

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CONSTITUTIONAL JURISDICTION)**

2021/HP/EP/022

IN THE MATTER OF:

**IN THE MATTER OF PARLIAMENTARY
PETITION RELATING TO MALOLE
PARLIAMENTARY ELECTIONS HELD ON
12TH AUGUST, 2021.**

IN THE MATTER OF:

**ARTICLE 73(1) OF THE OF ZAMBIA
ACT.**

IN THE MATTER OF:

**SECTIONS 81, 82, 83, 84 86,
87,89,91,92, 94,97, 98, 99,100,110 OF
THE ELECTORAL PROCESS ACT NO.
35 OF 2016 OF THE LAWS OF ZAMBIA.**

IN THE MATTER OF:

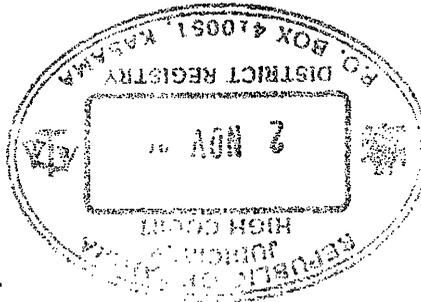
**THE ELECTORAL CODE OF CONDUCT
RULES OF 2016.**

BETWEEN:

CHIKONKOLO CHILUFYA

AND

ROBERT KAELA KALIMI



PETITIONER

RESPONDENT

Before:

The Hon. Mr. Justice Charles Zulu.

For the Petitioner:

**Mr. W. K. Cheelo of Batoka Chambers,
Agents for Mesdames Martha Mushipe
and Associates.**

For the Respondent:

**Mr. Jonathan Tembo of Messrs Linus
Eyaa and Partners.**

J U D G M E N T

Cases referred to:

1. *Michael Mabenga v. Sikota Wina & Others* (2003) ZR 43.
2. *Anderson Kambela Mazoka & Others v. Levy Patrick Mwanawasa & Others* (SCE/EP/01/02/2002).
3. *Nkandu Luo and Another v. Doreen Sefuka Mwamba and Attorney General* Selected Judgment No. 51 of 2018.
4. *Chrispin Siingwa v. Stanley Kakubo* (CCZ Appeal No. 196/2015).
5. *Muhali George Imbuwa v. Enock Kaywala Mundia* (CCZ Selected Judgment No. 12 of 2018).
6. *Christopher Kalenga v. Annie Munshya, Electoral Commission of Zambia and Attorney General* (CCZ Appeal No. 115/12).
7. *Akashambatwa Mbikusita Lewanika & Others v. Frederick Jacob Titus Chiluba* [1998] Z.R. 79.
8. *Steven Masumba v. Elliot Kamondo* (CCZ Selected Judgment No. 53 of 2017).
9. *Colorado v. New Mexico* 467 US 310 (1984).
10. *Richwell Siamunene v. Sialubala Gift* (CCZ Selected Judgment No. 58 of 2017).
11. *Attorney General v. Kakoma* (1975) Z.R. 212.
12. *Mushemi Mushemi v. The People* (1982) Z.R. 71.
13. *Cambridge v. Makin* (2011) EWHC 12 (QB).
14. *DPP v. Hester* [1973] AC 296).
15. *Mwiya Mutapwe v. Shomeno Dominic* 2016/CC/A008. Appeal NO.19/2017.
16. *Lazarous H. Chota v. Patrick Mucheleka & Another* (SCZ Appeal No. 18 of 2015).

Legislation referred to:

1. *The Constitution (Amendment) 2016.*
2. *The Electoral Process Act No. 35 of 2016.*
3. *The Electoral Process (General) Regulations 2016 S.I. No. 63 of 2016.*
4. *The Electoral Act No. 12 of 2006.*

Other material referred to:

1. **Evans Bell, An Introduction to Judicial Fact Finding (Commonwealth Law Bulletin 2013, page 519).**
2. **Phipson on Evidence Tenth Edition, (Sweet & Maxwell), paragraph 20-01 at page 855**

INTRODUCTION

On August 12, 2021, Zambia held a general election. In Malole Constituency, nine (9) parliamentary candidates contested the election, namely; the Petitioner, Chikonkolo Chilufya, sponsored by the United Party for National Development (UPND), the Respondent, Robert Kaela Kalimi, stood on the Patriotic Front (PF) ticket, Emmanuel Mulenga, an independent candidate, Lawrence Chomba an independent candidate, Francis Mwila was sponsored by the Development Party (DP), Bwalo B. Venon was standing on the ticket of the People's Alliance for Change (PAC), Mwiche M. Lazarous was sponsored by the United National Independence Party (UNIP), Margaret K. Pikiti was backed by the Socialist Party (SP) and Sampa M. Joseph an independent candidate.

On August 15, the Returning Officer, Benson Chiluba declared the results of the poll as follows:

NO.	NAME OF CANDIDATE	POLITICAL PARTY	VOTES
1.	KALIMI ROBERT KAELA	PF	25,407
2.	CHIKONKOLO CHILUFYA	UPND	7,245
3.	MULENGA EMMANUEL	IND.	6,386
4.	CHOMBA LAWRENCE	IND.	6,080

5.	MWILA FRANCIS	DP	1, 659
6.	BWALO VENON B.	PAC	1,108
7.	MWICHE LAZAROUS M.	UNIP	457
8.	PIKITI MARGARET K.	SP	383
9.	SAMPA JOSEPH M.	IND.	288
REJECTED AS INVALID			1,418

The Respondent, Robert Kaela Kalimi of the PF was declared the duly elected Member of Parliament for Malole Constituency. However, on August 27, the Petitioner being dissatisfied with the said election results and alleged electoral malpractices surrounding the election, took out the present petition, challenging the election results.

It should be noted that initially the Electoral Commission of Zambia (ECZ) was a party to the proceedings as the second Respondent. However, on the return date for trial, Counsel for the ECZ, Mr. Mbambara applied for misjoinder of the ECZ. The application was anchored on the premise that there was no cause of action in the petition disclosed against the ECZ. Counsel for the Petitioner, Mr. Cheelo duly conceded. And there being no objection to the application, and having being satisfied that there was no cause of action against the ECZ, I allowed the application by striking out the ECZ.

The reliefs sought by the Petitioner, against the Respondent, Robert Kaela Kalimi as pleaded are:

- i. a declaration that the election of the Respondent as a Member of Parliament for Malole Constituency is void;*

- ii. *an order that the declaration of the Respondent as winner of the said election was null and void;*
- iii. *an order that the election is invalid by reason of non-compliance with the Constitution and the Electoral Process Act and the procedure for the conduct of elections prescribed by the Electoral Commission of Zambia pursuant to the provisions of the Electoral Process Act;*
- iv. *an order that the Respondent be disqualified from being a Candidate in the By-elections for not complying with the provisions of the Constitution and Electoral Process Act;*
- v. *an order that the Respondent bears the costs of this petition; and*
- vi. *any other reliefs the court may deem fit.*

The gist of the Petitioner's petition is that the parliamentary election held in Malole was held in an atmosphere which was not free and fair, due to widespread malpractices, vote buying, bribery, violence and corruption, contrary to the Constitution of Zambia Chapter 1 of the Laws of Zambia and the Electoral Process Act No. 35 of 2016 (hereinafter referred to as the EPA), but the Respondent disputes the allegations.

BACKGROUND TO THE ALLEGATIONS AS PLEADED.

A summary of the said allegations as deciphered from the petition essentially fall into two (2) categories, reproduced in the proceeding paragraphs.

1. Allegations of violence allegedly perpetrated by the Respondent against the Petitioner and her team prior to the election.

The Petitioner alleged that following threats from the PF supporters of arson; on August 10, the Respondent organized his supporters within Kasama to burn the motor vehicle namely, Toyota Hilux registration mark BAE 138, which the Petitioner was using in her campaigns.

2. Allegations of corruption, bribery, inducement of voters, feeding of voters and ferrying of voters by the Respondent to polling stations in order to sway them to vote for the Respondent.

The Petitioner alleged that the Respondent and his agents were distributing mealie meal and beef to electorates during campaigns and on the poll day using a truck, registration mark BAP 1746. And that the said food was delivered to the following places: Makasa and Mankungu Village in Mpanda Ward, Bwebe and Mumba Village in Chambeshi Ward, Chonya and Chilele Village in Mabula Ward, Maliko Mpange Village in Iyaya Ward, Shumpa Village in Fube Ward, and Nyoli Village in Katumba Ward.

It was alleged that the Respondent and his agents cooked nshima with beef near polling stations during the polling day in all the above stated wards to feed electorates, who pledged to vote for the Respondent and the PF.

It was further averred that the Respondent and his agents ferried electorates from various villages to Kapolyo Polling Station in Chambeshi Ward using a motor vehicle, Mistubishi Fuso Fighter registration mark ABJ 3314. And that another vehicle registration

mark GRZ 229CF belonging to the Department of National Registration and Passport Office was used to ferry electorates to Ndakala Polling Station, including a Toyota mini bus which was used to ferry electorates to Kanyanta Polling Station in Fube Ward. And that at the said polling station, the driver of the mini bus, Sydney Mwango bribed electorates with K10 notes.

Furthermore, it was alleged that the Respondent and his agents particularly, Major Richard Kachingwe were seen distributing money to electorates during campaigns and on the polling day in order to entice electorates to vote for the Respondent. That an agent of the Respondent, Moses Chintwa was involved in the distribution of money on the poll day at Kalikeka Village. And that the Respondent and his agents were campaigning on the poll day; whereby the Presiding Officer at Mankungu Polling Station, Francis Phiri directed electorates to vote for the Respondent, and that in cases where electorates were unable to vote due to their disabilities, he voted on their behalf in favour of the Respondent.

The Petitioner contended that as a result of the aforesaid illegal practices committed by the Respondent, his agents and supporters, the majority of the voters within the constituency and the polling stations aforesaid were prevented from exercising their freedom of choice in electing a candidate of their choice as Member of Parliament for Malole Constituency.

THE RESPONDENT'S ANSWER/DEFENCE

In opposing the petition, the Respondent filed an answer and an affidavit verifying facts. The Respondent traversed seriatim each and every allegation levelled against him. He contended that he was duly and validly elected as a Member of Parliament for Malole Constituency.

SUMMARY OF THE PETITIONER'S CASE (ORAL TESTIMONIES)

The Petitioner apart from herself called thirty-four (34) witnesses, referred to as Petitioner Witness(s) (PW(s)). And the Respondent apart from himself called five (5) witnesscs, referred to as Respondent Witness (s) (RW(s)).

PW1 was Anne Chewe Mutale, a peasant farmer of Mwele Village. She attempted to testify about alleged abuse of social cash transfer in connection to the election; however, Counsel for the Respondent objected by contending that there was no allegation of that sort in the petition, and the Petitioner's Counsel, Mr. Cheelo conceded. In essence PW1 was withdrawn.

PW2 was Marcel Sampa, a peasant farmer of Chilele Village, Chief Mwamba in Mungwi District and a branch chairperson in the UPND. He stated that on August 12, around 05:30 hours, he proceeded to vote at Mabula Polling Station. He said near the polling station, he found young men dishing out face masks and he was given one. He said he voted, and on his return, he found the same gentlemen who had earlier given him a face mask. He said he was directed to a house of Bubble Kapolyo, a PF agent. He said the said house was located

400 metres from the polling station, where he found people preparing nshima with beef. He said he just passed through and went straight to his home.

PW3 was Emmanuel Mulenga, who introduced himself as a Consultant with the Northern Association of Agricultural Economics, but in cross examination it came out that he equally stood as an independent candidate after his application to stand on the PF ticket as a council chairperson was unsuccessful.

PW3 said the week before campaign period officially commenced, he met Major Richard Kachingwe. He said the mission of Major Richard Kachingwe was to dissuade him from contesting as an independent candidate for the parliamentary race in order to enable the Respondent to garner more votes in the election. He said no consensus was reached with Major Kachingwe. He said two weeks later he received another delegation from the PF comprising Major Richard Kachingwe, Dr. Bwalya Ng'andu, and Mr. Chipili, the PF Provincial Chairperson. He said again no consensus was reached with this delegation.

He said at some point he left Kasama for a month, but while he was out of town, he used to receive election updates from his agents locally based in the constituency.

He said on August 10, at around 17:00hours, he received a phone call from one of his agents, Moses Bwalya of Nkongwe Village, who reported to inform him that his wife had received three (3) chickens

and seven (7) kilograms of beef meant to feed electorates at Mulombelwa Polling Station in Fube Ward. He said he made a follow up and inquired from Moses Bwalya's wife and she told him that an agent named Chimandwa had taken the food to her and told her that someone from Matote Polling Station would collect the food earmarked for electorates. He added that he received several calls from several wards regarding the distribution of meat and mealie meal.

He said on August 12, he voted at Mfinshe Polling Station at around 06:30 hours. He said after voting he proceeded to Mukosha Polling Station. And that while at Mukosha, Major Richard Kachingwe arrived and started mingling with voters in the queue. He said he got interested to find out the nature of interaction Major Kachingwe was having with voters. He said two people in the queue told him that Major Richard Kachingwe was advising them to vote wisely, by voting for President Edgar Lungu, and the Respondent. And that he even told them that food was set apart for them.

He said after Mukosha Polling Station he proceeded to St. Josephs Polling Station in Malole North. That on his way at a place called Chinchiwababili, he again found Major Kachingwe's motor vehicle surrounded by people. He said he got concerned and enquired from the people, and that the person he enquired from told him that they were being given face masks. He added that he saw a group of young men running away chanting: "*we should share this money equally.*"

He said after the second encounter with Major Richard Kachingwe, he went to Kapolyo Polling Station. He said before he reached the polling station, he came across a Fuso Truck registration mark ABJ 3316 loading people at Nkongwe Village. He said as a concerned individual he trailed the said truck until it dropped off the said people, ten (10) meters from Kapolyo Polling Station. He said he approached the driver, McBright, who told him that he was working on instructions from the Respondent to ferry people from their villages to the polling station. He said before leaving Kapolyo he found Moses Chintwa, the Respondent's agent giving out money to people who had surrounded his motor vehicle.

He said after Kapolyo Polling Station, he went to Kabwenko Polling Station. He said, at Kabwenko, his agent took him to Mr. Sampa who had participated in the slaughtering of a cow. And that Mr. Sampa confirmed that the cow was meant to feed the Respondent's voters.

He said he later drove to Munkolo Polling Station, as he was keen on gathering more information about distribution of masks. He said he found a gentle man named Frank, who had in his possession masks. and was dishing out face masks and was given one upon request. He said at that point there were some old women and that Frank told the old ladies that the masks were able to detect if they voted for President Lungu or the Respondent.

He said after Munkolo Polling Station, he went to Kampamba, where he found people preparing food to feed voters. And that when he enquired from John Mulenga, a participant, the said John Mulenga

told him that they had foot soldiers who were recording the number of people who were voting for the President as a prerequisite to partake in the food.

He said around 18:40 hours, as he was heading back, he decided to return to Kapolyo Polling Station. That while he was talking to the people at Kapolyo, he saw the Respondent, clad in a white head sock, enter the polling station. And that when the Respondent came out of the polling station, he heard him say; "you should vote for the person you are seeing, which is me". He added that the Respondent proceeded to buy fritters for the electorates who were in the queue.

In cross examination, he said, he never saw the Respondent and his election agent, Gift Lwembe deliver chickens to anyone or slaughter an animal. He said he did not report any malpractice against the Respondent that he witnessed either to the Police or the ECZ.

PW4 was Kennedy Mwila of Katebule Village, Chief Makasa of Mungwi District. He said he was a village headman. He stated that on August 12, at around 08:00hours he was visited by Gift Lwembe, the campaign manager for the Respondent and Wisdom Chileshe, a councillor candidate on the PF ticket. He said when he was visited, Gift Lwembe was driving a Land Cruiser registration Mark GRZ 229 CF. He said Gift Lwembe advised him as village headman to encourage his subjects to vote for the PF in the general election and that food would be available for distribution. He said he was cautioned that if people did not vote for the PF, the machine that was used to register voters was able to detect those that did not vote for

the PF. He said, he was also warned that those that would not vote for the PF were amenable to sanctions.

He said he went round villages and spread the information to other village headmen namely: Kalela, Mwendo-ofyo, Chipaila and Kayengele. He said at 13:00hours, he went and voted at Chipili Polling Station, where he met Peter Shula, a PF branch chairperson, who asked him if he had done what Lwembe had instructed him to do, to which he said he responded in the affirmative.

He said he voted according to what he was told; for Republican President, Lungu, and Kalimi for Member of Parliament, Wisdom Chileshe for Councillor, and the PF candidate for Council Chairperson. He said Peter Shula told him that food was prepared at Simon Kangwa's house, situated 75 meters from the polling station. He said at Kangwa's house, the food was prepared by his wife, Edith Kapambwe, and Jennifer Katongo. He said according to his count six hundred (600) people had gathered to partake in the meal. He added that as village headman together with his village secretary, they were given six pieces of meat. He said he voted for the PF because he was given food with good relish.

In cross examination, he stated that he did not recall testifying before the Local Government Election Tribunal to the effect that, food was prepared at his house. He said when he was visited by Gift Lwembe, he was given K50 to buy food. According to him, this was not corruption, but money was given as a sign of respect. He added that the people who were cooking were his relatives, his wife and

grandchild, and that the two cooked for six hundred (600) people. And when quizzed on how this was possible that the two people could realistically cook for six hundred (600) people, he said his wife was exceptionally strong.

And when asked if he had a preferred candidate at parliamentary level, at first he responded in the affirmative, naming the Respondent, but later he answered the same question in the negative, stating that after he was instructed what to do, he changed his mind. He also went on to state that he could not disclose his preferred candidate because his vote was secret.

PW5 was Chris Mubanga Chipoya of Chundu Village, Chief Chitimukulu, Mungwi District. He stated that he was the polling agent for Emmanuel Mulenga (PW3). He stated that on August 5, Justin Chimanga Chimwandwa delivered 25kg x 200 bags of mealie meal and seven (7) x 20 litres of cooking oil at his shop for safe keeping at a fee. He said the foodstuff belonged to the PF and it was for distribution to the people. He added that on August 8, Justine Chimandwa visited him in the company of *nine* (09) people from different polling stations and collected part of the food. And that on August 9, he returned and collected the rest and left two bags for him. He said he reported this to his candidate, Emmanuel Mulenga (PW3).

He said on August 12, he was a polling agent for Emmanuel Mulenga (PW3) at St. Josephs' School. He said when he exchanged with his colleague and went outside; he found the PF was cooking within the

school at the teacher's house named Kapisha. He said he complained to the Headmaster, Mr. Mukanwa who confronted the said teacher.

In cross examination, he admitted that when the food stuff was delivered and retrieved from his shop, the Respondent and Gift Lwembe were not part of the group.

PW6 was Josephine Mukuka of Mulunda Village in Chief Chitimukulu's Chieftdom in Mungwi District. She stated that on August 10, at around 04:00 hours, she was visited by Mr. Katongo who was standing as councillor on the PF ticket. She said he was in the company of Mr. Kapota. She said the duo gave her *seven (7)* bags of mealie meal, *five (5)* chickens and a 5 litre of cooking oil, and told her that the food was earmarked for cooking on the polling day.

She added that on August 11, at around midnight, the duo returned and gave her meat and was told that the food was from the Respondent meant for electorates voting for the PF.

She said on August 12, the cooking point was at Mercy Chilufya's house located 150 meters from Kabwenko Polling Station. And that along the way, she told people she met to go and eat before voting.

In cross examination she said the Respondent and his election agent, Gift Lwembe were not there when the food was delivered to her.

PW7 was Deosy Simpungwe of Kapota Village under Chief Chitimukulu in Mungwi District. He said he was an employee of Emmanuel Mulenga (PW3). He stated that on August 12, whilst in

the company of three friends namely: Ndonji, Chiti Lombe and Edward Chishimba, he set out to vote. That on their way, they met Katongo who was standing as a councillor on the PF ticket. He said Katongo told them that the Respondent had given him money for the benefit of voters to spur them to vote for him and gave them K20 each.

He said they were later joined by Kanya, a PF youth leader, who told them that the Respondent had prepared food for them provided they voted for the PF.

He said he proceeded to vote for the candidate of his choice and so did his friends. He said when they left the polling station they went to Kanya's house, where food was being prepared, within a radius of 70 meters from the polling station. He said his friends proceeded to eat, but he did not, because he was not happy with what was happening and decided to report to Emmanuel Mulenga (PW3).

In cross examination he stated that he was cognisant of the fact that the receipt of the K20 constituted an offence, but never reported to the Police. When asked if he had called the Respondent to confirm if the money had come from him, PW7 said he did so, but when further queried, he said his confirmation was based on the fact that Katongo called the Respondent around 14:00hours, and overheard Katongo advising the Respondent that the voting was going on well.

PW8 was Justin Mwansa, a peasant farmer of Chibao Village, Chief Chitimukulu in Mungwi District and a polling agent for Emmanuel

Mulenga (PW3). He said that on August 11, around 17:00hours, his young sister Gloria Mwansa, brought home *six (06)* bags of mealie meal, *five (05)* chickens and a 5 litre of cooking oil from Malole. He said when he asked her, where she got the food; she replied that the food came from the Respondent for use on the polling day.

He added that on August 12, when he exchanged with his friend as polling agent at 12:00hours, he went outside to look for talk time. He said at Mutaba Junction, he found the Respondent and Nelson Sapolonkoto giving out K20 notes and urging electorates to vote for the PF. He said he was a beneficiary of the bribe. He said he notified Emmanuel Mulenga (PW3).

In cross examination he stated that apart from complaining to Emmanuel Mulenga, he never reported to the presiding officer.

PW9 was Felix Mwansa of Mununga Village, Chief Chitimukulu, Mungwi District. He said on August 12, he set-off for Mumba Polling Station to vote. And that around 08:00 hours, he met Katongo, who was standing as councillor under the PF. He said Katongo was dishing out K20 notes, and that he was a beneficiary as well. He said when he asked where the money came from, Katongo replied that it was from the Respondent, meant for people to vote for him. He said Katongo took him to a place where food was being prepared located within a radius of 60 meters from the polling station, reserved for those that voted for the Respondent.

PW10 was Chrispin Kangwa of Mulundu Village, Chief Chitimukulu in Mungwi District. He said on August 11, he was in Kasama District at a place called location waiting for transport to take him to Kabwenko Polling Station in Mungwi District. He said he got a lift from Steven Mulenga and Alex Kapoto who were in a taxi. According to him, the duo carried a lot of chickens in the said motor vehicle. And that when they got to Kapolyo at 19:00hours, the duo got out of the motor vehicle and took some chickens to a certain house. And on their return, he said he enquired what the chickens were for. He said, the duo replied and told him that the food was from the Respondent meant to feed electorates. He said as they proceeded with the journey, he reprimanded the duo that that was corruption of vote buying. He, however, stated that he got one chicken as well.

PW11 was Oscar Musambo of Daudi Mulusa Village, Chief Mwamba in Mungwi District. He described himself as an "Election General" for Emanuel Mulenga (PW3). He said on August 12, he went to vote early in the morning, at about 06:30 hours at Kabwe Polling Station. He said his friend, Joseph Bwalya pulled him aside to show him where people were being fed nshima with beef just behind the school within a radius of 50 meters from the polling station, and that he confirmed the same.

He said he returned to vote and after voting, he set off for his home in Katongo Chibwe, but when he reached the road, his friend Joseph Bwalya told him that there was a motor vehicle delivering food to polling stations. He said the said motor vehicle was a Hilux white in

colour. He added that he did not know the driver of the motor vehicle, but only knew Boniface Mwaba Nkole, a PF councillor. He said he got a lift together with his friends, Gabriel Mukuka and Justin Bwalya.

He said when they arrived at Katongo Chibwe, they found a lot of people celebrating and chanting that, the Respondent had fulfilled what he had promised; that he would prepare food for them, and that those who were assigned to cook the said food proceeded to cook. He said the message that was being spread was that the food was only for those that had voted for the PF.

He said the people he was with, Justin Bwalya, Gabriel Mukuka and another were denied a share in the meal as the condition to partake therein was to vote for the PF. He said about 34 people after eating did not proceed to vote because they had already benefitted from the food.

In cross examination, he said neither the Respondent nor his election agent, Gift Lwembe were at Kabwe Polling Station. And that he was only told that the food came from the Respondent, but never verified that it came from him. He said he only complained to his candidate, Emmanuel Mulenga (PW3) at around 20:00hours.

PW12 was Michael Mukuka of Pwemu Village, Chief Chitimukulu in Mungwi District. He said on August 10, he attended a meeting wherein Katongo, standing as a councillor on the PF and Mulenga Malaiti, a PF branch chairperson were in attendance. He said Katongo gave him K150 and told him to vote for the Respondent and

he. And that he was told that on the poll day, food was going to be prepared from Kanya's house. He said on the poll day, he passed through Kanya's place, but did not take part in the meal.

In cross-examination, he stated that at the meeting he attended, the Respondent was not in attendance neither did he know Gift Lwembe. He said he supported an independent candidate and the UPND.

PW13 was Chisanga Chrispin of Mukulula Village, Chief Makasa in Muchewe Ward in Mungwi District. He described himself as non-partisan. He kindled his testimony by stating that the manner of campaigning in the 2021 elections was unprecedented. He said on June 26, the PF team visited the area and during campaigns they urged the people to vote for the PF and promised that if they voted for the PF they would be given food. He said the team returned to the area, and the team comprised the Respondent, Lwembe, Kelvin Chafilwa, and Gostavia, the ward chairperson. He said the Respondent and Lwembe promised the people that if they voted for him (Respondent) they were going to be given food.

PW13 added that on July 26, the Respondent returned to the area and addressed a gathering of people. He said the Respondent told the people that on the poll day, food would be prepared for those that were going to vote for the PF. And that those who were not going to vote for the PF, after being feed, they were going to be detected through some monitoring system. According to him, he was gripped with fear and hence voted for the PF. He added that after voting, he

was approached by a gentleman named Robert who was chewing a piece of beef and shared a piece with him.

In cross-examination, he reaffirmed that on July 26, the Respondent visited the area and addressed a meeting. He, however, said he was not aware that on that date, the Respondent's mother had died and that the Respondent was attending to the funeral in Kabwe.

PW14 was Theresa Nakamba of Kanuma Village, Chief Chitimukula in Mungwi District. She said she was the UPND chairperson for Malole Constituency and the campaign manager for the Petitioner. The witness in her abbreviated testimony generally said that the UPND was not allowed to campaign freely in the constituency because wherever they went, they were attacked by the PF. But Counsel, Mr. Cheelo directed the witness to focus her attention to the allegation pertaining to the burning of the motor vehicle as pleaded. The witness replied that she knew nothing about that issue, and Counsel, Mr Cheelo opted to end there with this witness.

PW15 was Benard Mutale, a Village Headman of Lupande Village, Chief Chitimukuklu in Mungwi District. He said on the poll day August 12, at around 08:00hours, while at home in the company of his wife and children, he received Katongo who was standing as a councillor on the PF ticket in Chambeshi Ward. He said Katongo told him that he had been sent by the Respondent to relay a message that he, as the village headman, should tell his subjects to vote for the PF in the general elections. He said he replied that, since the request

was made on the poll day, he had no authority to relay such information to his subjects. He said at that point, Katongo gave him K100 and told him that the money was from the Respondent.

He added that at around 10:00hours, he went to Bwele School Polling Station to cast his vote. And that while in the queue he was approached by the same Katongo who took him aside and told him that they had prepared food to eat. He said he did not return to the queue, but went to eat at a house that was about 70 meters from the polling station. He said he found other people there eating. He said after eating, he returned to the polling station and went straight to vote without queuing since he enjoyed the privileges of a headman.

PW16 was Moses Chisonde of Bulaya Village, Chief Chitimukulu in Mungwi District. He said he was a polling agent for the UPND at Chandaweyaya Polling Station. He said on August 12, he reported at the polling station at around 04:30 hours and after voting he took a break from his duties as a polling agent at around 07:00hours. He said when he went outside the polling station he saw a Fuso Fighter truck in which there was a gentleman called Ricky Simutenda, a PF ward chairperson *cum* polling agent. He said Ricky was calling Idah and Paulina, inviting them to get food that he had brought. He said the food was four (4) chickens, pieces of beef, mealie meal, cooking oil and some tomatoes. He said when the food was collected, the cooking of the same was done at Idah's house.

He also stated that he saw another motor vehicle Rosa by make driven by George Bwalya dropping off 30 voters. That after these voters voted, they went to eat at Idah's house. He said the Rosa made a second similar trip and that after the people voted they went to eat at Idah's house.

In cross examination he admitted that he never complained to the presiding officer or to the police.

PW17 was Francis Chileshe of Koni Village, Chief Chitimukulu in Mungwi District. He also stated that he was an agent for the UPND stationed at Kanyanta Polling Station. He said he was at the polling station and after voting, he took a break around 10:00 hours. And that he decided to take a rest at a place located about 45 meters from the polling station. He said he saw a grey motor vehicle driven by Lawrence Kafula commonly known as "LK". He said the motor vehicle was given to Kafula by the Respondent. He said the motor vehicle was ferrying people to the polling station to vote. And that at around 11:30 hours, he saw the Respondent giving money to LK with instructions to hire more vehicles to ferry more people.

He said after LK was given the money, he organised a mini bus and a taxi, and the ferrying of people continued until 18:00hours.

PW18 was Emmanuel Mwamba, of Koni Village, Chief Chitimukulu. He said he was a polling agent for the UPND at Kanyanta Polling Station. The other agents he mentioned at the said polling station were Chansa Chansa, Bwalya Chikwe, Francis Chileshe and Godfrey

Mulenga. He said when he took a break, he went to sit 50 meters from the polling station, and saw Lawrence Kafula ferrying people to the polling station, and after voting returning them to their homes. He alleged that the motor vehicle Lawrence Kafula was using was given to him by the Respondent. He said he failed to intervene because he was scared of LK and his boys because they were in power.

He said when he took the second break, he went outside the polling station to organise food and water for his friends. He said he found Sampa Kacholi at Mr. Mulongoti's house queuing up people, and telling them to go and vote for the PF and thereafter to return and partake in the meal.

PW19 was Bright Sampa of Yunge Village, Chief Chitimukulu in Mungwi District. He said he was the Youth District Chairperson for the UPND. He added that during elections, he was a local monitor. He said on August 12, after voting around 08:00hours, he went to Chitila Polling Station where he saw Collins Musonda driving a grey Toyota Hilux belonging to the Government of the Republic of Zambia (GRZ). He said upon arrival, Musonda sped off, but he proceeded to enquire from the people that had gathered around the car, what Musonda's mission was. He said one of the people he spoke to was Anne Mulenga who told him that Collins Musonda had given them money to vote for the PF.

He said when he returned to the totalling centre at Mungwi District Council, he again saw the same Toyota Hilux driven by Collins

Musonda, and at that point he confronted Collins Musonda as to why he was driving a government motor vehicle. He said Collins retorted that: "us is Boma! Government!". PW19 said he did not respond.

PW20 was Bernard Nkole of Chumba Village, in Mungwi District. He said he was a councillor candidate on the UPND ticket for Iyaya Ward, and he lost. He recounted that on August 4, the Respondent, his campaign manager, Gift Lwembe, Grace Chomba and Joseph Mubanga, the PF secretary at the district level held a big rally in the school ground at Chumba School. He said at the said rally, the Respondent urged the people to vote for the PF and promised them that on the day of voting, they were going to prepare food and transport to ferry electorates from their homes to the polling stations.

He added that on August 11, the Respondent returned driving a blue motor vehicle. He said the Respondent was accompanied by two motor vehicles, a Fuso Truck laden with mealie meal and a Rosa mini bus carrying women. He added that the food stuff was delivered to Mr. Steven Mwamba's house, the PF information secretary.

He further stated that at the said rally held on August 11, from 13:00 to 17:00 hours, the Respondent said he had fulfilled his promises he made on August 4 to bring food to feed voters so that they don't go hungry on the polling day.

He said on August 12, he went to Chumba Polling Station at around 07:00 hours where he saw a motor vehicle, Fuso Fighter, belonging to Chikampa offloading people at a polling station. He said he

approached Saviour Mukuka, a PF official who was inside the Fuso Fighter and asked him why he was dropping voters at the polling station. He said the reply was that, he was following instructions by those that had hired the motor vehicle.

He said he reported the matter to the presiding officer, Mr. Musonda Mpando, who directed him to report the matter to the police officers who were manning the polling station, but received no response from them.

He said after Chumba Polling Station he went to Chandaweyaya where he voted from around 10:00 to 11:00hours. He said whilst there, he saw a motor vehicle, Rosa, driven by George Bwalya dropping electorates near the polling station. He said he confronted George Bwalya who said he was employed by the Respondent and Gift Lwembe and was only doing his job. He added that he left the school and by the road he went to Idah's house where food was being prepared. He said there were a lot of people receiving food.

He said on his motor bike, he proceeded to visit Chilaila Polling Station. He said opposite the school, food was being prepared at Bana Ireen' house. And that whilst there, he saw a motor vehicle inscribed 'Denmark' ferrying people to the polling station. He said he complained to the police officer deployed at the polling station, and was assured that the officer would bring to a stop the said act.

He said he farther visited Maliko Polling Station where he learnt that food was being prepared from three places. And while there, he

witnessed voters being dropped 50 meters from the polling station by a tipper Truck and later by a Fuso Fighter truck. He said he spoke to Kalela and Paul Bwalya who were in control of the truck. He said he was told that people were told how to vote and after voting they were directed where to eat from so that they did not starve. He said Paul Bwalya also told him that people were given K20 each.

He stated that he farther proceeded to Sompe Polling station and that even there he was shown a place 45 to 50 meters from the polling station where food was being prepared.

He said the last place he touched was Peleti Village, where he found people being served with food at *Shi Mischeck's* house. He added that even at that village, he saw people going to vote being dropped off. He said he did not proceed any farther due to the lateness of the hour.

PW21 was Christopher Mulenga of Kampamba Village Chief Chitimukulu, Mungwi District. He said he was a polling agent for the UPND at Chisali Polling Station in Kalungu Ward. He said on August 10, at around 12:00hours, the Respondent in the company of the ward chairperson, Pascal Mulenga and Chileshe Kangwa visited his father, George Kangwa, a member of the PF. He said the trio came with five bags of mealie meal, five chickens and a 5 litres container of cooking oil, and left the same with his father. He said his father was directed to deliver the said food to Pascal Mumbi's house situated about 300 meters from the polling station, a place designated for preparation of food. He added that on August 11, at around 19:00hours the said group delivered meat to Pascal Mumbi.

He said on August 12, he went to Chisali Polling Station, where he was assigned to carry out his duties as a polling agent together with Joe Bwalya. He said he took a break around 09:00 hours and went outside the polling station and that while outside, he saw a Fuso Fighter motor vehicle dropping electorates who were proceeding to vote, and after voting they were taken back. He said the truck made two other similar trips.

PW22 was Cephas Kangwa of Ndakala Village, Chief Makasa in Mungwi District. He said he was a polling agent for an independent candidate, Lawrence Chomba and that he was stationed at Ndakala polling station. He said on August 12, at 08:00hours he set out to vote at Ndakala polling station.

He said when he got to the polling station, he saw two motor vehicles, a Hino Truck and a Toyota Land Cruiser belonging to the government. He said in the Hino Truck, there was Wisdom Chileshe and a PF councillor, Paul Chipalapata, and the Land Cruiser was with Gift Lwembe. He said the two vehicles were used to ferry voters to the polling station. He added that he saw Gift Lwembe and Wisdom Chileshe dishing out money to voters at the polling station. He said their vehicles were surrounded by a number of electorates. He said they were putting 10 people in each group, and each group was given K150. He said mealie meal and beef was also distributed.

He said he was unsettled with what he had witnessed, and this made him to confront the two. He said Wisdom Chileshe reacted by

slapping him. He said he reported the malpractice to the presiding officer, and the police chased the duo from the polling station. According to PW22, Gift Lwembe did not stop ferrying people to the polling station. He added that when the matter was reported to the police officer, a message was sent to Mungwi District and there after twelve (12) officers were sent to address the situation. He said there was a lot of confusion, which prevented people from voting. According to him out of 973 registered voters only 558 cast their votes at the said polling station.

In cross examination he stated that he did not have a record of proceedings from the polling station to support his testimony. He said he was a trained polling agent, but did not use the ECZ 'Gen 15' to register his complaint.

PW23 was Christopher Chikoi of Chitanga Village, Chief Makasa's Chieftom in Mungwi District. He stated that he stood as a councillor on the UPND ticket in Fibwe Ward and lost. He said on August 12, around 06:00 hours he went to vote at Chitanga Polling Station in Fibwe Ward. He said around 13:10 hours he went to Chishimpa where he found people being served food by a PF member, named *Bana Mpundu*. He said he found about 30 to 50 people being fed and instructed to vote for the PF. He said he cautioned the PF cadres that what they were doing was corruption.

PW24 was Peter Bwalya Kalangila of Nseluke Village in Katumba Ward of Chief Chitimukulu's Chieftom in Mungwi District. He said in the immediate past general election, he stood as a councillor in

Katumba Ward on the UPND ticket and lost. He stated that he also lost his petition.

He said on August 6, the Respondent visited Nseluke Village and held a rally at the taxi rank. He said at the said rally, the Respondent promised the people that on the poll day, he was going to provide transport to those who would vote for the PF.

He said on August 12, around 07:30 hours, he voted at Nseluka Polling Station and thereafter went to Kamena Polling Station, where he parked his motor bike about 50 meters from the polling station. He said while there, he saw a motor vehicle dropping off 30 people. And that when he drew closer, he found Nixon Chewe, a polling agent for the PF, dishing out K20 notes to people. He said he too was a beneficiary. He said the matter was reported to police officers at Kamena Polling Station. He said after reporting to the police, he told Nixon Chewe to stop what he was doing. He said Nixon retorted, saying; "they were the ruling party".

He said after Kanema Polling Station, he went to Chamfubu Polling Station at around 11:30 hours. He said at Chamfubu, he found people had gathered at Mr. Kashita's house, where they were eating food prepared by the PF. He said he was informed that the food was brought by the Respondent.

He added that upon receipt of a phone call from his polling agent, George Katongo in Nseluka, at around 12:10 hours, he returned to Nseluka to witness what was happening. He said when he returned

to Nseluka Polling Station, he found the Respondent addressing people urging them to vote for all the PF candidates and that after voting, they should go and eat from houses where food was being prepared. And that when people asked: "are we not drinking", the Respondent replied that he was going to leave money with Bernard Kapele, a polling agent.

He further stated that he confronted the Respondent over his unacceptable conduct and the Respondent warned him that he was going to unleash his cadres on him.

In cross examination he said he never reported the conduct of the Respondent to the ECZ or to the Police. He said he got a K20 from Nixon Chewes so that he could use it as an exhibit. He said he did not raise a complaint of threatening violence.

PW25 was Patrick Kaulung'ombe of Musonde Village, Chief Nkole Mfumu's Chiefdom, Mungwi District. He said he was the campaign manager for the NDC party as well as a polling agent. He said on August 12, at around 06:00hours, he went to vote at Mabula Polling Station. He said he found two gentlemen, and one he identified as Clement Kapolyo. He said Kapolyo told him that the PF had prepared food as promised. He said he was advised that food was prepared at Bubble Kapolyo's house, a PF polling agent. He said after voting, he proceeded to Kapolyo's house and confirmed that food was being prepared. He said since he could not wait for the food as it was early in the morning, he left the place.

He said he was a polling agent for three polling stations: Mabula, Katongo Chibwe and Chikuta. He said when he visited Katongo-Chibwe Polling Station, and discovered that the PF was preparing food for voters at *Bana Chewe Bufi's* house. And that at Chikuta Polling Station, food was prepared at the headmaster's house.

PW26 was Lewis Kafula of Mutale Namutimba Village, Chief Makasa's Chieftdom in Mungwi District. He said on August 12, after voting in his village, he went to Matthew Bwalya's house, a PF leader, where he found 20 people, and food being prepared. He said the place was located 45 meters from the polling station. He said the people demanded to be served before proceeding to vote, but they were advised to first go and vote. He said when the people asked about the money they were promised, Matthews Bwalya assured them that the distribution of money was set for 12:00hours. He said the people left and he too he left.

He said after a while, he returned upon hearing commotion, and found a multitude of people receiving K2 and K5 notes from Matthews Bwalya Kasonde and Lyapuma.

PW27 was Peter Mulenga Masako, of Malele Village in Katuba Ward, Chief Chitimukulu's Chieftdom in Mungwi District. He said on August 12, he and Remmy Musonda were on duty as polling agents at Mwangata Polling Station for the UPND. He said he took a break and left the polling station and near Mwangata Market at an unnamed house, he found a gathering of people, crowding the PF officials, namely Mary Chilufya and John Kabwa. He said at the same place

food was being prepared for voters to vote for the PF. He said he sent a young lad named Chile Nkole to get some food as well. He said at first the young boy was stopped because he was UPND, but nevertheless he managed to get food and they ate together.

He said he later returned to the polling station and sat outside and after a while, he witnessed the arrival of the Respondent, greeting the people and saying: "vote wisely".

PW28 was Andrew Chanda Kabuswe of Makasa Village, Chief Chitimukulu in Mungwi District. He stood as a councillor on the UPND ticket, and lost both in the general election, and his petition. He said on July 26, he attended a PF rally led by the Respondent accompanied by Gift Lwembe, Grace Chomba, the Council Chairperson candidate on the PF ticket and Wisdom Chileshe, a councillor candidate on the PF ticket. He said the rally was held at TAZARA grounds at Kalala Polling Station. He said at that rally, the Respondent made a statement to the effect that: "people of Mpanda Ward, I will bring you bags of mealie meal, money and I will also kill some cattle so that you vote for me". He said the other speakers that accompanied the Respondent adopted and repeated the same promises.

He said on July 31, he got information from Martin Lupakanya who owned a shop at TAZARA that the PF had transported mealie meal via railway to TAZARA Station. He said upon receipt of that information, he went to TAZARA Railway Station where he found, Wisdom Chileshe, Gift Lwembe and Arnold Chitoto. He added that

when the Respondent joined the group they started ferrying mealie meal in a Toyota Hilux in the direction of Makasa Village. According to him, 16 trips were made using the Toyota Hilux. He said upon observing this, he notified the Youth Provincial Vice Chairperson for the UPND, Mr. Bright Mweemba and reported to Constable Chinkumba, but he did not get a report.

He said on August 2, he and Bright Mweemba went to Makasa Primary School to follow up on the issue of the said mealie meal. He said at the school they counted up to 300 bags of mealie meal and that he took a video clip of the mealie meal; and the same was played during court proceedings marked exhibit "P1".

He said on August 6, he found Mr. Panta, the village headman writing down the names of people and recording their national registration and voter registration numbers. He said when he enquired from the headman, the purpose of that exercise, the headman replied that he was assigned to do so by the Respondent and the list was to be used for distribution of mealie meal in exchange for votes, and that food would be prepared on the poll day.

He added that the following day August 7, he found Wisdom Chileshe, the village headman and Arnold Chitoto distributing mealie meal according to the list. And that when he confronted them, they said they were the ruling party. He said he reported the matter to TAZARA Police Post, but there was no answer. He said he also reported to the ECZ who were doing voter education at Kalala School, but there was no answer as well.

He said on August 12, he visited and monitored a number of polling stations starting with Kalala Polling Station, where he went to *Bana Lucy's* house a PF member. He said at that house, people had gathered and food was being prepared. He said *Bana Lucy* told him that the food was reserved for those voting for the PF.

He said from there he went to Makasa Polling Station to *Bana Nkole's* house, situated 250 meters from the polling station and found food in terms of mealie meal, cabbages and meat being prepared. He said that *Bana Nkole* told him that the food was reserved for those voting for the PF. He said he was also told that if they were to cheat that they voted for the PF, they would be detected through a machine.

He said thereafter, he proceeded to Nawila Polling Station on his motor bike, where he found the village headman, Mr. Rodgers with assorted food items. He said the headman told him that the said foodstuff was delivered by Wisdom Chileshe using a Hino Truck.

He said whilst at Nawila, he saw a Toyota Land Cruiser belonging to the government under the department of National Registration, Passports and Citizenship (NRPC) being driven by Gift Lwembe, the Respondent's campaign manager.

He said upon seeing this, he trailed Gift Lwembe upto Chibolya Village. That at Chibolya Village, people were getting into the said motor vehicle belonging to the government including: Kalenga Chepela and his son, Chisanga Malamba and *Bana Mutale*. He said

after the people boarded the Land Cruiser, it headed in the direction of Ndakala. He said he still trailed the motor vehicle, until it got involved in an accident at Kankokwa. He said while there, another Land Cruiser without a number plate but inscribed 'Youth and Sports' came to the rescue of Gift Lwembe. He said he left the scene when they were changing tyres.

He said he proceeded to Ndakala Polling Station, and that after a short while, Gift Lwembe arrived and parked right inside the polling station and dropped off people to go and vote.

PW28 said he went to report to the police about the ferrying of voters in a vehicle that seemingly belonged to the government. He said the response of the police officer was that there was nothing he could do. He said at that point he noticed that the registration mark of the vehicle was GRZ 229 CF.

He added that another motor vehicle parked at Ndakala Polling Station was a Hino Truck with Wisdom Chileshe. He said he noticed that Gift Lwembe and Wisdom Chileshe were distributing mealie meal and money to electorates. He explained that Gift Lwembe and Wisdom Chileshe were grouping people; ten per group and gave them K150 to vote for all the PF candidates. That he and a polling agent, Cephas Kangwa (PW22) confronted the duo and reported to the police officer and the presiding officer. He said the duo were chased from the Polling Station. And that he also reported to the campaign Manager for the UPND, Mr. Munaile (PW32) who advised him to continue following trailing them.

He said at Mankungu Polling Station, Gift Lwembe, Wisdom Chileshe and Chipalapata dropped fifteen bags of mealie meal and headman Mankungu was advised to gather the people in groups of ten and each group was given K150 to vote for the PF. He said at Mbesuma, enroute to Ndakala, Gift Lwembe driving the said Land Cruiser picked eleven (11) people, among whom was a person he knew very well, Topwe Enge, who were dropped at Ndakala Polling Station. He added that he received further information that 400 meters from the school, food was being prepared at *Bashi* Junior's house. He said the people he found there, were celebrating and saying: "in PF there was nshima and beef" and that they had "*dununad* again" (to mean they had voted for the PF and won).

PW28 made reference to a video recording availed to the Court packaged in a CD containing three video clips: one allegedly showing Major Kachingwe; the second one showing bags of mealie meal; and the third showing a woman clad in PF regalia serving food. And an audio recording of the Respondent was also played.

In cross examination he admitted that the videos shown had no specific dates neither did the Respondent appear in the video clips. He also stated that he was not aware that on July 26, the Respondent was in Kabwe for his mother's funeral. He mentioned that he took pictures of the government Land Cruiser referred to as exhibit "CC7" and admitted that the pictures shown had no date and did not show the occupants or Gift Lwembe in particular. He also stated that

during his movement from Kalela to Nawila, he was with Justine Mukonka.

PW29 was Kennedy Mukukula, the Provincial Registrar of Northern Province in the department of National Registration, Passports and Citizenship (NRPC). After taking oath and giving his particulars, Counsel for the Respondent, Mr. Tembo raised some concerns which he termed 'housekeeping issues'. He noted that, the witness appeared to have been a subpoenaed witness via a *subpoena duces tecum* to produce documents rather than a witness via *subpoena ad testificandum* merely to testify. Mr. Tembo went further to state that he had no sight of the actual subpoena except the praecipe. Mr. Cheelo admitted that equally having inherited the file from Mesdames Martha Mushipe and Associates, he had no sight of the same. And he opted not to proceed with the witness until he had resolved the issue. Curiously, I asked the witness as to whether he knew what he was called to present or testify to before court, and his answer was that he did not know what he had come to testify about. There was no testimony led by this witness. The Petitioner closed her case without recalling this witness.

PW30 was Davis Bwalya of Chisongo Village in Kalungu Ward, Chief Chitimukulu in Mungwi District. He said he was a polling agent for the UPND. He said towards the end of July 2021, on a date he could not recall, the Respondent and the PF visited Numbuka Polling Station and addressed a rally. He said at that rally, the PF branded chitenge materials, t-shirts and caps were distributed. He said the

Respondent promised the people that he was going to give them mealie meal, sugar, cooking oil and beef.

He said after three days, his friend, the PF, branch chairman *cum* polling agent for the PF, Emmanuel Chisenga told him that he was going to Kampamba to collect food as promised by the Respondent. He said the following day he went to Emmanuel Chisenga's house and was shown the items that he had previously collected, namely a bale of chitenge materials and t-shirts, mealie meal, two (2) buckets of cooking oil and salt. He said he was given a t-shirt.

He said on August 12, Emmanuel Chisenga was ferrying foodstuff from his home to the polling station using a bicycle. And that some women were assigned to do the task of cooking. He said Emmanuel Chisenga addressed people in the voting queue that they needed to eat before voting. He added that a *Carter* truck sent by the Respondent was ferrying voters to vote and returning them after voting.

PW31 was Sydney Chileshe of Nakabale Village in Kalungu Ward in Chief Mumena's Chieftdom of Mungwi District. He said he was a polling agent for the UPND at Mumena Polling Station. He testified that between August 24 and 26 in Kampamba Village at a house of *Shi* Mumbi Shamalela, the PF officials from different polling stations were collecting mealie meal, salt, caps, chitenge materials and t-shirts. He said he equally visited the place during the above stated period and came to discover that the PF officials from Mumena had not yet collected their parcels. He said since he was identified by

those distributing the food, they suggested that he could collect on behalf of the PF officials from Mumena. He said he collected the parcel which was later handed over to Eugene Mukuka, the PF polling agent at Mumena.

He said on August 12, he was at the polling station and that at around 10:00 hours, he decided to take a break and while on break, he witnessed Eugene Mukuka giving out food to voters on their way to vote and after voting.

In cross examination he stated that he did not complain to the ECZ.

PW32 was Emmanuel Munaile, the campaign manager for the UPND in Malole Constituency during the 2021 general election. He said towards the end of May, the UPND commenced its campaigns. And that as campaign manager, he was assigned a Toyota Hilux registration mark BAE 138, and the driver of the same motor vehicle later came to be Chansa Mwelwa, PW35.

He said during the period July 29 to August 5, and in accordance with the ECZ campaign timetable they were scheduled to campaign in Maluba Ward. That he and the Petitioner and the team were campaigning in the said ward. And that their campaigns at Mulilo were disrupted by four members of the PF riding in an unregistered white Land Cruiser. He said the PF members were playing loud music and throwing Chitenge materials to the crowd and that the vehicle was laden with mealie meal.

He said when the UPND team moved to Chonya, they suffered disruption from the PF cadres. He said he personally confronted one of the PF cadres over their misconduct. He said the excuse they made for disruption of their rally was that they were delivering mealie meal to the next point.

He said on August 9, while conducting campaigns in the constituency with the Petitioner, he received information that they were being stalked by the PF cadres. And that as a result of this information instead of stopping over in Mungwi, they went straight to Kasama. He said he went to bed at around 20:00hours in readiness to campaign the next day. He said around at 04:00 hours he was called by Chansa (PW35) and was informed that the Toyota Hilux BAE 138 was burnt.

He said the matter was reported to the Police. He said the burning of the said motor vehicle placed their campaigns in total disarray. He said that they did not campaign for two days because they feared for their lives.

He said on August 12, after voting at Makasa Polling Station, he later received a phone call from Andrew Chanda (PW28), a councillor candidate on the UPND ticket, that he had seen Gift Lwembe driving a Land Cruiser. He said he advised the informant to trail him. He added that at Ndakala, Andrew Chanda came to discover that the Land Cruiser was without a number plate in front, but at the back it was bearing GRZ 229 CH. And that upon receipt of this report from Andrew Chanda, he decided to make follow ups on the matter with

the department of the NRPC. He said the matter was escalated to the Permanent Secretary Northern Province, but there was no answer save to assure him that they were available to testify in this petition.

PW33 was Jasper Chileshe a peasant farmer of Mankungu Village, Chief Makasa's Chieftdom in Mungwi District. He said on August 8, the PF through Matthews Chilekwa bought a cow from Mr. Paul Kasonde, of Mankungu Village. And that he was assigned by George Mubanga Kalima and Paul Kasonde to deliver the same to Deophilas Mukuka, and that he did as instructed.

In cross examination he stated that he never saw the Respondent or his election agent on that material day.

PW34 was Chilufya Chikonkolo the Petitioner. Regarding the allegation of arson, involving the motor vehicle Toyota Hilux BAE 138, she recounted that on August 9, she was in Malole Constituency campaigning with her team, which included Emmanuel Munaile (PW32). She said she later received a phone call from Chansa Mwelwa (PW35) alerting her that the PF was stalking them. She said upon receipt of this information, they decided to exit Malole and proceeded to Kasama where they were lodging.

She said when they returned to Kasama, they had a brief meeting and later they dispersed. And that at around 04:00hours, she received a phone call from Chansa Mwelwa (PW35) informing her that the motor vehicle, Toyota Hilux BAE 138 which they were using in their campaigns was torched and burnt. She said this act of arson

physically and emotionally disoriented her. She said as a result of this ordeal, her spirit was shattered and that her campaign came to an abrupt end. She said as a female candidate, she was gripped with fear to be on the ground and campaign. She said her option at the material time, was to remain in her lodge until the poll day. She said her personal vehicle she was using a white Hilux was not in good condition.

Regarding the allegation of bribing voters, feeding voters to induce them to vote for the Respondent and ferrying voters to the polling stations; her testimony was that she was only made aware through her witnesses that testified. She said she could not make follow-ups because she was immobile.

And regarding the audio, that was played, according to her, she expressed surprise that in that audio the Respondent was talking to his people to be cautious; because what they were doing could be used as evidence against him in court proceedings.

In cross examination when asked about the videos, she said the Respondent was not in the video except the PF party and it was not ascertainable where the same videos were captured from. And in reference to the video supposedly showing Major Kachingwe, she said that there was no face of Major Kachingwe in the video and that the video was undated. And in respect of the audio, she said that the Respondent was reprimanding his people.

The last witness for the Petitioner was **PW35**, Chansa Mwelwa. He said he was part of the UPND campaign team. That on August 9, he was assigned to assist with registration of polling agents in Mungwi District, and was at the material time using the motor vehicle Toyota Hilux registration mark BAE 138. That whilst executing his duties at around 11:30 hours, he was called by John Simfukwe who alerted him that the PF thugs were planning to harm and attack his team. And that when he finally managed to get hold of the Petitioner and Emmanuel Munaile (PW32) on phone, he conveyed the message to them. He said that he, the Petitioner and Emmanuel Munaile later returned to Kasama and had a meeting at around 20:00hours, and later dispersed.

He added that on August 10, at around 03:30 hours, while in the house he heard a loud bang coming from outside, and that when he went outside to check, he found the Toyota Hilux registration mark BAE 138 on fire. He said at that point he also saw an unregistered motor vehicle VVTI escaping from the scene. He said thereafter he reported the matter to the Petitioner and the Police.

In cross examination, he said the people that burnt the car were unknown.

THE RESPONDENT'S CASE (ORAL TESTIMONIES).

The first Respondent called five witnesses and testified last, but conveniently, I will start by summarizing his testimony. The first Respondent was designated as **RW6**.

On allegations, allegedly linking him to the arson of the motor vehicle, Toyota Hilux BAE 138, he said the implication was false. He said he only learnt of the same when he received the petition. And that he also came to learn that, the motor vehicle was a subject of litigation in the petition for Lukashya Constituency, in which the petitioner in that petition alleged that, the respondent, George Chisanga, was responsible for the arson of the said motor vehicle. He said he only had one duly appointed election agent, Gift Lwembe. In support he produced a document dubbed 'Gen 7'. He said his election agent was never charged with arson of the said motor vehicle.

He said he never appointed any polling agents, and that the polling agents exhibited at page 7 to 19 of his bundle of documents were appointed by the PF to represent the PF presidential candidate.

Regarding allegations that allegedly occurred on July 26, he said allegations associated with that date cause his heart to bleed, because on that day he said he was burying his mother in Kabwe, who died on July 23. He said he returned to the constituency on August 2, and resumed his campaigns on August 6. And that on August 10, he was in Chambeshi, and wound-up his campaigns on August 11, in Mungwi Central Ward.

He denied allegations that he distributed mealie meal and slaughtered 26 cattle to feed voters to induce them to vote for him. He described the allegation as total fabrication. He explained that, Malole Constituency had 15 wards and 142 polling stations covering

10,000 square meters, as such he could not be reasonably expected cook nshima in all the alleged wards. He added that he was cognisant of electoral regulations, and for that reason he did not bribe voters.

He said McBright Bwalya was not known to him. And that he never assigned any polling agent to ferry voters. He said Moses Chintwa was one of the aspiring candidates on the PF ticket, but was not adopted and that Moses Chintwa was aggrieved by his adoption. He wondered how Moses Chintwa could work for him. He added that he never interacted with Major Kachingwe or any of the alleged polling agents.

And that he never used a government motor vehicle to campaign. He said the allegation was malicious.

He added that on August 12, around 06:30, he and his family went to vote at Chitila Polling Station in Mabula Ward. He said after voting and after dropping his family at home in Mabula Ward, he conducted a snap check at three polling stations namely, Mungwi Central, Musenga, and Musungu. He said after his inspection around 12:00 hours, he retired to his home. He said polling day was a dangerous day to move about, he denied going to Chumba, which was located 100km. He denied buying fritters at Kapolyo Polling Station.

He denied allegations raised by Andrew Kabuswe, PW28. He denied taking part in the off-loading of mealie meal at TAZARA as alleged by PW28. He said the videos relied on were undated and the places from

where they were taken were unknown. And he disassociated himself from an organisation called GOZA.

Regarding the audio recording, he admitted that the voice in the recording was his. He explained that in the audio he was addressing the district and constituency officials who were coordinating his campaign, post the present petition. He explained that the PF councillors had hired motor vehicles and bicycles, bought drinks and buns and had accumulated debts from the community.

He said when the councillors sought for his financial help as an area Member of Parliament, to service the debts, he reprimanded them that he had sorted that out through the constituency executive, and that he could not become careless to give out money when he had a petition pending, and that if he assisted them, that could have been used as evidence against him in court.

He said to suggest that the electorates were enticed using food was mischievous. According to him, the PF was very popular in the constituency attested by the number of votes he amassed of 25, 407 votes, compared to his opponents.

RW1 was Gift Lwembe. He said he was the only appointed election agent for the first Respondent, and that polling agents were appointed by the PF. He said his task was to coordinate campaigns for the first Respondent.

In relation to the allegation of arson, he said he only came to learn about the same through these court proceedings. He denied

allegations of distributing food stuff to electorates. He said he had no knowledge of the motor vehicle registration mark BAP 1746, allegedly used to distributed food.

He also denied allegation of him abusing a government motor vehicle registration mark GRZ 229 CF. He denied the allegation and stated that in as much as he was in government as a Mayor from 2016 to June 2021, the moment Parliament was dissolved, his entitlement to government properties ceased to exist.

He added that he was not privy to the said government motor vehicle. He said during campaigns he was using two motor vehicles, namely, a grey Ford Ranger and at times a Toyota Hilux, given to him by the party.

He denied knowing Andrew Chanda Kabuswe (PW28) who alleged that on July 26, he and the first Respondent addressed a meeting at TAZARA ground. He said it was unfortunate that such an allegation was raised, when on that date, he was away consoling the first Respondent who had lost his mother in Kabwe. He added that on the said date, he was giving a speech on behalf of the bereaved family' at the burial site in Kabwe. He said they only returned to Mungwi on August 2, and resumed campaigns on August 6, in Kabisha Ward. He said on August 10, he was in Mpanda Ward, east of Malole Constituency. He added that August 10, was his last day of campaigns for the first Respondent. And that on August 11, he returned to his home in Kasama in readiness to vote on August 12.

He said on August 12, after casting his vote at 08:30 hours at Chumba Polling Station, he immediately returned to his home, on account that his wife was due for delivery, and that he spent most of his time at the hospital, until she delivered a baby boy at 16:00hrs.

And in relation to allegations raised by Kennedy Mwila (PW4); to the effect that that Gift Lwembe visited him on 12 August, using a government motor vehicle registration mark GRZ 229 CH, and directed him as headman to tell his subject to vote for the PF. Gift Lwembe said, he only came to know PW4 at court during the hearing of the local government election petition for Mpanda Ward, where PW4 appeared as a witness for the petitioner (UPND losing candidate). He said the testimony of PW4 was false because the time that was mentioned by PW4, he was at Chumba Polling Station, where he voted from. And that for him to be at the place PW4 alleged Katebule Village, it was a two hour drive from Chumba.

He expressed ignorance and denied all allegations relating to Major Kachingwe, and cooking and distribution of food. He said in compliance to Covid-19 guidelines, the nature of the campaigns was door to door rather than holding rallies.

RW2 was Boniface Nkole Mwaba, the ward councillor for Mabula ward. Basically, his testimony was in reaction to the testimony of PW32, Emmanuel Munaile, by alleging that on July 30, when he and his friends came face to face with PW32, the Petitioner and team, it was PW32 and his team that were provocative. He said it was PW32

that actually punched him on his left eye and his driver was hit on the eye with a golf stick. He said he reported the incident to Gift Lwembe, who told him that he was out of the constituency attending to the funeral of the first Respondent's mother. He said Gift Lwembe assured him that the matter would be reported to the police. He said after a short while the police visited the scene. He said the UPND group bolted upon arrival of the police. He said he was issued with a police medical report.

RW3 was Joseph Mubanga, he said during the 2021 campaigns, he was the district secretary for the PF. He said he was in charge of receiving items on behalf of the PF and distributing the same. He said this included allocation of motor vehicle and fuel. He said it was not true the first Respondent and his election agent were using a motor vehicle marked GRZ 229 CH. He added that the duo were using their own motor vehicles to campaign.

He made reference to complaints he formally registered with the District Conflict Management Committee regarding attacks that occurred between July 22 to 31, by the UPND members against the PF members, including the incident involving RW2 at Mabula Ward Chonya Village. He made reference to a letter in respect of the complaint by RW2 to the District Conflict Management Committee dated July 31. He said the addressee did not respond to the complaint.

RW4 was Rhoidah Chanda. She said she was a good governance coordinator for a non-governmental organisation (NGO) called GOZA. She said objectives of GOZA in Malole Constituency included voter education. She said the programme was running from January to August 2021.

She added that GOZA discovered that during elections, there was voter apathy due to long distances, and that potential voters were discouraged to participate in voting. She said in order to redress the apathy on polling day, her organisation provided food (mealie meal, chickens and beef) and hired motor vehicles to ferry voters to and from each polling station, without discrimination. She said the preparation of food was not done from PF members' houses.

She said the execution of the plan was done through its ward coordinators, and that each ward was assigned a motor vehicle. She said the motor vehicles included *canthers, fusso fighters and taxis*.

She said there was no relationship or political ties between GOZA and the UPND and the PF or with the Respondent.

RW5 was Christopher Mulenga a Ward Councillor of Kalungu ward. His testimony was a counter reaction to what PW21, Christopher Mulenga said, that on August 10, the Respondent was in Kalungu ward handing out food to George Kangwa meant to feed electorates. He said the Respondent did not visit Kalungu Ward on August 10. According to him, there was no way that the Respondent could have

visited the ward without him knowing since he was the village headman and the councillor candidate for the PF for the ward.

And in relation to events of August 12, he stated that on the poll day he voted at Chisali Polling Station between 06:00 hours to 07:00 hours and thereafter went home to await results. He denied knowing anything about ferrying people after voting.

THE PETITIONER'S SUBMISSIONS

Counsel for the Petitioner, Mr. Cheelo kindled his submission by stating that the Petitioner had proved her case on the balance of probability. However, regarding the required standard of proof in an election petition, he cited the case of Michael Mabenga v. Sikota Wina & Others (2003) ZR 43, wherein the Supreme Court held:

An election petition is like any other civil claim that depends on pleadings and the burden of proof is on the challenger of the election to prove to a standard higher than a balance of probability – issue raised are required to be established to a fairly high degree of convincing clarity.

He also made reference to the case of Anderson Kambela Mazoka & Others v. Levy Patrick Mwanawasa & Others (SCE/EP/01/02/2002) wherein the Supreme Court held:

We accept that the issue of standard of proof may turn out to be more of a matter of words than anything else. There can be no absolute standard of proof. The degree must depend on the subject matter, in the case under consideration; the standard of proof must depend on the allegations pleaded.

Mr. Cheelo argued that notwithstanding the stance that the Petitioner had taken that he was not answerable or accountable for the actions of the polling agents, this did not hold any water. It was contended that the actions of all polling agents fall squarely on the shoulders of the Respondent. According to Mr. Cheelo, the actions of polling agents that the PF appointed as shown at pages 7 to 19 of the of the Respondent's bundle of documents did not only affect the party, but the parliamentary candidate as well, as they acted for and on behalf of the Respondent.

On the totality of the evidence adduced, it was argued that that the supply of food to voters was widespread in the constituency and was actuated by the Respondent and members of the PF. And that there was evidence that the Respondent was on the poll day dishing out money to electorates. And that the only logical and feasible conclusion to be drawn was that the Respondent either directly or indirectly with his consent and knowledge sanctioned the activities.

Similarly, it was argued that given the magnitude of ferrying of voters to polling stations it was surprising that the Respondent pleaded ignorance of those activities, when he was fully aware of the same.

Regarding the allegation involving abuse of a government motor vehicle by the Respondent's agent on the poll day, it was submitted that this allegation was proved.

And regarding the allegation touching on arson, it was argued that given the Respondent's desire to win the parliamentary seat, it was

inevitable that the Respondent naturally schemed the arson to frustrate the Petitioner's campaigns. According to Counsel, there was circumstantial evidence that the vehicle that was burnt was either burnt by the Respondent or by his agents.

Finally, it was submitted that the acts of: dishing out money; campaigning during elections; transportation of voters; and feeding of voters was widespread, and if put together including the act of arson, his conclusion was that, most likely these acts swayed voters to vote for the Respondent. I was thus urged to allow the petition.

THE RESPONDENT'S SUBMISSIONS

Counsel for the Respondent, Mr. Tembo argued that for the petition to succeed whatever illegal activity or malpractice in connection with an election must be attributed to the candidate personally or his election agent as by the law established, and as guided in the case of Nkandu Luo and Another v. Doreen Sefuka Mwamba and Attorney General (Selected Judgment No. 51 of 2018) wherein the Constitutional Court held:

...in order for a petitioner to successfully have an election annulled pursuant to Section 97(2) (a), there is a threshold to surmount. The first requirement is for the Petitioner to prove to the satisfaction of the Court that the person whose election is challenged personally or through his duly appointed election or polling agents, committed a corrupt practice or illegal practice or other misconduct in connection with the election; or that such malpractice was committed with the knowledge and consent or approval of the candidate or his or her election or polling agent..., in addition to proving the electoral malpractice or

misconduct alleged, the Petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was so widespread that it swayed the majority of the electorate from electing the candidate of their choice. Recently in Austin Liato v SitwalaSitwala we said:

..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 so widespread and prevented or may have prevented the majority of the voters in the constituency, district or ward from electing the candidate of their choice...

Counsel further contended that the fact that cadres or supporters of the PF were implicated in corruption, violence or illegal activities was not enough to attach liability to the Respondent or his duly appointed election agent, and in turn used as a basis to annul an election. And regard was thus had to the case of Chrispin Siingwa v. Stanley Kakubo (CCZ Appeal No. 7 of 2016) wherein it was held:

...a candidate is only answerable for those things which he has done or which are done by his election agent or with his consent. In this regard, we note that not everyone in one's political party is one's election agent since an election agent has to be specifically so appointed.

Section 2 of the 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 candidates nomination paper.

And based on the *Nkandu Luo* case (supra) it was argued that not everyone in the candidate's political party is a candidate's election

agent. It was thus noted that the Respondent's only duly appointed election agent was Gift Lwembe.

It was further submitted that the Respondent did not appoint polling agents so as to be held personally liable for their misdeeds. Counsel made reference to Regulation 56 of the **Electoral Process (General) Regulations, 2016 Statutory Instrument No. 63 of 2016** which provides:

(1) subject to the other provisions of this regulation, a candidate, or candidate's election agent may, in respect of each polling station within the constituency in which the candidate is nominated, appoint a person to be that candidate's polling agent.

And concerning the allegations raised by the Petitioner, Counsel segmented them as follows:

- 1. burning of the motor vehicle belonging to the Petitioner;***
- 2. providing food and money to the electorates on voting day;***
- 3. transporting of electorates during the voting day to the polling station; and***
- 4. use of government vehicle, Land Cruiser registration mark GRZ 229 Ch belonging to the National Passport and Registration Office by the Petitioner's agent to ferry voters on voting day.***

Mr. Tembo submitted that there was no evidence adduced connecting the Respondent or his election agent to the burning of the said motor vehicle.

And regarding the allegations of bribery, feeding of electorates and transportation of electorates, he submitted that witnesses in this regard fall in the category of partisan witnesses, whose testimony require corroboration. He also pointed out that a partisan witness cannot be corroborated by another partisan witness because they both require corroboration. The case of Muhali George Imbuwa v. Enock Kaywala Mundia (CCZ Selected Judgment No. 12 of 2018) was vouched wherein the Constitutional Court citing with approval a Ugandan case of *Wadada Rogers v. Sasaga Isaiah Jonny and the Electoral Commission Electoral Petition No. 3 of 2011* held:

In election matters partisan witnesses have a tendency to exaggerate claims about what might have happened during elections. In such a situation, it is necessary to look for other evidence from independent sources to confirm the truthfulness or falsity of the allegations... to the issue of corroboration we take on board the reasoning in DPP v. Hester wherein at page 1065 Lord Mouris stated that: corroboration evidence will only fill its role if itself is completely credible evidence.

The Court went further to state that:

The credibility of the witnesses in group one is in question because of their political affiliation and inclination. Lack of credibility is in fact the reason why trial judge dismissed the allegations of bribery against the Appellant..., the issue is that the witnesses belonged to a group that are considered suspect. To make the point we wish to cite a case though criminal and merely persuasive value is nevertheless helpful. It is the case of Boniface Chanda Chola and 2 others v. the People wherein it is stated that critical considerations is not whether the witness did in fact have interest or purpose of their own to serve, but whether they were witnesses who, because of the category into which they fall or because pf the particular

circumstances of the case may have had a motive to give false information.

In the light of the above, Mr. Tembo specifically discredited the Petitioner's witnesses that sought to speak in support of allegations relating to bribery, feeding of electorates and transportation of electorates. And in my determination I will, where it is deemed appropriate, make reference to his submissions.

In addition to the allegation of ferrying of voters, Counsel argued that this allegation was vehemently denied by the Respondent. He went on to argue that the law did not proscribe anyone from ferrying voters to a polling station using private motor vehicles. And the case of **Christopher Kalenga v. Annie Munshya, Electoral Commission of Zambia and Attorney General (SCZ Appeal No. 115/2012)** was cited wherein the Supreme Court held:

We shall deal with the grounds one and two together. It is common cause that trucks Registration No. AIC 6667 and ALC 6652 ferried people from Majuta and Kabangwe sections to Shibuchiga and Mushinka Polling stations to vote. This was a finding of fact by the learned trial Judge.... The argument by learned Counsel for the appellant while relying on the Mabenga case is that the use of government transport is an illegal practice. We agree. However, in this case the transport used was private transport and it is settled that the use of private transport to ferry voters is not an offence under our Electoral Laws. Indeed, as the learned Judge found, there was no evidence to show that two trucks were government vehicles or that they had been hired by the 1st Respondent. There was also no evidence to show that the persons who were on the trucks were agents of the 1st Respondent....to argue that the use of private transport which had a message to vote

on the clock to ferry voters amounted to a “corrupt practice or illegal practice” in terms of Sections 93(2) (a) of the Act; that it amounted to bribery as defined under Section 79(1)(c) of the Act and that it amounted to treating as defined under Section 81 of the Act is casting the net too wide.

It was, however, noted that by virtue of clause 15(1)(l) of the ***Electoral Code of Conduct 2016*** the use of government resources or facilities to transport voters to polling stations was proscribed.

Mr. Tembo observed that there was no evidence adduced to demonstrate that the Petitioner had officially raised complaints against the Respondent prior to the election. That even though various witnesses testified as polling agents to have witnessed the alleged malpractices on the polling day, no evidence was adduced to show that they registered any objections of electoral malpractice during the polling day in accordance with ***Regulation 38(2) and (3) of the Electoral Process (General) Regulations 2016 S.I. No. 63 of 2016*** which provides:

2.an election agent or voter may object to any other conduct of an election officer or any other conduct of an election officer or any person present at a polling station.

3.An objection shall be made to the presiding officer by an election agent, polling agent or voter in Form Gen 15 set in the Schedule.

Finally, it was submitted that the petition was not proved to the required standard and should stand dismissed with costs.

DETERMINATION:

I have carefully considered the evidence adduced by the Petitioner and his witnesses, the Respondent and his witnesses, including the parties' respective submissions.

It is opportune for me to start by acknowledging that **The Electoral Process Act No. 35**, came into force in 2016, upon the repeal of the **Electoral Act No. 12 of 2006**. The 2016 general elections were beset by unprecedented parliamentary election petitions ever filed in the history of the electoral process in Zambia. Over *eighty* (80) petitions were filed in the High Court, and some went on appeal to the Constitutional Court. In the process of adjudication on those cases, it is considerably safe to say that some jurisprudence under the EPA has emerged regarding parliamentary petitions. Therefore, the 2021 parliamentary petitions, being the second set of petitions under a general election governed by the EPA; the present petitions are relatively graced with sufficient home-grown case law, which this Court can easily have recourse to.

Nevertheless, development and evolution of case law in this regard is unavoidably continuous, compounded by the fact that a case may have unique features never tried or determined before, especially that the political environment under which elections are conducted are invariably distinct and evolving.

Mr. Cheelo, took the view that the Petitioner had proved her petition on the balance of probability. The balance of probability is not the required standard of proof in an election petition. The standard of

proof required in an election petition has remained immutable. In *Akashambatwa Mbikusita Lewanika & Others v. Frederick Jacob Titus Chiluba [1998] Z.R. 79* Ngulube CJ., stated that:

... we wish to assert that it cannot be seriously disputed that parliamentary election petitions have generally long required to be proved to a standard higher than on a mere balance of probability...

It follows also that the issues raised are required to be established to a fairly high degree of convincing clarity.

And the Constitutional Court in the case of *Steven Masumba v. Elliot Kamondo (CCZ Selected Judgment No. 53 of 2017)* reaffirmed the standard of proof by holding that:

In election petitions the applicable standard of proof is higher than a mere balance of probability applicable in ordinary civil cases but less than beyond all reasonable doubt.

The holding in case of *Anderson Kambela Mazoka* (supra) cited by Mr. Cheelo, regarding the standard of proof does not in any way suggest that the standard of proof should be compromised to accommodate a certain favourable outcome to a particular party. If the standard is lowered that is a recipe for arbitrariness.

The policy and object of any standard of proof was aptly stated in the case of *Colorado v. New Mexico 467 US 310 (1984)* wherein the Supreme Court of the United States held:

The function of any standard of proof is to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication. By

informing the factfinder in this manner, the standard of proof allocates the risk of erroneous judgment between the litigants and indicates the relative importance society attaches to the ultimate decision.

Adaptively, even here one can assert that society's interest in minimizing the risk of erroneous judgments in electoral petition dispute requires the petitioner to go an extra mile rather than take comfort in adducing evidence merely on a balance of probability or based on hearsay or/and unfounded inferences, but hard facts. It must be evidence which in the Colorado case is described to be: *highly probable and substantially more likely to be true than untrue*, synonymous with what we call in our jurisdiction as: *a fairly high degree of convincing clarity*.

The EPA in section 97 promulgates *inter alia* grounds upon which an election of a candidate as a member of parliament may be declared void. The relevant portion, namely section 97 (2) of the EPA is quoted hereunder:

(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.”

The test and approach to be applied whether to annul an election or not was lucidly outlined in the case of *Richwell Siamunene v. Sialubala Gift (Selected Judgment No. 58 of 2017)* the Constitutional Court held:

First that a corrupt or illegal practice or other act of misconduct was committed by the Respondent in connection with the impugned election. Second, that the prohibited practice or illegal act was committed with the knowledge as well as the consent or approval of the Respondent's election or polling agent. Thirdly, that as a result of the misconduct, the majority of voters in the Constituency were or may have been prevented from electing the candidate in the Constituency whom they preferred.

An election or polling agent envisaged here is one duly appointed by a candidate in a prescribed format in accordance with section 35 of the EPA which provides:

35(1) A candidate may appoint-

- (a) two polling agents for each polling station; and*
- (b) two election agents for each venue where counting of the votes will take place.*

(2) An election or polling agent-

(a) shall be a Zambian citizen or resident permit holder;

(b) shall not be a candidate in an election.

(3) The appointment and revocation of appointment of a person as an election agent shall be effected in the prescribed manner.

In the present case it should be pointed out from the outset based on the evidence adduced that, the Respondent only had one election agent, namely Gift Lwembe, who was appointed in accordance section 35 of the EPA, and the Respondent did not appoint any polling agents.

As stated above, it must be proved further that the corrupt practice, illegal practice or misconduct thereof, affected the majority of voters in a constituency, whereby the majority of voters were or may have been prevented from electing the candidate whom they preferred. And by majority, I reckon, it means that the corrupt practice, illegal practice or misconduct was wide spread in the majority of wards in the constituency.

If the question is answered in the negative that during campaigns, the corrupt or illegal practice or other acts of misconduct were not committed by the respondent, or by his election agent or polling agent, or committed without the respondent's knowledge or consent or approval of the respondent's election or polling agent, but by others, other than the above named, such as ordinary party supporters, cadres or sympathisers on their own volition, including

election or polling agents directly appointed by the sponsoring party, the respondent cannot be held liable.

And by law it matters less that the act or misconduct complained of was widespread and affected the results of the polls if not committed by the candidate or by his election or polling agent. This Court has no discretion to cast the net wider and include corrupt acts or misconduct of others not mentioned by the lawmaker to constitute wrongdoing to nullify an election.

The interpretation of corrupt practice under the Act means any conduct which is declared to be corrupt in accordance with section *eighty-one*, which generally covers instances of bribery. And an illegal practice is defined to mean an offence which is declared under the Act to be an illegal practice.

Additionally, section 97(2)(a) of the Act invests in the Court wide discretion to consider other misconducts albeit not specifically listed in the EPA, provided they have been committed in connection with an election and proved at the trial of the petition.

1. Allegations of violence allegedly perpetrated by the Respondent against the Petitioner and her team prior to the election.

A parliamentary election is a competitive process, which demands that the parties participating in the process, especially the candidates render themselves governable by the EPA, which also embodies the Electoral Code of Conduct. The Code serves as a guide to participants

about what is and what is not acceptable behavior. This is necessary to bring about credibility, transparency, accountability, legitimacy, propriety, integrity, equality and fairness to the electoral process.

Above all, Article 45 of the Constitution of Zambia supremely ordains principles of electoral system and process, which *inter alia* include holding of free and fair elections, devoid of violence and intimidation.

Therefore, acts of violence, intimidation and threatening violence by a candidate or his election or polling agent against his fellow candidates is unacceptable and unlawful. Such conduct is plainly made unlawful by section 83(1)(a) and (b) of the EPA. Such acts are amenable to constitute misconduct within the ambit of section 97(2)(a), and capable of nullifying an election if proved to the required standard.

In respect of this allegation essentially three witnesses testified: PW32, Emmanuel Munaile; PW35, Chansa Mwelwa; and the Petitioner. Clearly, there is no doubt that a motor vehicle used in the Petitioner's campaigns was burnt two days before the elections, and this occurred amid threats of violence from some PF sympathizers. And according to the Petitioner, this violence gripped her with great fear and forced her out of any morale to go out and continue to do her final campaign.

I have no doubt and certainly agree that, the acts of burning the said motor vehicle was meant to terrorize her. However, there is no

evidence whatsoever that this atrocity was directly or indirectly committed by the Respondent or his election agent.

PW35, Chansa Mwelwa who rushed to the scene immediately after the motor vehicle was set on fire said the perpetrators were unknown. However, Mr. Cheelo's argument is that the Respondent's desire to win the parliamentary seat, must lead to a conclusion that he or his agent committed the offence. This argument is unfounded.

2. Allegations of corruption, bribery, inducement of voters, feeding of voters and ferrying of voters by the Respondent to polling stations to vote.

In determining this allegation, I am generally faced with conflicting testimonies from the witnesses of the Petitioner and those of the Respondent. Accordingly, I have to make a determination which of the witnesses gave credible and reliable evidence. And in this regard, I wish to rely on the case of Attorney General v. Kakoma (1975) Z.R. 212 in which the Supreme Court held:

A court is entitled to make findings of fact where the parties advance directly conflicting stories, and the court must make those findings on the evidence before it and having seen and heard the witness giving evidence"

Further, in the case of Mushemi Mushemi v. The People (1982) Z.R. 71 the Supreme Court stated:

The credibility of a witness cannot be assessed in isolation from the rest of the witnesses whose evidence is in substantial conflict with that of a witness. The judgment of a trial court faced with conflicting evidence should show on the face of it why a witness has been seriously contradicted by others is believed in preference to others.

The assessment of credibility of witnesses in a judicial fact-finding process especially in a politically charged election petition can be daunting. A jurist, Evans Bell, in his publication "***An Introduction to Judicial Fact Finding***" (***Commonwealth Law Bulletin*** 2013, page 519) aptly describes the challenges generally associated with assessment of credibility:

There are no rules of law for assessing credibility anymore than there are rules for assessing relevance. There is no formula for doing it. The evaluation is essentially a subjective judgment as a result of a number of factors whose varying weight depends upon the circumstances.

In general, the factors to be taken into account in assessing credibility are: demeanor, character, reliability, consistency, veracity, and motive.

It is acknowledgeable that sometimes demeanor in the witness box can be misleading (see ***Cambridge v. Makin (2011) EWHC 12 (QB)***). Nevertheless, Evans Bell makes this compelling observation:

One of the advantages of the adversarial process is that the inner realities of a case are often much more apparent to the judge who watches the battle played out before him than those engaged in the fray. The parties ask questions so as to test the witnesses' veracity. The judge listens and observes. At the end, the judge decides which of them is being truthful and which is not. It is not a perfect or infallible system, but a better one has yet to be devised.

An election petition is usually a politically charged legal battle. It is realistically correct to state that such a trial is usually not short of testimonies tainted with exaggeration and disinformation inspired by

political bias or politically charged ulterior motives, including self-serving interests.

A helpful guide on how to deal with evidence of partisan witnesses is drawn from the Constitutional Court in the case of Steven Masumba v. Elliot Kamondo (supra) wherein it was stated that:

The evidence of partisan witnesses should be treated with caution and requires corroboration from an independent source in order to eliminate the danger of exaggeration and falsehood.

And it should also be pointed out that the mere fact that a witness is not partisan, does not automatically mean that the witness is reliable and credible. The court must never lose its judicial sense of caution.

It is absolutely necessary to test the credibility and reliability of each and every witness that alleged that the Respondent was particularly involved in the above stated allegations against the required standard of proof.

Conveniently, I will start by considering the testimony of the Petitioner and thereafter assess the testimonies of the Petitioner's witnesses generally in the order in which they were called.

It is abundantly clear that the Petitioner did not adduce direct evidence connecting or linking the Respondent and or his election agent to the allegations she raised in her petition. I agree with Mr. Tembo that the Petitioner did not personally perceive or witness any of the allegations including the alleged widespread distribution of food, the cooking and feeding of voters or and ferrying of voters to

polling stations in order to induce them to vote for the Respondent, which occurred mainly on the polling day.

The Petitioner also relied on video clips. Firstly, a video clip of a woman clad in PF regalia and serving food, secondly, a video clip allegedly showing Major Richard Kachingwe, and thirdly a video clip showing bags of mealie meal. There is nothing in those videos linking or connecting the Respondent or his election agent to acts alleged therein.

Likewise, the audio clip relied on by the Petitioner purportedly suggesting that the Respondent had knowledge of the allegations herein does not prove wrongdoing on the part of the Respondent. The Petitioner acknowledged that she was not there when the audio was taken. And having carefully listening to the audio, there is no admission whatsoever that the alleged misconduct was done under his authority or sanctioned by him. In fact, what came out to be probable as stated by the Respondent was that, the audio recording was actually done after the polls. And that the Respondent was responding to demands for financial assistance from party officials and he was reprimanding them to say that, given the pending petition, he was unwilling to help them because that could be an entrapment and used in the present petition as evidence against him.

It is not sufficient to merely adduce evidence that there was widespread corruption, vote buying, bribery and ferrying of voters to polling stations and rewarding voters with food and money if they

voted for the Respondent. What is crucial is the production of hard facts, cogent and convincing evidence that the Respondent or his election agent were involved in such acts. And I now proceed to sift through the evidence.

PW1, Anne Chewe Mutale as earlier noted was withdrawn, because she sought to adduce evidence on matters that were not pleaded.

PW2, Marcel Sampa's testimony does not in any way render the Respondent liable to the issuance of face masks to voters and the cooking that took place at Bubble Kapolyo's house to reward those voting for the PF in the polls. No proof was adduced that Bubble Kapolyo was an election or polling agent of the Respondent. The Respondent only had one election agent namely, Gift Lwembe and he did not appoint any polling agent within the meaning of section 35 of the EPA.

PW3, Emmanuel Mulenga, was a partisan witness including his polling agents; A partisan witness in the sense that, he stood as an independent candidate in Malole parliamentary election after he was not adopted by the PF. A considerable portion of his testimony was hearsay. Hearsay in the judicial sense generally means, a witness is prevented from reporting communication heard outside court from a person /persons who are not called as witnesses, (see *Phipson on Evidence Tenth Edition, (Sweet & Maxwell) paragraph 20-01 at page 855*).

And concerning what he said against Major Kachingwe, it should be pointed out that, Major Kachingwe was not an election or polling agent of the Respondent, neither is there proof that what he was alleged to have done was sanctioned by the Respondent or his election agent.

PW3's testimony suggesting that McBright confirmed to him that he was ferrying electorates to vote for the Respondent on instructions by the Respondent was hearsay, and was uncorroborated. Again, the dishing out of money by Moses Chintwa at Kabwenko Polling Station cannot be attributed to the Respondent because in the first place, he was not an election or polling agent of the Respondent. Similarly, the alleged acts of Frank dishing out masks and guiding women on how to vote at Munkolo Polling Station was uncorroborated and remains unreliable to meet the required standard of proof. In fact, the said Frank was not an election or polling agent of the Respondent. He was a PF supporter.

PW3 talked about preparation of food at an area called Kampamba, there is no proof that the said activity was sanctioned by the Respondent and his agent for purposes of vote buying. The narrative repeated by PW3 whose source of information was allegedly John Mulenga who was not called as a witness is hearsay.

PW3 also stated that he witnessed the Respondent buy fritters for voters at Kapolyo Polling Station on the poll day. The Respondent denied this allegation. The testimony of PW3 was uncorroborated,

therefore, the danger of exaggeration cannot be ruled out. It is inconceivable that PW3 being a key stakeholder in the election as a competitor, chose not to report the matter to the ECZ at the polling station, over this alleged malpractice.

PW4, Kennedy Mwila was equally a partisan witness, and his testimony was uncorroborated to rule out the danger of false implication and exaggeration. My considered assessment of him was that, he was elusive and exaggerative. His demeanor in the witness box did not impress me as a trustworthy witness. When asked the same question he would give two different answers. For instance, when he was asked if he had a preferred candidate in the election, he said no, but later changed to yes. And when asked to convince the court on how his wife and granddaughter managed to cook for six hundred (600) people, nshima with only one leg of a cow, he did not take it seriously, but responded in a dramatic and theatrical manner that, cooking was his wife's *forte*, and that she was highly dependable to cook for masses. His credibility and reliability is doubted.

PW5, Chris Mubanga Chipoya, while it is probable that the PF officials took 200 bags of mealie and other food stuffs for storage, and later distributed to the PF officials within the constituency, his testimony does not link the Respondent to any of the alleged corrupt practices. Moreover, I agree with Mr. Tembo that, this witness was a partisan witness whose testimony too required corroboration, but was uncorroborated.

PW6, Josephine Mukuka, her testimony did not in any way link the said food she received to the Respondent or his election agent. The fact that she was told by Katonga, a councilor candidate on the PF ticket and Kapoto that the benefactor of the food was the Respondent was hearsay. In any case, Katongo and Kapoto were not election or polling agents of the Respondent.

PW7, Deosy Simpungwe, testified to events that allegedly took place at Mumba Polling Station. This witness was measurably exaggerative. At first he wanted to portray a picture that he had personally spoken to the Respondent to confirm that the alleged bribery acts by Katongo were sanctioned by the Respondent, when in fact he did not speak to the Respondent. There is absolutely no evidence with a fairly high degree of convincing clarity that the alleged bribe he got from Katongo came from the Respondent. There is also no evidence that the food that was prepared around this polling station at Kanya's house was sanctioned by the Respondent or his election agent.

PW8, Justin Mwansa, was a polling agent for an independent candidate (PW3). This witness was a partisan witness and his evidence was uncorroborated, and was to some extent hearsay. It was hearsay because he was only allegedly told by his younger sister, Gloria Mwansa that the food earmarked to feed voters was from the Respondent. The said Gloria Mwansa was never called as a witness

to confirm this testimony, and no explanation was given as to why Gloria Mwansa was unavailable as a witness.

And the allegation that he witnessed the Respondent bribing voters at Mitaba Junction was uncorroborated. And given his demeanor, the danger of false implication and exaggeration cannot be ignored.

As a polling agent he was the watchdog of the voting process in accordance rule 5 of the *Electoral Code of Conduct 2016*. He was therefore, reasonably expected to officially report any illegality that was happening within and around the polling station to the ECZ through the presiding officer. Pursuant to rule 3(1) (b) and (d) of the said *Code of Conduct 2016*, the ECZ *inter alia* has the power to censure acts done by leaders of political parties, candidates, and supporters aimed at jeopardizing elections or done in contravention of the Code. It is, therefore, inconceivable that as a polling agent, he did not consider it wise to report to the relevant authorities, or perhaps he did not see the need because as alleged albeit without corroboration that he was a beneficiary.

PW9, Felix Mwansa alleged that he was given K20, by a PF councilor candidate, Katongo, who told him that the money was from the Respondent to vote for him. This is hearsay, Katongo was never called as a witness to confirm the testimony of PW9. And most importantly, Katongo was not an election or polling agent of the Respondent within the import of section 97(2)(a) and 35 of the EPA, so as to hold the Respondent vicariously liable for his misdeeds. Therefore, whatever

Katongo is alleged to have done has no bearing on the Respondent or his election agent, Gift Lwembe. The same applies to the cooking that PW9 testified to.

PW10, Crispin Kangwa's testimony that Alex Kapota and Steven Katongo, told him that the chicken they were delivering on August 11, was from the Respondent is hearsay. The duo were never called as witnesses to confirm the veracity of his testimony.

PW11, Oscar Masabo's testimony that the cooking that took place around Kabwe Polling Station to feed voters was unsubstantiated, insofar as proving that the same was sanctioned by the Respondent or by his election or polling agent. The same applies to alleged actions of Boniface Mwaba Nkole, a PF councilor candidate at or around Katongo Chibwe Village regarding preparation of food to bribe voters to vote for the Respondent. Additionally, Boniface Mwaba Nkole was not an election or polling agent of the Respondent.

PW12, Michael Mukuka alleged acts of bribery, whereby he alleged that he was given K150 by Katongo to vote for the Respondent. This cannot be imputed on the Respondent because the said Katongo was neither an election or polling agent of the Respondent nor is there proof that the Respondent approved or had knowledge of Katongo's actions. Again, the cooking of food to feed voters that this witness talked about, is not in any way connected to the Respondent or his election agent.

PW13, Crispin Chisenga, the test of his credibility in terms of his testimony in particular that the Respondent addressed a meeting, on July 26, at Mukakula Village in Muchewe Ward promising electorates to be fed on the poll day if they voted for him, and that those that were to vote otherwise would be detected, must be measured against the testimonies of the Respondent and his election agent Gift Lwembe. The Respondent's passionate reaction was that, on that particular day, he was not at the rally alleged by PW13, but was in Kabwe attending to the funeral of his late mother, and this was confirmed by Gift Lwembe. I find the testimony of the Respondent probable, and having said so the credibility of PW13 is in doubt. I do not question the Respondent's credibility and the veracity of his testimony in this regard; that he would feign the death of his mother for political expedience.

PW14, Theresa Nakamba, as earlier noted did not lead any evidence that linked the Respondent to any of the allegations herein.

PW15, Bernard Mutale, a village headman, said he received money from Katongo, a PF councilor candidate with authorisation from the Respondent. Interestingly, PW15 said he met Katongo around 08:00hours in Lupanda Village, and that is the same time PW9 said he met Katongo around Mumba Polling Station. Nevertheless, the testimony of PW15 to the extent that Katongo told him that the money was from the Respondent is hearsay. There is even no evidence whatsoever, connecting the Respondent to any of the alleged

electoral malpractice, such as the preparation and feeding of electorates on the poll day in the said village.

PW16, Moses Chisonde's testimony that there was cooking and feeding of electorates and ferrying of voters at Chandaweyaya did not link the Respondent to be the sponsor.

PW17, Francis Chileshe was a polling agent at Kanyanta Polling Station for the UPND. Undoubtedly, he falls in the category of a partisan witness, and in order for his testimony to be reliable assuming it passes the veracity test must be corroborated. PW17 spoke to events at Kanyanta Polling Station of ferrying electorates. He alleged that he witnessed the Respondent giving Kafula some money to hire more vehicles to ferry voters. The Respondent denied this allegation. PW17's testimony was uncorroborated, therefore, the danger of exaggeration cannot be doubted.

PW17 also appeared to be presumptuous and exaggerative. Firstly, without proof he vehemently alleged that the motor vehicle Kafula was using was given to him by the Respondent. Secondly, part of his untrustworthiness lies in his assertion that the money given to Kafula by the Respondent was used to hire motor vehicles, as if he was there where Kafula was allegedly spending the money. A witness' attempt to make his testimony attractive diminishes his or her credibility. It is unbelievable that apart from failing to make an official

complaint to the ECZ, he made no hint of what he allegedly witnessed to his co-polling agents, including PW18.

PW18, Emmanuel Mwamba was equally a partisan witness and his testimony cannot be said to independently support the testimony of PW17 and vice versa. Although PW18 stated that he witnessed the ferrying of voters to Kanyanta Polling Station at the instance of Lawrence Kafula, he did not confirm the testimony of PW17 that he equally witnessed the Respondent giving Lawrence Kafula money to hire more motor vehicles or that PW17 made such a complaint to him.

PW18 did not attach any blameworthy conduct on the part of the Respondent in his testimony. Legally, the alleged conduct of Lawrence Kafula or the alleged conduct of Sampa Kacholi dishing out money to electorates and urging them to vote for the PF cannot pass to the Respondent, because he was not his election or polling agent, neither is there proof that the Respondent was the underwriter of his alleged activities. In fact, PW18 admitted that he did not know the sources of the said monies.

PW19, Bright Sampa, was a polling agent for the UPND, and thus a partisan witness. Needless to say, his testimony requires corroboration. He alleged that on August 12, at Chitala Polling Station, he heard from Anne Mulenga that Collins Musonda was dishing out money to electorates to vote for the PF. His testimony is

hearsay. Above all, the said Collins Musonda was not an election or polling agent for the Respondent, neither is there proof that the alleged driving of a motor vehicle by Collins Musonda at the material time believed to belong to the government was commissioned by the Respondent.

PW20, Bernard Nkole, stood as a councilor in Iyaya Ward on the UPND ticket in the 2021 general election and lost. Clearly, as a witness he falls in the category of a partisan witness whose testimony to be credible and reliable requires corroboration from an independent credible source. It is apparent that the gist of his testimony having had an opportunity to visit several polling stations, was intended to demonstrate that the Respondent and his agent were at the center of those malpractices, thus; vote buying, ferrying and feeding of electorates. According to him, this was based on public assurances allegedly made by the Respondent at rallies held on August 4 and 11, when the Respondent allegedly visited Chumba Village with truckloads of mealie meal. He alleged that the Respondent and his election agent assured voters that on poll day, he was going to feed voters and transport would be made available for their mobility to and from polling stations, provided they voted for the PF. The allegations were passionately denied by the Respondent and his election agent

The testimony of PW20 must be measured against the competing or counter testimonies of the Respondent and his election agent RW1, Gift Lwembe. The Respondent and his election agent, Gift Lwembe

categorically denied that they addressed voters on the stated dates and at Chumba Village. According to the Respondent, by July 23, he halted his campaigns due to his mother's demise and only resumed campaigning on August 6, and that on August 11, he was winding-up his campaigns in Mungwi Central and not in Chumba Ward.

My earlier findings expressed in respect of PW13 equally apply here. I find the explanation given by the Respondent probable that he had a funeral in Kabwe and that during that period save for August 11, he was attending to the funeral of his mother. This, therefore, materially renders the testimony of PW20 less credible. And most crucially his testimony was uncorroborated.

The allegation of bribery, feeding of voters and ferrying of voters to vote for the Respondent supposedly at the instance of the Respondent in the places PW20 visited is hearsay. Hearsay in the sense that he did not personally perceive the Respondent or his election agent approve or sponsor the above alleged illegalities, save to say that he was only told by non-witnesses, that the mastermind was the Respondent. No weight can be attached to such evidence, because it unjustly deprives the Court and the other party (opponent) the opportunity, and constitutional right to test the veracity of its source. Advisedly, an election cannot be annulled based on hearsay.

PW21, Christopher Mulenga was a polling agent for the UPND. He therefore falls in the category of a partisan witness, whose testimony

requires corroboration. He was also exaggerative in the sense that he purported to testify to events that allegedly happened at Pascal Mumbi's residence, where the Respondent allegedly took food on August 11, but did not convincingly demonstrate how he was privy to those facts. His testimony was not corroborated, thus, unreliable. And regarding the ferrying of voters around Chisali Polling Station, his testimony does not in any way connect the Respondent to be responsible for that activity.

PW22, Cephas Kangwa was a polling agent for the UPND at Ndakala Polling Station. His allegation that on the poll day he witnessed the Respondent's election agent, Gift Lwembe and his team ferrying voters and bribing voters was uncorroborated, by way of independent evidence. I must add here that PW28 too, testified to events that happened at Ndakala Polling Station, he said he was with PW22, but PW22 made no mention that at the material time he was with PW28. I agree with Mr. Tembo that a partisan witness cannot be corroborated by another partisan witness because they both require corroboration. Indeed, it is trite law that corroboration evidence will only fill its role if itself is completely credible evidence (see *DPP v. Hester [1973] AC 296*).

PW22 alleged that he was assaulted by Gift Lwembe's attendees, Wisdom Chileshe and Paul Chipalapata, and that a dozen police officers were dispatched to quell the commotion, however, it is quite odd that no independent witness was called especially a police officer

or the ECZ presiding officer to attest to the illegality and alleged criminality as alleged by PW22.

PW23, Christopher Chikoi; this witness was a partisan witness in the sense that, he contested in the general election as councilor on the UPND ticket and lost. Further, his testimony that the PF were cooking for the electorates at Chishimpa and in Fibwe, in no way establishes responsibility on the part of the Respondent or his election agent.

PW24, Peter Bwalya Kalangila, stood as a councilor on the UPND ticket and lost. Undoubtedly, he falls in the category of a partisan witness. His testimony to the effect that the Respondent addressed a meeting on August 6, in Nseluka Ward, at which he allegedly promised electorates that on poll day, he would provide food to those who would vote for the PF, was uncorroborated. Therefore, his testimony's reliability is discounted, especially in the face of the Respondent's denial that he never addressed such a meeting.

The Respondent cannot take responsibility of Nixon Chewes's action of bribing voters at Kanema as alleged by PW24, because Nixon Chewes was not an election or polling agent of the Respondent, neither is there proof that Nixon Chewes was sanctioned to do so by the Respondent or his election agent.

PW25, Patrick Kaulung'ombe, was a polling agent representing NDC. While the testimony of PW25 is plausible to the extent that there was

preparation of food by the PF to spur electorates to vote for the PF candidates at Bubble Kapolyo's house in Mabula Ward, *Bana Chewe Bufi's* house around Katongo Chibwe Polling Station, and at Headman Chikuta's house within Chikuta Polling Station, there is no proof connecting the Respondent or his agent to the alleged activities.

PW26, Lewis Kafula's testimony does not connect the Respondent or his election agent in any way to the preparation of food and the distribution of money to electorates by the PF that happened in Mutale Namutimba Village, so as to make him liable for corruption or illegal practices and general misconduct under section 97 (2) (a) of the EPA. And most importantly, Matthews Bwalya and Lyapuma who were reported to be the PF officials organizing the said illegalities were not the Respondent's election or polling agents within the purview of section 35 of the EPA. The mere fact that they were PF leaders or members of that party, is not sufficient to render the Respondent amenable to liability. In the case of *Mwiya Mutapwe v. Shomeno Dominic (2016/CC/A008, Appeal No.19/2017)* the Constitutional Court made it very clear by holding that:

It is settled law that not everybody in a candidate's political party is his election agent as an election agent has to be specifically appointed in terms of the law.

The above holding applies to a polling agent, *mutatis mutandis* that, not everybody in a candidate's political party is that candidate's polling agent, a polling agent has to be specifically appointed as provided by section 35 of the EPA.

PW27, Peter Mulenga Masako, was a polling agent for the UPND at Mangwata Polling Station. The alleged cooking, he talked about by the PF to induce voters at Mangwata Market in Katumba Ward, in no way pointed to the Respondent or his election agent. There was no proof to that effect to render the Respondent answerable.

Furthermore, the alleged fleeting utterances by the Respondent on August 12 that: "vote wisely", albeit uncorroborated and denied by the Respondent does not in any way constitute electoral illegality, or constitute misconduct.

PW28, Andrew Chanda Kabuswe, was a councilor candidate on the UPND ticket in Mpanda Ward, and lost. He also lost his election petition before the Tribunal. PW28, is clearly a partisan witness, whose testimony advisedly requires corroboration.

Firstly, PW28 alleged that the Respondent and his election agent addressed a meeting/rally on July 26, at TAZARA grounds at Kalaba Polling Station, at which the Respondent promised the people of Mpanda Ward that he was going to deliver mealie meal and beef, for them to vote for him. This testimony was uncorroborated.

And as earlier noted, regarding allegations that the Respondent addressed rallies on July 26, PW28's credibility and reliability, like the other witnesses dealt with before such as PW13, PW28's testimony should be measured against the Respondent's testimony

that he never addressed such a meeting because at the material time he was in Kabwe attending to the funeral of his late mother, and that he had ceased all campaigns activities until August 6.

My earlier findings apply here as well, that I find the Respondent's alibi, as it were, probable. This finding cast aspersion on PW28's credibility in this regard.

I will, nonetheless, assess the rest of his testimony independently in isolation of the above, and test the credibility of his evidence on the different set of events he testified. As earlier stated, PW28 was a partisan witness, and whose testimony requires corroboration from an independent witness, not a partisan witness. This is because, with a partisan witness the danger of falsehood potentially remains.

PW28 was apparently firm that the Respondent's election agent, Gift Lwembe on the poll day was driving and abusing a government motor vehicle, GRZ 229 CH to the advantage of the Respondent by ferrying voters to Ndakala Polling Station. Gift Lwembe was passionate in denying this allegation. PW28 said he got some pictures of the motor vehicle using his phone, but surprisingly he did not get any picture showing Gift Lwembe in the car as a driver or as a passenger or around the car when he had such an opportunity, especially at the point he alleged that the vehicle got involved in an accident.

No witness from the department of NRPC was called to confirm how a government vehicle allegedly ended up in the hands of Gift Lwembe.

Perhaps in an attempt to unveil the issue regarding the said government motor vehicle, PW29, Kennedy Mukukula, the Provincial Registrar of Northern Province in the department of NRPC, was called, but aborted immediately after taking oath due to procedural and communication glitches, as it were. Remarkably, both the Petitioner's Counsel and PW28 himself were at sea; Counsel was not privy to why PW29 was subpoenaed by his co-advocates, and PW29 personally expressed total ignorance as to why he was in court as a witness.

Furthermore, PW28 made a litany of allegations relating to the PF preparing food on the poll day to feed voters in various place, but his testimony did not in any way connect the Respondent or his election agent. This includes the allegation relating to the Respondent allegedly delivering more than 300 bags of mealie meal to the constituency via TAZARA Station on July 31, supposedly earmarked to feed voters on polling day, was uncorroborated insofar as connecting the Respondent or his election agent to that activity. A video clip was shown of the said bags of mealie meal, however, the video clip was undated, but most crucially, the Respondent and his election agent are not in that video. Moreover, the Respondent, as already alluded to in respect of the testimonies of PW13 and PW20, was on the said date, July 31 had halted his campaigns due to his mother's demise, which explanation, I find to be probable.

PW29, Kennedy Mukukula, has been covered as stated above.

PW30, Davis Bwalya, was a polling agent for the UPND, likewise he falls in the category of a partisan witness; his testimony requires corroboration. He alleged that towards the end of July, the Respondent addressed a rally around Numbuka Polling Station, at which the Respondent allegedly promised the people that he was going to provide mealie meal, sugar, cooking oil, beef, chitenge materials and caps. This was denied by the Respondent, the testimony of PW30 was uncorroborated. The reliability of his testimony is doubtful. PW30 was unable to even recollect the date of the said rally. Notably, during that period the Respondent had a funeral in Kabwe.

PW30's narration about Emmanuel Chisanga, the PF branch chairman telling him that the food stuffs and other materials he had collected destined to benefit voters was from the Respondent, was hearsay.

Additionally, his testimony that the *canter* truck that was ferrying voters at Numbuka Polling Station was commissioned by the Respondent was somewhat speculative. The sole basis of his assumption was that, he was in the know because he was a resident of that area and that he was a polling agent.

PW31, Sydney Chileshe, was a polling agent for the UPND and his testimony requires corroboration. The character of this witness was rather odd. Notwithstanding that he was a member of the UPND, he

alleged that upon noticing that the PF official from Mumena had not yet collected their parcel of food stuffs from the distribution point at the house of Shi Mumbi Shamalela, he suspended his maize business, and chose to be generous and assist the PF officials from Munene who were unavailable at that time by collecting their food parcel on behalf of Eugene Mukuka, a PF official.

It would have been reasonably understood if he collected the items to use them as evidence, rather than collect them in furtherance of the PF's vote buying scheme. And as a polling agent, reasonably well informed of what was permissible and not in the electoral process, he was principally expected to be in the forefront of unearthing suspected electoral malpractices and report such to the relevant authorities rather than aid in their commission.

The testimony of PW31, does not in any way assign wrongdoing in the electoral sense on the part of the Respondent.

PW32, Emmanuel Munaile, was the campaign manager for the UPND in Malole Constituency. He testified to disruptions of the UPND campaign timetable in week 11 of the campaign period at Milimo and Chonya at the hands of the PF. Although these disturbances were not specifically pleaded as material facts in the petition, for which as the rules of procedure dictate no evidence should have been led, nevertheless, there is still no evidence that the said disruptions were sanctioned by the Respondent or his election agent.

Generally, PW32's testimony does not establish any credible link of wrong doing on the part of the Respondent or his agent to warrant nullification of the election. PW32 did not personally perceive any of the illegality, malpractice or corruption allegedly committed by the Respondent, other than to rely on what he was told by his foot soldier, PW28, Andrew Chanda Kabuswe, that Gift Lwembe was driving a government motor vehicle.

And PW32's pursuit to follow-up the matter with the relevant authorities in charge of the said motor vehicle, on behalf of the Petitioner and the UPND, did not only yield results outside court, but also hit a snag in court, given the abandonment of PW29, Kennedy Mukukula, the Provincial Registrar of Northern Province in the department of NRPC, as a witness. In fact, PW29 expressed utter ignorance as to why he was in court as a witness.

Having already analyzed and determined the testimony of the Petitioner, the last witness to analyze regarding the subject allegations is **PW33**, Jasper Chileshe. He testified that on August 8, he was assigned to deliver a cow that was bought by Mathews Chilekwa on behalf of the PF to deliver to Delphis Mukupa in Makasa Village. His testimony does not in any way establish electoral malpractice on any one; neither does it link the Respondent to the alleged transaction.