisitioning drugs from Medical Stores, for the Rural Health Centres and Community Health Centres in Mulobezi Constituency;**

- (2) Him using his transport to transport the drugs, as a Minister; and
- (3) Him causing the collected drugs to be stored at a house at Sichili Basic School, from where they were distributed, to the various places, up to polling day.

On the authority of the **Mabenga case** and on the evidence on record, we hold that the Appellant's conduct in donating the money to the church congregation, when he was introduced as a Parliamentary candidate and expressly asking for votes, went beyond philanthropic activity. We uphold the holding by the learned trial Judge that the Appellant's conduct amounted to a corrupt or illegal practice, under **Section 79 (1) (c)** and **93 (2) (c)** of **the Electoral Act, 2006**. It warranted nullification of his election to the National Assembly.

Ground **two** is an alternative to ground one. The gist of the submission on this ground is that even if the learned trial Judge made a finding of fact that the Appellant's donation constituted a prohibited practice, it cannot be said that such practice was so widespread as to adversely affect the result of the election. In support of the submission, we are referred to **Mubika v Njeulu** (*unreported*). In that case, the learned trial Judge found that there was an illegal practice in relation to the brewing and

drinking of beer in the Constituency. He nullified the election of the Appellant under **Section 93 2 (a)** of **the Electoral Act 2006**. On appeal, this Court reversed the nullification. It pointed out that the evidence of beer brewing and drinking in one village did not prove widespread inducement of registered voters in the Constituency. Therefore, it was a misdirection to base the nullification on this allegation. Counsel also cite **Mazoka (& Others) v Mwanawasa** <sup>(4)</sup>, which also dealt with the majority clause.

In response, Counsel for the Respondent submit that under **Section 79 (2) (c)** of the **Act**, where acts or an act of bribery are or is established, an election will be nullified, notwithstanding that the bribery has no widespread effect on the electorate. In support of their submissions, they cited **Mlewa v Wightman** <sup>(5)</sup>. We must say at once here that we agree with this submission. We do so for reasons that follow: Section 93 of the Electoral Act 2006, deals with election petitions. It provides as follows:-

- “93 (1) No election of a candidate as a member of the National Assembly shall be questioned except by an election petition presented under this Part.**
- (2) The election of a candidate as a member of the National Assembly shall be void on any of the following grounds which is proved to the satisfaction of the High Court upon the trial of an election petition, that is to say:-**

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- (a) *that by reason of any corrupt practice or illegal practice committed in connection with the election or by reason of other misconduct, the majority of voters in a constituency were or may have been prevented from electing the candidate in that constituency whom they preferred.***
  - (b) *subject to the provision of subsection (4), that there has been a non-compliance with the provisions of this Act relating to the conduct of elections, and it appears to the High Court 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.***
  - (c) *That any corrupt practice or illegal practice was committed in connection with the election by or with the knowledge and consent or approval of the candidate or of that candidate's election agent or polling agent; or***
  - (d) *That the candidate was at the time of the election a person not qualified or a person disqualified for election.***
- (3) Notwithstanding the provisions of subsection (2), where, upon the trial of an election petition, the High Court finds that any corrupt**

practice or illegal practice has been committed by, or with the knowledge and

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consent or approval of, any agent of the candidate whose election is the subject of such election petition, and the High Court further finds that such candidate has proved that:-

*(a) no corrupt practice or illegal practice was committed by the candidate personally or by that candidate's election agent, or with the knowledge and consent or approval of such candidate's election agent;*

*(b) such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and*

*(c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent's:*

*The High Court shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void.*

**(4) No election shall be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court that the election was so conducted as to be substantially in**

**accordance with the provisions of this Act, and that such act or omission did not affect the result of that election.”**

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Paragraphs (a) and (c) of Sub-Section 2 of **Section 93**, both mainly deal with corrupt and illegal practices, committed in connection with the election. On the face of it, the two appear to be the same. But decided cases show that the two have different scope and consequences. Under paragraph (a), any corrupt practice or other misconduct, committed in connection with an election, by somebody else, but nothing to do with a candidate in a particular Constituency, or his agent, can nullify an election. But it must be shown that by reason of such corrupt practice, illegal practice or other misconduct, *“the majority of voters in a Constituency were or may have been prevented from electing the Candidate in that Constituency whom they preferred”*: **See:**

- (a) Jere v Ngoma <sup>(6)</sup>;**
- (b) Limbo v Mututwa (unreported); and**
- (c) Mlewa v Wightman <sup>(5)</sup>.**

The **Jere case** was decided under **Section 16 (2) (a) of the Electoral Act, 1968**. The **Limbo case** was decided under **Section 17 (2) (a) of the Electoral Act, 1973**. The **Mlewa case** was decided under **Section 18 (2) (a) of the**

**Electoral Act, 1991**. The Sections in question are exactly the same, word for word, as **Section 93 (2) (a)** of **the Electoral Act, 2006**.

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In **Mlewa v Wightman**, this Court considered the difference between paragraphs (a) and (c) of **the Electoral Act, 1991**. It said that under paragraph (a), it does not matter who the wrongdoer is. The election will be nullified if there is wrongdoing of the type and scale which satisfies the Court that it has adversely affected or may have affected the election. That paragraph (c) penalizes the candidate. Even one or two proven instances of wrongdoing are enough; even though they could not conceivably have prevented the electorate from choosing their preferred candidate.

In the instant case, the learned trial Judge found as a fact that the money gifts the Appellant made to the Church was an illegal or corrupt practice. He then went on to nullify the election of the Appellant as a Member of Parliament, under paragraph (c) of Sub-Section 2 of Section 93 of the Act. In our view, having invoked paragraph (c) of Sub-Section 2, there was no need for the learned trial Judge to consider whether the proven wrong doing, adversely affected or may have adversely affected the result of the election under paragraph (a) of Sub-Section 2. An election can be nullified either under paragraph (a) or (c) of the Sub-Section. It does not have to be nullified

under both paragraphs. On the authority of **Mlewa v Wightman**, we do not accept the argument that for one or two proven acts of a corrupt or illegal practice attributable to a candidate, to nullify an election, it must be shown that it prevented or may have prevented the majority of

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voters in a Constituency, from electing the candidate whom they preferred. On the law, the fact that the learned trial Judge did not consider the proven wrongs under paragraph (a) of Sub-Section 2, was not a misdirection.

**Mubika v Njeulu**, was decided both in the High Court and in this Court, under paragraph (a) of Sub-Section 2, the majority clause. Paragraph (c) was never invoked and was never considered. That is what distinguishes that case from this case. Given the foregoing, we dismiss ground 2 for lack of merit.

On the totality of issues, **we uphold the nullification of the Appellant's election, for breach of Section 93 (2) (c) of the Electoral Act 2006**, and dismiss this appeal. This being a Constitutional matter, we order that each party bears own costs.

M.S. MWANAMWAMBWA  
**SUPREME COURT JUDGE**

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H. CHIBOMBA  
**SUPREME COURT JUDGE**

G.S. PHIRI  
**SUPREME COURT JUDGE**

M.E. WANKI  
**SUPREME COURT JUDGE**

E.C. MUYOVWE  
**SUPREME COURT JUDGE**