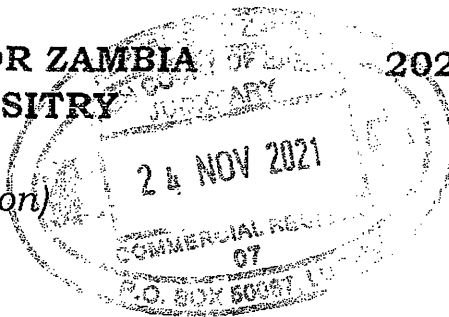


IN THE HIGH COURT FOR ZAMBIA 2021/HP/EP/007
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Election Petition Jurisdiction)



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

AND IN THE MATTER OF: PARLIAMENTARY ELECTION FOR
SHIWANG'ANDU CONSTITUENCY
HELD ON THE 12th AUGUST, 2021

AND IN THE MATTER OF: ELECTION PETITION BY ALBERT
MUNANGA

BETWEEN:

ALBERT MUNANGA PETITIONER

AND

STEPHEN KAMPYONGO 1ST RESPONDENT

THE ELECTORAL COMMISSION OF ZAMBIA 2ND RESPONDENT

Before Hon. Mr. Justice Bonaventure C. Mbewe at Chinsali in
Open Court.

Marshal: Esther Ng'uni

Research Advocate: Mwiche Ntinda

For the Petitioner: Mr. T. Munalula of Messrs. Lusenga Mulongoti Advocates

For the 1st Respondent: Mr. K.M.G. Chisanga of Messrs. KMG Chisanga Advocates and Mr. L. Lemba of Messrs. Mulungushi Chambers

For the 2nd Respondent: Mr. A. Kalikiti and Mr. J. Muloongo of Messrs. MSK Advocates.

JUDGMENT

Legislation Referred To:

- 1. Electoral Process Act, No 35 of 2016;*
- 2. The High Court Rules, Chapter 27 of the Laws of Zambia.*

Cases Referred To:

- 1. Austin Liato v. Sitwala Sitwala - Selected Judgment No 23 of 2018;*
- 2. Sunday Chitungu v. Rogers Mwewa and Attorney General - Constitutional Court Appeal No. 4/2017;*
- 3. Nkandu Luo, The Electoral Commission of Zambia v. Doreen Sefuke Mwamba, the Attorney General - Selected Judgment No. 51 of 2018;*

4. *Giles Chomba Yambayamba v. Kapembwa Simbao, Electoral Commission of Zambia, Attorney General - Selected Judgment No 6 of 2018;*
5. *Michael Mabenga v. Sikota Wina, Mafo Wallace Mafiyo and George Samulela - SCZ 15 of 2003 (SC);*
6. *Christopher Kalenga v. Annie Munshya and Others - 2011/HK/EP/03*
7. *Brelsford James Gondwe v. Catherine Namugala - Appeal No. 175 of 2012;*
8. *Akashambatwa Mbikusita Lewanika and Others v. Fredrick Jacob Titus Chiluba (1998) ZR 99 (S.C.);*
9. *Annard Chibuye v. Zambia Airways Corporation Limited (1985) Z.R 4 (SC);*
10. *Richwell Siamunene v. Sialubalo Gift - Selected Judgment No. 58 of 2017;*
11. *Margaret Mwanakabwe v. Charlotte Scott and Attorney General - Selected Judgment No 50 of 2018 (SC).*

Other Works Referred To:

1. *The Oxford Languages Dictionary, 2021, Oxford University Press*

1.0 INTRODUCTION

- 1.1. The Petitioner, Mr. Albert Munanga, on the 25th of August, 2021, commenced this action against the First and Second Respondents; Mr. Stephen Kampyongo and the Electoral Commission of Zambia. The Petitioner, is the losing Parliamentary Candidate under the United Party for National Development (UPND) in the 12th August, 2021, Shiwan'gandu Constituency election. The First Respondent, Mr. Stephen Kampyongo is the winning Parliamentary Candidate under the Patriotic Front (PF) party in the same election and the Second Respondent, the Electoral Commission of Zambia is the body responsible for arranging and conducting elections in Zambia.
- 1.2. This action is presented by way of Petition pursuant to the **Electoral Process Act No. 35 of 2016** whose prayer is for nullification of the election of the 1st Respondent as the Member of Parliament for Shiwan'gandu Constituency in Muchinga Province of Zambia.

2.0 THE PETITIONER'S CASE

- 2.1 The Election Petition of Mr. Albert Munanga, who was a parliamentary candidate under the United Party for National Development (UPND) in the Shiwan'gandu Constituency election held on the 12th day of August, 2021, sheweth;

- 2.2 That following the Presidential and General Elections held on the 12th day of August, 2021, the 1st Respondent Mr. Stephen Kampyongo of the Patriotic Front who polled 16, 451 against the Respondents 7, 214 votes, was declared as the duly elected Member of Parliament for the Shiwan'gandu Constituency.
- 2.3 That, contrary to the aforesaid declaration, the 1st Respondent was not duly elected, as elections in the said Constituency were held in an atmosphere that was not free and fair due to widespread malpractices, vote buying, bribery and corruption.
- 2.4 That, the 1st Respondent, being a former Minister of Home Affairs, engaged in acts of violence against other candidates of both parliamentary and local Government elections as well as their campaign agents.
- 2.5 That, on the 21st of May, 2021, at the instruction of the 1st Respondent, cadres belonging to the Patriotic Front caused damage to a Motor Vehicle – Toyota Land Cruiser registration number ABG 6830 at Mukwikile Camp in Shiwang'andu.
- 2.6 That, on the 2nd of June 2021, the 1st Respondent acting together with Ms. Evelyn Kangwa, directed the Police to impound a Fuso Fighter truck that was being used for campaigns by the Petitioner and the same was detained by the Police for 34 days to the detriment of the Petitioner.

- 2.7 That, the 1st Respondent, through the aspiring candidate for council chairperson under the Patriotic Front, one Mr. S. Bwali and campaign agents masquerading as PF cadres, assaulted one Mr. Derick Simuchindo an aspiring candidate for the role of councilor in Mayembe Ward under the UPND.
- 2.8 That the 1st Respondent through his agents namely, Sokopipo, Sebastian and other unknown PF cadres brutally assaulted one Mr. Michael Sichone, aspiring candidate for council chairperson under UPND. The said assault is said to have been carried out against the said Mr. Sichone and his family at his home on 11th July, 2021, for the reason that Mr. Sichone belonged to the United Party for National Development (UPND).
- 2.9 That, on the 8th of July, 2021, the 1st Respondent, while speaking at a Rally at Matumbo Village, instructed potential voters to prevent any other political party candidate from holding campaign meetings within the area. Further, and at the orders of the 1st Respondent and the District Commissioner, one Ms. Evelyn Kangwa, the Petitioner was denied permission to hold a campaign meeting at Matumbo Village on the 10th of July 2021.
- 2.10 That, on the 6th of August 2021, the 1st Respondent in the company of the Shiwan'gandu District Commissioner aforementioned, opened a mortuary at Matumbo Health Center

for purposes of inducing the electorate within the Matumbo area to vote in his favour.

2.11 That also, on the 6th of August 2021, one Mr. Andrew Kapasa Kalulu, parliamentary candidate for Shiwan'gandu District under the Socialist Party, was brutally assaulted by cadres and members of the Patriotic Front in the presence of the 1st Respondent and the said incident was captured on video. The assault, according to the Petition, occurred when the victim had set out to begin his campaigns for the day as per ECZ approved time table.

2.12 That, on the 11th of August, 2021, the 1st Respondent commissioned a health post at Mutitima village, and during the opening ceremony threatened the community stating anyone that would vote for the Petitioner would not be allowed access to services at the health post.

2.13 That, on the same date, the 1st Respondent was captured on video donating ZMW1,000.00 to villagers at Mwilwa Village for the purpose of inducing villagers to vote for him but under the guise of making a contribution towards the community clinic project.

2.14 That, on the day of elections being the 12th of August, 2021, the 1st Respondent's agent, Ms. Evelyn Kangwa, the District Commissioner, visited a polling station at Chiseko Primary School and whilst there threatened to demolish all houses belonging to members of the UPND and disperse all their occupants.

2.15 That, the 1st Respondent, *via* phone call, ordered the presiding officer at Matumbo Polling Station to allow his brother – one Andrew Kampyongo, Mr. Mwamba Matumbo, S.N. Mutale and other unknown persons to vote at the said polling station despite their not having been registered to vote at that station.

2.16 That, on the 12th of August, the 1st Respondent's agents namely: Andrew Kampyongo, Mathews Chilekwa and Phily Sinkala brutally assaulted members of the UPND at Kalalantekwe which incident was captured on video.

2.17 That, the 1st Respondent's agent Ms. Evelyn Kangwa the District Commissioner, acting together with unknown cadres of the PF stopped the Petitioner's polling agents from entering Kasashi Polling Station on the day of elections. Similarly, the said Ms. Evelyn Kangwa on the said date, threatened voters in queue at Kasangala Polling Station stating that because it was past 18:00 hours, the Polling Station was closed for voting.

2.18 That, the 1st Respondent's agent Ms. Evelyn Kangwa, supplied Disaster Management and Mitigation Unit (DMMU) relief mealie meal to PF cadres who in turn distributed the same to would be voters on their way to vote on the day of elections.

2.19 That, on the day of elections, the Headman of Macheleta village, a person alleged to be another agent of the 1st Respondent, threatened to remove his subjects as recipients of social cash transfers and confiscate the bicycles donated to them if they did not vote for the 1st Respondent.

2.20 That, on the date of election, the 1st Respondent forced polling staff at Matumbo Polling Station to allow an unregistered voter, one Anthony Makwaya to vote using his father's voters and national registration cards.

2.21 That, on the day of elections, the 1st Respondent was seen giving cash handouts, namely ZMW20.00 notes to voters on their way to various polling stations as an inducement to vote in his favour.

2.22 The Petitioner prays for the following relief from this Court:

- 1) *The said Stephen Kampyongo was not duly elected or returned and the election was void*

2) Costs.

2.23 The Petitioner's Affidavit Verifying Election Petition of 25th August, 2021, repeated the same allegations as set out in the Petition, and further alleged, that the Petitioner who is the immediate former Minister of Home Affairs continued to portray himself as such and used Government facilities through the District Commissioner, one Ms. Evelyn Kangwa and other Government officers including the Police, during his campaigns to the detriment of the Petitioner.

3.0 THE SCHEDULING CONFERENCE HEARING

3.1 At the Scheduling Conference hearing held on the 8th of September, 2021 at Lusaka and attended by counsel for each of the parties, the Court issued an Order for Directions in the matter pursuant to **Order 19, rule 3 of the High Court Rules, Chapter 27 of the Laws of Zambia** and further Ordered the Petitioner to pay into Court, security for costs in the amount of ZMW 2, 400 on or before the 10th of September 2021.

3.2 Hearing of the Petition was set down at Chinsali from 19th October, 2021 to 1st November, 2021.

4.0 THE RESPONDENTS' CASES

THE 1st RESPONDENT'S ANSWER

- 4.1 The 1st Respondent filed an Answer accompanied by an Affidavit in Opposition to the Petition on the 09th of September, 2021, in which Respondent denied all the allegations contained in the Petition, averring that he would put the Petitioner to strict proof on each allegation at trial.
- 4.2 In denying the allegation at paragraph 6 of the Petition, the 1st Respondent averred in answer, that the matter concerning damage to the Motor vehicle ABG 6830 was investigated and adjudicated upon by the Magistrate Courts of Chinsali without any implications whatsoever laid upon himself.
- 4.3 In addressing the contents of paragraph 8 of the Petition and denial of the allegation, the 1st Respondent provided that he did not have knowledge of the circumstances under which the UPND candidate one Mr. Derrick Simuchindo was assaulted by alleged PF cadres.
- 4.4 It was further averred in paragraph 13 of the answer, that the official guest of honour at the opening of the mortuary at Matumbo Health Center was the Provincial Permanent Secretary who was on that occasion represented by his deputy, and not the 1st Respondent as alleged in paragraph 12 of the

Election Petition. The 1st Respondent similarly submitted in answer that the official opening of the health post at Mutitima village was carried out by one Dr. Gibson Mweemba who was at the time the Government authority and not himself as alleged in the Petition, as he had no Government authority to carry out such a function at that time.

4.5 In denying paragraph 20 of the Election Petition, the 1st Respondent stated that the District Commissioner of Shiwan'gandu District was not a part of his campaign team and he therefore was not aware of what activities she undertook around the time of the election campaigns.

4.6 The 1st Respondent further stated in answer, that he was only a candidate in the 12th August, General Elections and possessed no capacity to prevail upon election officers and prayed that:

- 1) It be determined and ordered that your 1st Respondent was duly and validly elected as Member of Parliament for the Shiwan'gandu Constituency*
- 2) The costs for and incidental to the Petition be borne by the Petitioner*

THE 2nd RESPONDENT'S ANSWER

- 4.7 The 2nd Respondent in its Answer of 14th August, 2021, denied all the allegations contained in the Petition, arguing that the same were in the peculiar knowledge of the Petitioner who would be put strict proof on each allegation at trial.

5.0 PETITIONER'S REPLY TO RESPONDENTS' ANSWERS

- 5.1 In his Replies to the Respondents' Answers dated 16th and 21st September 2021, the Petitioner maintained that the 1st Respondent was not duly elected because elections within Shiwan'gandu Constituency were held in an atmosphere which was not free and fair due to widespread malpractices, vote buying, bribery and corruption.
- 5.2 The Petitioner stated that the evidence at trial would positively prove allegations within his Petition, as well as the 1st and 2nd Respondent's involvement.
- 5.3 The Petitioner maintains in his submission, that he is entitled to the reliefs as set out within his Petition.

6.0 TRIAL

6.1 Trial of the matter took place at Chinsali. This was to accord witnesses who may otherwise have been unable to do so to attend at court nearer to the places where they came from.

Petitioner's evidence at Trial

6.2 The Petitioner who was **PW1** gave evidence that he was adopted as a candidate to contest the Shiwang'andu Constituency Parliamentary seat in the August, 2021, elections by the United Party for National Development (UPND). He told the Court that he brought this action to Court in order to air his grievances on what happened during the August 2021 elections.

6.3 **PW1** opened his testimony by stating that, from the time of the campaign period up to the day of elections, Shiwan'gandu Constituency was marred with a lot of malpractices by the 1st Respondent, his campaign team and supporters, and that these malpractices left him disappointed in the 1st Respondent whom he takes as an older brother.

6.4 **PW1** testified that during the period of campaigns, his main campaign vehicle was impounded by the Police who verbally told him that the same was done at the direction of the 1st Respondent. That this crippled his campaign for a period of over 30 days and caused destabilization of his campaign as he and

his team were not able to reach vast and far places within the Shiwang'andu Constituency. The witness testified that the car which was taken away from the driver, a Mr. Chota was only released after an order was issued by the Chinsali Magistrate Court ordering the Police at Matumbo to release the vehicle back to the Petitioner and his team.

6.5 **PW1** testified on the stand, that on several occasions he received reports from people connected to him concerning the violence perpetrated by the 1st Respondent and his team and supporters. The Witness stated that he was on one occasion told firsthand by one Andrew Makasa, a fellow candidate in the election, that he had been assaulted by the 1st Respondent's people in full view of the 1st Respondent. **PW1** also stated that on another occasion which occasion's date he did not specify; he received a report from a person unnamed, that his people had been attacked and the said attacks caused the damage of several items such as cellphones and a Public Address (PA) system.

6.6 The Witness further testified, that on the 6th of August, 2021, the 1st Respondent, being a mere candidate the election, officiated the opening of a mortuary in Matumbo village during which ceremony he began to coerce voters to cast votes in his favour. This act of coercion according to the **PW1**: misguided voters. In a similar fashion the Witness testified that on the 11th

of August, 2021, the 1st Respondent who was parading himself as a Minister in the Government, officiated at the opening of a clinic at Mutitima village. The Witness testified that the 1st Respondent informed would-be voters that if they did not support the Patriotic Front (PF) party they would not access clinic or mortuary services which caused intimidation amongst the people and fear of discrimination in terms of the distribution of and access to resources.

6.7 The Witness also informed the Court that, one of the reasons for his allegations of bribery, election buying and corruption against the 1st Respondent was because the District Commissioner of Shiwan'gandu District distributed bags of mealie meal within the District weeks before and until the date of elections. According to the Witness, the said mealie meal was only distributed to Patriotic Front (PF) supporters within the District. The Witness further stated that upon a confrontation of the said issue, the District Commissioner informed him that that the Disaster Management Mitigation Unit (DMMU) was the supplier of the of mealie meal.

6.8 **PW1** concluded his testimony by adding that, he was convinced that the people of Shiwan'gandu did not participate in free and fair elections because of the aforesaid issues.

6.9 In Cross-examination, **PW1** testified that he saw the 1st Respondent committing acts of physical violence and threatening people. The Witness testified that he on at least three (3) occasions he saw the 1st Respondent physically assault people whose names he did not know as well as smashing a vehicle. The Witness stated that he could not provide specific dates of the said incidents as he had forgotten the dates on which they occurred. The Witness stated that though he knew of the procedures for reporting such incidents under the Electoral Rules he did not report the said incidents to either the Police or the 2nd Respondent and did not produce any medical report forms of the said victims of the alleged assault to Court.

6.10 The Witness clarified in cross – examination that he had not produced to Court the order of the Magistrates Court instructing the Police at Matumbo to release his campaign vehicle as he had already produced the written document at page 4 of his Bundle to prove his allegation. The Witness however confirmed that the document, though written by one Detective Inspector Phiri, had no date stamp of the Zambia Police. The Witness also confirmed that the said document at page 4 did not contain the name of the Witness or the names of his election agents and did not in any way link the 1st Respondent to the allegation concerning the impounding of the vehicle in question. **PW1** further told the Court that he owned

the said campaign vehicle and he did not witness the 1st Respondent report to the Police Station or attend Court in relation to the allegation of unlawful detention of the said vehicle. The Witness further gave evidence that despite the impounding of the said vehicle he did still carry out campaigns using other means.

6.11 The Witness provided in cross – examination that though he did not see the 1st Respondent giving out bribes to the electorate he did see him engaging in corruption which alleged acts the Witness did not elaborate. **PW1** further stated that he also did see the District Commissioner of Shiwan'gandu distributing bags of mealie meal in a residential area within the Matumbo village in the month of August on a date unspecified but before the election date. He further stated that he could not recall the brand or the type of the said mealie meal.

6.12 **PW1** informed the Court further, that other than his testimony he did not produce any further evidence before Court to demonstrate that the 1st Respondent officiated at the opening of both the mortuary at Matumbo Village and the clinic at Mutitima Village. The Witness testified that he could not ascertain whether the Permanent Secretary or any other Government officials attended the official opening of the Matumbo mortuary. The Witness further testified that he did not attend the official opening of the Clinic located at Mutitima

village but the information concerning the event was given to him by his officials who were in attendance.

6.13 In relation to the other event of 11th of August, 2021, the 1st Respondent is alleged to have also donated ZMW1,000.00 to villagers at Mwilwa village, **PW1** clarified that he was not personally present at this event and was only given information by an eye witness account. When referred to the Whatsapp messages exchanged between himself and the 1st Respondent at page 24 of the 1st Respondent's Bundle, the Witness confirmed that the 1st Respondent did indicate that he visited Mwilwa village on the 7th of August 2021 but that did not preclude the 1st Respondent from making a stopover in the same village on other dates which he did and repeatedly so.

6.14 In response to Counsel's statement that the WhatsApp communications of 28th July 2021, between himself and the 1st Respondent did not indicate that either of the parties as candidates in the election seemed disadvantaged, the Witness answered in the affirmative. The Witness further accepted that he did not at any time within that communication accuse the 1st Respondent of violence or damage to a motor vehicle.

6.15 In continued cross – examination, **PW1** confirmed that he was resident in the United States for the past seventeen (17) years

and also had a home within the Chelston area of Lusaka. He stated to the Court that he was not as regular as the 1st Respondent to Shiwan'gandu, but had been interacting with the people of Shiwan'gandu since 1995. **PW1** attributed the large margin in votes between himself and the 1st Respondent to the unfair playing field at the time of campaigns and elections resulting from violence and electoral malpractices in Shiwang'andu Constituency.

6.16 **PW1** also stated in cross – examination that he was aware that the 1st Respondent had two campaign agents which agents did not include a Ms. Kangwa though she acted like one and she was a campaign agent of the 1st Respondent. The Witness testified that though in his Petition, he alleged that Ms. Kangwa stopped the Petitioners polling agents from entering the Kasashi Polling Station he did not report the said incident to the 2nd Respondent.

6.17 **PW1** further stated that he was aware that his campaign manager, one Maureen Bwembya attended a stakeholder meeting with the Conflict Management Committee and she told him of the official report which stated that the election in the Shiwan'gandu District was free and fair though she did not agree with the report. **PW1** testified that there was no written

evidence or document that demonstrated that Ms. Bwembya did not agree with the conclusions of the said meetings.

6.18 At the close of cross – examination, **PW1** clarified that the allegations against the 2nd Respondent were contained within the Petition and his Reply to the Answer to the Petition.

6.19 The 2nd Respondent cross examined the Witness and the Petitioner's Counsel re-examined him.

6.20 The second witness testifying on behalf of the Petitioner (**PW2**) was **Andrew Kalulu Kapasa**, a politician residing in Kasama. **PW2** testified that he stood as a candidate for member of parliament under the Socialist Party in the recently concluded General Elections. **PW2** testified that during the campaign period each of the candidates abided by agreed guidelines and timetables in the conduct of their campaigns.

6.21 **PW2** testified that, on the morning of 6th August, 2021, he and his team set out for campaigns. He states that when he reached the Sele Polling Station, which according to the candidates' agreed time table was the area within which he was to be campaigning that morning namely Mwiche and Ichengo Wards, he encountered members of the PF party and their supporters displaying their party regalia at the said station. **PW2** stated

that he was surprised because he was aware of the time – table that stated that the Patriotic Front were to be in Chibinda Ward which is 100 kilometers away on the said date. **PW2** stated that he alighted from his vehicle and approached a PF party member whom he knew and who also has a close relationship with the 1st Respondent and the said person informed him that they had just been dropped there and would leave shortly after.

6.22 According to the Witness he then got in touch with the District Electoral Officer (DEO), who informed him to speak to the 1st Respondent to avoid clashes or confusion. The DEO also advised that he could go to another place to hold his campaigns as he awaited to speak to the 1st Respondent. It was at this time that the Witness and his team left the Sele Polling Station area and headed to Shuka Polling Station. **PW2** told the Court that when he arrived at Shuka Polling Station he found the 1st Respondent and some of his people holding a meeting which the 1st Respondent was chairing. **PW2** stated that because the PF members knew his vehicle, he drove about a hundred meters away from where the meeting was being held. He stated that he was then approached by one of the PF security personnel who introduced himself as such asked him why **PW2** had followed the PF to Shuka Polling Station. The unnamed person allegedly further told the Witness that though the Witness was accusing them of loving confusion he was the one that did. The said

person then cautioned him saying *"You want to be beaten that is when you will believe that we don't want confusion."*

6.23 That when handed the agreed timetable, the individual then admitted that the PF were wrong and said he would speak with the 1st Respondent and inform him that **PW2** and his team had arrived at the said Polling Station. **PW2** stated that he awaited the conclusion of the public address by the Petitioner and following this, the security person approached him again. He told the Court that he at this point decided to walk toward the 1st Respondent in order to speak to him as his people and finished distributing t-shirts. According to the Witness, when the 1st Respondent emerged from the headmaster's office, he whispered inaudible statements to the person who had earlier been conversing with **PW2**. According to **PW2** the 1st Respondent and his team got into their three (3) vehicles and when the 1st Respondent's convoy began to leave or exit the said area, one of the vehicles in the convoy, a Land Cruiser driven by the 1st Respondent's brother one Andrew Kampyongo and loaded with cadres, made a U-turn and headed toward the Witness at full speed and in full view of everyone there including the 1st Respondent.

6.24 **PW2** stated that the person he had earlier spoken to and whom Andrew was with pointed at him saying *"this is the honourable"*

and the people in the van except for the driver Andrew Kampyongo, got hold of the Witness and his driver and began to beat them up. **PW2** testified that he was hit near his eye with an iron bar and the same resulted in permanent scarring and he fainted.

6.25 According to the Witness, he was then taken to Ilondola clinic where he regained consciousness. He was referred to Chinsali District Hospital because he suffered internal body pain. He was later taken to Chinsali Central Police and the Chinsali District Hospital. The Witness stated that many officers at Chinsali Police station were reluctant to handle his matter until it got the attention of the former President of the Republic. He stated that he got a call from the PF Deputy General Secretary, one Ms. Mumbi Phiri, who he called his sister. The Witness stated that he then gave his statement before the Criminal Investigations Officer (CIO) at Chinsali, a Mr. Zulu and his case remains active to this day with all documents in the custody of the Police at Chinsali.

6.26 In Cross – examination, **PW2** testified that the person he made a report against at Chinsali Police Station was Andrew Kampyongo for the assault occasioned on him. He confirmed having stated in his testimony in chief that Andrew did not alight from the vehicle he was driving. **PW2** stated that the reason he reported Andrew Kampyongo as having assaulted

him is because he is the one that directed the people that attacked him and his team and he was the person known to them while the other attackers were unknown. The Witness further confirmed that in the video he produced before Court, neither the said Andrew Kampyongo nor the 1st Respondent can be seen. The Witness further testified that the video only showed him as injured and lying down and he did not know who shot this video. The Witness clarified that because of the confusion that erupted at the time of the assault, he as well didn't know who had actually struck him with an iron bar.

6.27 When referred to the letter at page 3 in the Petitioner's Bundle to the Chairman of the Electoral Commission of Zambia, the Witness clarified that the letter was politically damaging and a personal attack against the 1st Respondent even though he did not participate in the assault against **PW2**. The Witness however stated that the 1st Respondent was not more than 20 meters away when he was being assaulted by members of the 1st Respondents party. **PW2** told the Court that at the time the General Secretary and Vice President of the Socialist Party sent out the letter to the Chairman of the Electoral Commission of Zambia, he was not fully aware of what had transpired between the parties at Shuka Polling Station on the material day. **PW2** as well stated that he did not advise the General Secretary to re-direct his complaint to the appropriate authorities in

Shiwan'gandu being the District Conflict Management Committee.

6.28 **PW2** stated that the matter of assault was receiving active attention from the authorities.

6.29 There was no cross examination of the Witness by the 2nd Respondent.

6.30 **PW3, Peter Mumba**, a farmer from Matumbo village testified concerning the events of 12th June, 2021. He stated that on the material day he was attacked by some people who had followed him to Mukwikile village. Following the attack, he was then taken to Shiwan'gandu Police Station, where he was issued with a medical report and told to go to the hospital where he received medical treatment.

6.31 The Witness was not cross - examined. By both the 1st Respondent and 2nd Respondent's Counsel.

6.32 The fourth witness on behalf of the Petitioner (**PW4**,) was one **Michael Sichone**, a politician who stood for position of as council chairperson under the United Party for National

Development in the last election. He testified, that in the second week of June, during the campaign period, the 1st Respondent together with one Ms. Evelyn Kangwa and Simon Sampa Bwali brought to Shiwan'gandu District "*giants*" (This term was settled on for use in these proceedings owing to difficulties of translating the description of huge muscular men) who were known as *hundred percent (100%)*. The Witness stated that these giants were kept in four places within the Shiwan'gandu District but eventually began mingling with people of the Constituency. **PW4** stated to the Court that in the third week of June, 2021 and on two separate occasions, people whom he personally knew, being Malama and Sokopipo, began to divulge to him information concerning the said giants. The said Malama and Sokopipo, who were working with these giants, informed the Witness that the leaders of the giants were one Mathews and a Chipili and the said giants were being accommodated at a guest house owned by one Ms. Evelyn Kangwa.

6.33 **PW4** stated that, upon further inquiry or investigation, he came to find out that the said *hundred percent* were being accommodated at the aforementioned guest house; the PF office in Shiwan'gandu; at the personal residence of one Mr. Banda and at the personal residence of one Mr. Kunda, all located within the Manshya Ward. **PW4** stated that these people brought fear in the UPND such that they did not carry out their campaigns well. He told the Court that after a discussion with

some members of the UPND, it was agreed that a complaint in the form of a letter be addressed to the 2nd Respondent, the Police, the Patriotic Front party and the Conflict Management Committee for assistance concerning the said issue. The letter written on the 28th of June, 2021, appears at paragraph 6 of the Petitioners Bundle of Documents.

6.34 In Cross – examination, the Witness testified, in agreement with the allegation at paragraph 9 of the Petition, that he was assaulted by one Sokopipo, Sebastian and other unknown PF party cadres. The Witness stated that the reason he had not mentioned this in his evidence in chief was because he did not want to bring up the said issue. The Witness also stated that he knew more than five people that had been beaten up by these giants but he could not at the time recall the names of these people. The Witness also clarified that he in his letter of 28th June, did not refer to the people as giants but strange people and also never mentioned that the said giants beat up people but instead mentioned that they caused intimidation to people within the District because at the time of his letter the ‘giants’ had not yet beaten up anyone.

6.35 The Witness stated in cross – examination that when he visited the places where the *hundred percent* were presiding, he got quite close to the premises as he was not afraid. He also clarified

that the 2nd Respondent did not do anything in response to the letter written by himself and other UPND party members.

6.36 When referred by Counsel for the 1st Respondent to page of 5 the 1st Respondent's Supplementary Bundle of Documents, the Witness confirmed that the appendix to the minutes of the District Conflict Management Committee meeting held on 27th August, 2021, stated that the issue of intimidation between the PF and UPND was indicated as resolved. The Witness however stated that he had not been availed this document by his campaign manager or anybody else as he had never come across it.

6.37 There was no cross examination of the Witness by the 2nd Respondent and there was no re-examination.

6.38 The fifth witness on behalf of the Petitioner **PW5** was **Alfred Chisanga Chota**, a taxi driver from Matumbo village. He testified concerning the events of 13th June, 2021. **PW5** told the Court that on the said day at 09:00 o'clock, he was at the roadside refueling a UPND branded Fuso truck he was driving. As he stood beside the vehicle, he noticed a Police vehicle come and park in front of his truck and block it. **PW5** stated that four (4) Policemen alighted from the said Police vehicle and asked him if he was the driver of the vehicle and when he answered in

the affirmative one of the officers took the truck keys from him and told him they had been sent to him while another stated *"Kampyongo is the boss and we should do what he has instructed us to do"*. The Witness testified that he was at this point apprehended and transported to Chinsali Police Station in the Police vehicle while the Fuso truck driven by one of the Police officers followed closely behind.

6.39 **PW5** stated that at the Police station he was placed in a holding cell in which he stayed three days and on the fourth day he appeared in Court charged with the offence of criminal trespass. **PW5** stated that the finding of the Court was in his favour and he was later discharged and returned to the Police to have the Fuso truck released to him which did not happen because the Police informed him that the matter was still before the Court. **PW5** then proceeded to obtain a Court order for the release of the vehicle and the same was released into his custody on 15th July 2021 after having been impounded for over a month. The Witness stated that campaigns were halted due to the fact that the vehicle had been in Police custody.

6.40 In Cross – examination the Witness testified that he is not a member of the UPND but was only working for the UPND as a driver ferrying people that were carrying out campaigns from place to place at the time he was apprehended. **PW5** stated that he did not concern himself with how the said party members

would carry out their door-to-door campaigns. **PW5** also testified that from the time he was released from detention until the time the Fuso truck was released to him he was at home and not working.

6.41 It was **PW5**'s testimony in cross-examination that on the 20th of July 2021, he handed the order for release of the vehicle that he had obtained from the Court over to the Petitioner. He further stated that he did not obtain any release form when he and the UPND campaign manager one Mr. Chuma retrieved the Fuso truck from Police custody on the 15th of July 2021.

6.42 **PW5** clarified in cross – examination that he did not personally hear or see the 1st Respondent issue instructions to the Police officers for his apprehension and the impounding of the vehicle. He further stated in relation to the charge of trespass that was brought against him, that the same was in connection to the alleged abduction of one James Mulenga Nsunge, from Mr. Nsunge's home in Shiwan'gandu District and he was in no way connected or linked to the said offence.

6.43 There was no cross examination of the Witness by the 2nd Respondent and there was no re-examination.

6.44 **PW6** was **Mr. Moses Mulenga**, a businessman from Kalikiti village in Shiwan'gandu District testifying to the events of 7th August 2021. He stated that on the said date, the 1st Respondent sent people to deliver mealie meal, cooking oil and sugar in polling stations within the Chamsenga Ward in Shiwan'gandu. **PW6** stated that he identified the District Commissioner of Shiwan'gandu among the people who delivered these items. **PW6** testified that the District Commissioner informed him that the said items were being delivered to Chamsenga ward at the instruction of the 1st Respondent. According to the Witness, the 1st Respondent had distributed similar food stuff within the entire Constituency of Shiwan'gandu. He further stated that the said items that were taken to Chamsenga Ward were kept at the residence of one Charles Zabangwa the ward treasurer PF and were to be distributed on 12th August 2021.

6.45 In Cross- examination, the Witness informed the Court that he was present when the District Commissioner, in the presence other people unidentified, delivered bags of mealie meal to the said Charles Zabangwa's house in Shiwan'gandu District. **PW6** stated that the said mealie meal whose brand he did not know was delivered to the said location in a white canter truck and was being offloaded by the people who were in the company of the District Commissioner and at her instruction. **PW6** said he had occasion to count the said bags of mealie meal and

informed the Court that there were fourteen (14) bags in total and the same were meant to feed PF supporters within Chamsenga Ward on the 12th of August 2021.

6.46 **PW6** stated that he neither heard nor saw the 1st Respondent issue the alleged instructions to the District Commissioner to distribute mealie meal within Chamsenga Ward and further that he did not report the alleged incident of malpractice to the Police because he was afraid to do so.

6.47 There was no cross examination of the Witness by the 2nd Respondent and there was no re-examination.

6.48 **PW7, Henry Mulenga**, a subsistent farmer from the Mulanga village of Shiwan'gandu District who testified concerning the occurrences of 23rd July 2021. **PW7** gave evidence that on the material date he attended a football tournament sponsored by the 1st Respondent. That upon his arrival he saw the 1st Respondent issue instructions to people around him to beat him up because he was a member of the UPND. According to the Witness, shortly after this, he was approached by people he identified as John Ngandu and Sikabalu who initiated the said assault and a multitude of people then descended on him and proceeded to physically assault him. **PW7** submitted that he submitted before Court, a medical report to this effect and

added that he had become disabled as a result of the said assault.

6.49 In Cross – examination, the Witness admitted that he was formerly a member of the Patriotic Front and had met the 1st Respondent on several occasions and described their working relationship as a good one. **PW7** testified that on the day he was assaulted at the direction of the 1st Respondent he had been in the company of a Silone Chibesa and one Steven Simumba whom he did not mention in his testimony in chief because he did not deem it relevant to do so. **PW7** stated that the said Silone Chibesa was also physically assaulted by the multitude on the 23rd of July 2021. The Witness further stated that though he was and still is a UPND official, he on the material date went to Matumbo ground to watch a PF organized/sponsored football tournament.

6.50 The Witness in Cross – examination stated that he spent two (2) days at Matumbo Hospital, following which his family members picked him up and took him to a hospital in Mulanga in order that the distance would be shorter for them as they were his primary caregivers. The Witness added that because there were no doctors at Mulanga, on the 16th October, 2021, he returned to Matumbo Hospital which Hospital has his medical records and was given a letter of transfer from Matumbo to Chinsali Hospital.

6.51 **PW7** stated that after his initial report to the Police on the 23rd of July, 2021, he was told to return on the Saturday the 16th of October 2021. **PW7** stated that he could not recall the name of the officer he spoke to on the 16th of October and maintained that his case is still under investigation by the Police.

6.52 There was no cross examination of the Witness by the 2nd Respondent and there was no re-examination.

6.53 The eighth witness on behalf of the Petitioner, **PW8** was **Maureen Bwembya**, a businesswoman residing at Mukwikile in Shiwan'gandu Constituency. **PW8** testified that in the 2nd week of June 2021, the 1st Respondent brought giants to reside in Shiwan'gandu Constituency. She submitted that though these giants were accommodated at four main locations they were for the most part scattered within the Constituency. **PW8** stated that the locations at which the giants were accommodated by the 1st Respondent were: Mutanga Lodge, Mr. and Mrs. Banda's home, Mr. and Mrs. Kunda's home and at the PF office. The Witness testified that the said giants were assigned to beat up people in Shiwan'gandu – most especially people identified to be members of the UPND. The giants were, according to the Witness, also assigned to burn and tear down UPND party regalia and posters within Shiwan'gandu Constituency.

6.54 **PW8** told the Court that she is a leader within the UPND party.

She testified that as a leader, she took it upon herself to report the giants to the Police and was told to return to the Police after having gathered more facts about them. In a bid to do so **PW8** consulted a person she identified as Nicholas Malama, who was working hand in hand with the giants who informed her that the giants were working with the 1st Respondent and took her to the four (4) places aforementioned where the said giants were accommodated and found. According to the Witness, this then prompted her to write a letter to the District Electoral Officer of Shiwan'gandu exhibited at page 5 of the Petitioners bundle of documents. She categorically stated that her case was never investigated by the Police as they demanded further evidence such as pictures of the giants with the 1st Respondent which she could not furnish them or capture because she was afraid of them. **PW8** further stated that her complaint to the Conflict Management Committee concerning the giants was, similar to the five (5) other complaints she made to them i.e. they were never resolved.

6.55 In Cross – examination, **PW8** testified that the appendix appearing at page 5 of the 1st Respondent's Bundle of Documents was indicative of the six (6) reports made to the 2nd Respondent's Conflict Management Resolution Committee. That five (5) of all complaints were made by the UPND. **PW8** testified

that despite them being recorded as resolved, only one (1) of the six (6) matters was resolved by the 2nd Respondent.

6.56 **PW8** also stated that she presented her letter at page 5 of the Petitioners Bundle to the Chairman and two (2) Secretaries of the Committee whose names she could not recall. She stated that she made personal delivery of the letter on all parties addressed or copied at their office on a day designated for the filing of reports.

6.57 In Cross – examination, **PW8** submitted on record that that the giants accommodated by the 1st Respondent did not leave Shiwan'gandu Constituency until after the date of elections. She stated that upon her carrying out surveillance of them at a distance, she saw groups of these giants at Mutanga Guest House, the PF offices, the Banda's residence and the Kunda's residence and informed **PW4, Mr. Sichone** of her observations two weeks after having made them. **PW8** stated that between the 2nd week of June and the 28th of June 2021, on which date she wrote a letter to the Conflict Resolution Committee. That she witnessed the giants assaulting people on different occasions. She stated that on one of these occasions the giants beat up a person at Mukwikile who reported the said incident of assault to the Police.

6.58 **PW8** did also clarify that no reference was made in her letter at page 5 and **PW4**'s letter at page 6 of the people being giants and they were instead called "strangers". Although her testimony in cross – examination was that one Andrew Kampyongo was also among this group of giants that caused intimidation within the Shiwan'gandu Constituency, **PW8** confirmed she made no mention of him or the 1st Respondent within her letter to the DEO.

6.59 **PW8** confirmed to Court that she did attend the meeting of 27th August 2021 but testified that she did not stay until conclusion of the meeting though this was not recorded in the minutes of the meeting. She stated in conclusion that neither her nor anyone she knew appealed the final decisions of the District Conflict Management Committee.

6.60 There was no cross examination of the Witness by the 2nd Respondent and there was no re-examination.

6.61 The testimony of **PW9** was dispensed with upon objection raised by the Respondents.

6.62 The tenth witness **PW10** was Mr. Sidney Siwila, a Police Chief Inspector from Shiwan'gandu Police Station who attended Court in response to a *subpoena* to give evidence concerning

occurrences or events reported to Matumbo Police during the campaign period.

6.63 At the hearing on 22nd October, 2021, the Witness informed the Court that he did not come to Court with the actual Occurrence Book for Shiwan'gandu Police Station because the said book was in use due to a road traffic accident that had happened in Shiwan'gandu on the said date. He testified that he did however reproduce in writing, the information required from the occurrence book and would produce the same before Court if allowed.

6.64. PW10 led evidence concerning the political clashes reported to him in the Month of July 2021. Counsel or the 1st defendant objected to the many parts of the evidence led by the Witness which they submitted contained discrepancies with photocopied evidence of the same entries tendered into evidence by the Witness in a Local Government Elections Tribunal under cause No. 2021/F/LGET/15 a few weeks before. They requested that the original OB be tendered into evidence as ordered by the *subpoena*.

6.65. Upon application by Counsel for the 1st Respondent, the Court Ordered **PW10** to produce the actual occurrence book *subpoenaed* before Court the 26th day of October, 2021.

6.66. When **PW10** returned to the stand on the 26th of October 2021 he made application for the amendment of some OB numbers he had submitted to Court on 22nd October, 2021 that the same were mistakenly written or taken down. The Witness who had earlier testified saying that he had personally extracted reports from the Occurrence Book told the Court that he assigned his Chief Investigations Officer (CIO) to extract the same on his behalf whilst he attended a meeting and later found out when he returned to the Police station that the OB numbers taken down were in fact different from what was in the Occurrence Book.

6.67. The Witness this time brought before Court the actual Occurrence Book which covered the period 24th October 2020 to 26th June 2021 laid evidence before Court evidence of events that happened on or between the periods of 27th June 2021 to 26th October 2021. The Court ruled that PW10's earlier testimony would be discarded and he could present the evidence from the OB.

6.68. **PW10** testified that that on 12th June, 2021 a case bearing occurrence book number 1456/21 was reported at 21:26 hours by one John Bwalya of Matumbo village. The particulars of the said report were that PF cadres in the Mukwikile area of Shiwan'gandu District maliciously caused

damage to the property of John Bwalya namely: the windscreen of a Land Cruiser registration number ABD 6880. The value of the property was not yet ascertained. Secondly the witness testified on the 10th of July 2021 a case bearing occurrence book number 1674/21 was reported by one Mike Mulenga. The particulars of the said report were that the said Mike Mulenga was beaten and assaulted at Kalalantekwe Village. Third, the witness testified on the 10th of July 2021 a case bearing occurrence book number 1676/21 was reported by one Mike Sinkala. The particulars of the said report were that the said Mike Sinkala was beaten and assaulted at Kalalantekwe Village.

6.69. The next incident was also reported on the 10th of July 2021. A case bearing occurrence book number 1678/21 was reported by one Mike Mulenga. The particulars of the said report were that Andrew Kampyongo maliciously caused damage to the property of Mike Mulenga namely: a Samsung cellphone, white in colour valued at ZMW1,000.00. The next incident also reported on the 10th of July 2021, a case bearing occurrence book number 1680/2021 which was reported by one Chanda Anthony. The particulars of the said report were that PF cadres maliciously caused damage to the property of Mike Mulenga namely: a JVC speaker valued at ZMW12,000.00.

6.69. The next incident reported was also on 10th of July 2021, a case bearing occurrence book number 1682/2021 reported by one Anthony Chanda. The particulars of the said report were that one male Kelvin and others unknown, maliciously caused damage to the property of Anthony Chanda namely: the windscreen of a Toyota Land cruiser registration number AAK 1031 valued at ZMW4,500.00. The final incident report was also on 10th of July 2021, a case bearing OB number 1684/2021 reported by one Anthony Chanda. The particulars of the said report were that one Andrew Kampyongo and others unknown, maliciously caused damage to the property of Anthony Chanda namely: the rear left tail light of a Toyota Land cruiser registration number AAK 1031 valued at ZMW750.00

6.70. The Witness stated in his evidence in chief, that some of the cases aforementioned were still under investigations while others were before the courts.

6.71. In Cross – examination, the Witness clarified that the report given as OB number 1455/21 reported at 15:00hrs by one John Bwalya in his earlier evidence is what he intended to amend to the incident under OB number 1456/2021. He testified that the same incident did not have two OB numbers but just one and that is what he earlier intended to amend.

PW10 stated that the irregularity in the entire entry being the number and report was as a result of the delegation made to his CIO to extract entries on his behalf despite having said in cross – examination that the extractions were done by him.

6.72. The Witness confirmed that all events he reported on before Court occurred on the same day at the same location and between 11:50 am and 12:50 pm. The Witness testified that all events reported within that time were made by two complainants namely Mike Sinkala and Mike Mulenga. **PW10** also submitted that all incidents that were reported around this time were entered by three officers namely Detective Inspector Nsamba, Detective Inspector Sichone and himself. The Occurrence Book of Matumbo Police Station was admitted into evidence and marked “P1”.

6.73. There was no cross examination of the Witness by the 2nd Respondent and there was no re-examination.

6.74. The final witness on behalf of the Petitioner being **PW11** was **Patrick Bwalya**, a Police Inspector. **PW11** was *subpoenaed* to produce the occurrence book for Ilondola Police Post in connection with an incident that happened on the 6th of August 2021. The Witness stated that on 6th of August 2021 at 16:00

he received a complaint from one Andrew Kapaya of Mwika Village, in Shiwan'gandu District. The report was made by Mr. Kapaya on behalf of **PW2, Kapasa Makasa** - Socialist Party Candidate and Percy Mukata, Sylvester Manjani and Nkatya Radi. The report stated that the named victims had been assaulted by Patriotic Front cadres and the victims. The report further stated that **PW2** had sustained a big cut on his forehead, Percy Mukata sustained a swollen left leg and arm and the rest complained of general body pains because sticks and iron bars were used during their assault.

6.75. The report recorded that the attack occurred on the 6th of August 2021 at or around 16:00 hours at Sele Village 60 Kilometers away from the Ilondola Police post where **PW11** is stationed. The Witness stated that medical report forms were issued to the victims and a docket of the case, which is still under investigations was opened.

6.76. In Cross – examination the Witness testified that though the incident was entered in the OB after entries of 20:30 and 20:40 hours were entered, this was by reason of it being an omitted entry. That it was actually reported at 18:00hrs as recorded within the occurrence book. The Witness also clarified that according to the entries made within the book, there was no reference to or identification of any assailants.

6.77. There was no cross examination of the Witness by the 2nd Respondent and there was no re-examination. The Occurrence Book of Ilondola Police Station was admitted into evidence and marked as "P2".

Respondents' Evidence at Trial

1st Respondent's Evidence

6.78. Eight Witnesses testified on behalf of the 1st Respondent. The first was **James Nsunge Mulenga, (RW1)**, a businessman from Matumbo, Shiwang'andu. **RW1** led evidence before Court concerning the events of the 13th of June 2021. He told the Court that on the material day which was a Sunday, he got ready to go to church and as he about to board his vehicle when he saw a crowd of people approach him. Someone in the crowd told him he was the one they were looking for and they got a hold of him and carried him on their shoulders. According to the Witness, a short while later he was thrown into a UPND branded Fuso driven by a person he identified as Chota and occupied by one Singonga, Bwalya Muntwenda, Chansa Desmond and others he could not recognize. **RW1** stated that he was forced to lie flat inside the vehicle which was loaded iron bars that his assailants used to threaten him with.

6.79. The Witness testified that that the vehicle drove away from his home and at a distance of about three kilometers, the vehicle came to a halt and he heard a person on the outside who he later came to find out was a Police officer asking of him. The Witness testified that the people in the vehicle he was in denied having carried him or even knowing him but he lifted his head up and the Police officers identified him. The Witness stated that a scuffle ensued between the Police officer and his assailants until he was safely taken out of the Fuso truck, placed into a Police vehicle and driven away from the scene where his assailants and a few other Policemen remained.

6.80. **RW1** stated that he was taken to the Police Station by the Police where he noticed the Police taking into custody the aforementioned Chota and others. According to the witness the Police then recorded from him a statement of the occurrences of what had occurred that day and the matter was later taken to Court. Following this, the Witness was approached by Petitioner whom he identified as Bwalya Munanga. The Witness stated that the Petitioner begged for his forgiveness also requesting that the Witness cause the vehicle that was taken in Police custody be released. **RW1** stated that following a reconciliation with Ten (10) of the people and Mr. Munanga who gave him ZMW800.00 he proceeded to withdraw the case before the courts.

6.81. In Cross examination **RW1** testified that though he was a treasurer at Constituency level and a member of the Patriotic Front Party he had no role to play during the 2021 campaign period. **RW1** also clarified that the reason the Police asked for him when they stopped the car he was because shortly after his abduction his wife lodged a report with the Police that he had been abducted from his home by unknown men.

6.82. **RW2, Cacious Chiti**, a farmer from Nsofu village in Shiwang'andu testified that he is the neighbour of **PW7, Mr. Henry Mulenga**. He testified that he and PW7 have been neighbours and colleagues for a long period of time. **RW2** stated that he is aware that **PW7** has suffered an ailment that affects his knees and legs for a long time and that the affected areas do swell from time to time. **RW2** testified that in 2015 he even gave financial aid to **PW7** to go and seek treatment of the said ailment.

6.83. In Cross – examination, **RW2** testified that he was not aware any report concerning an assault of **PW7** at Matumbo ground. The Witness stated that PW7 lied because his problem with his knees was not from a beating but that he has suffered from swollen knees for a long time.

6.84. There was no cross examination of the Witness by the 2nd Respondent and there was no re-examination.

6.85. The third witness on behalf of the Respondent **RW3** was **Evelyn Kangwa**, District Commissioner of Shiwan'gandu District. **RW3** testified that her duties as District Commissioner were to implement Government programs according to Government policies and oversee Government departments within the District. **RW3** who had been District Commissioner for ten (10) years testified concerning the documents at pages 8 and 9 of the 1st Respondents Supplementary Bundle of Documents. She stated that documents such as delivery notes at page 8 and 9 are issued by the Disaster Management and Mitigation Unit in accordance with the information provided to them concerning floods and other disaster occurrences from villages within a particular area.

6.86. **RW3** testified that in this instance her office received 1,200 bags of mealie meal in January of 2021. She stated that the Government has a committee for the disaster management unit on which she served as Chairperson, which chooses which non – Governmental organisation to work with as a Project Implementing Partner (PIP) that helps provide disaster relief to particular areas. **RW3** testified that in this particular instance an organisation known as Caritas was chosen as PIP

and as Chairperson of the Disaster Committee, she was mandated to oversee and ensure that the said mealie meal was received in the areas marked for disaster relief within the Shiwan'gandu District.

6.87. In relation to the delivery notes at page 8 and 9, the Witness testified that, that was the DMMU's most recent consignment and the distribution of the same was last effected in the month of May 2021, after some parts of Shiwan'gandu experienced floods. The Witness further stated that distribution of the mealie meal took about two months or more because of the lack of consistent transportation.

6.88. **RW3** testified that no mealie meal distribution was carried out during the campaign period of 2021 because by then her department had completed their task in distributing the consignment provided. **RW3** also denied having received any instructions from the 1st Respondent for the impounding of the Petitioners campaign vehicle and stated that the same was not a part of her job description

6.89. In conclusion of her evidence in chief, **RW3** denied ever causing the distribution of mealie meal out of a white canter as such distributions are done by Government and overseen by the

Project Implementation Partner. She further stated that she had a designated vehicle as assigned to her and could not have been in a canter because her position invited much scrutiny from offices such as the Office of the President.

6.90. In cross – examination, when referred to the extract of Whatsapp messages between the Petitioner and 1st Respondent at page 7, the Witness responded that she did not have hateful speech as she was a civil servant and the Petitioner was not her rival. She further stated that she had never met nor spoken to the Petitioner and did not know him personally.

6.91. RW3 confirmed that she owned a lodge within Shiwan'gandu called Mutanga Lodge which she ran as a business. The Petitioner testified in cross – examination that she did during the campaign period receive a number of visitors at the said place of business which included members of the Patriotic Front, Buildcon, World Vision, the Council, the District Intelligence Office and she accommodated them. **RW3** recollected that the members of the Patriotic Front Party who had visited her place of business booked six (6) rooms in total.

6.92. RW3 clarified that relief food and other items by the DMMU would be distributed to places at any time to areas within her

Constituency were affected by disasters of different kinds such as the collapse of a house, heavy rains, floods and even fire. **RW3** stated that following a disaster, a victim of such disaster would make a request for disaster relief to her office which office would then verify if the same was true and then proceed to write to the Province which would take up the matter. **PW3** stated that it was not easy to ascertain when such relief would be provided to a victim because it all depended on whether resources for relief were readily available.

6.93. The Witness further reiterated that during the campaign period her office did not have any mealie meal from the Disaster Management Unit because distribution of the mealie meal received was completed in May.

6.94. RW3 testified in cross – examination, that she attended the official opening of a mortuary at Matumbo village on the 12th of July 2021 at which the 1st Respondent was also in attendance as an invited guest.

6.95. There was no cross examination of the Witness by the 2nd Respondent and there was no re-examination.

6.96. The fourth witness on behalf of the 1st Respondent **RW4**, was **Stephen Mutale**, a farmer from Kalalantekwe. The Witness stated that before the 12th of August 2021 he was assigned the role of campaign manager for the 1st Respondent. **RW4** stated that in early May, all political parties within Shiwan'gandu convened a meeting wherein a campaign time table was agreed among candidates running for member of parliament. **RW4** stated that all candidates made effort to adhere to such time – table. The general consensus among the parties was, according to the witness, that in the event a candidate for any reason could not adhere to the agreed time – table, discussions would be had and permission sought to allow any such candidate to operate outside the agreed schedule. **RW4** stated that on the 5th of August 2021 he and the 1st Respondent had discussions pertaining to the places he had not yet visited for campaigns and it was discovered that the 1st Respondent missed out on holding campaigns in the Ichingo Ward of Shiwan'gandu due to his mother having been hospitalized at the time.

6.97. **RW4** told the Court that on the same date, he engaged the Socialist Party candidate: **PW2** who as per the time – table was scheduled to be visiting the Ichingo Ward for campaigns the following day. According to the Witness, **PW2** agreed to allow Patriotic Front candidate to campaign in the said Ward

on the 6th as he said he would attend to other duties on the said date.

6.98. RW4 stated that on the 6th of August 2021, he and the PF party team in the company of the 1st Respondent set out for Shuka to hold their first meeting. According to the Witness, as the meeting was being chaired by the 1st Respondent, **PW2** arrived at the said place in a Regius. **RW4** then approached his vehicle and the two had a discussion and agreed that **RW4** could begin his campaigns after the conclusion of the on-going meeting which meeting was almost over. According to the Witness, he then approached the 1st Respondent and informed him of what he had discussed with **PW2**. According to the Witness, the 1st Respondent did not mind and stated that he would quickly conclude the meeting in order that he could carry own campaigns in another location within Shiwan'gandu.

6.99. RW4 stated that at the close of the meeting he and other members of the Patriotic Front party gave to their youth members t-shirts, portraits and party regalia to distribute while he and the 1st Respondent set out from the said location in order that **PW2** could begin his campaign or meetings. **RW4** stated that it was agreed amongst the membership of the party that the youth who were being transported in a white Land Cruiser by one Mwansa, would catch up with the 1st

Respondent and other party members once they concluded distribution of t-shirts, portraits and chitenge material at Shuka. The Witness testified that following this, he and the 1st Respondent proceeded to hold meetings at Sele and then Kabangwe which was their last campaign location.

6.100. RW2 testified that while at Kabangwe, one Mwansa the aforementioned driver of the Toyota Land Cruiser called him on the side and told him that at Shuka confusion had erupted between the Socialist Party and some villagers right after the 1st Respondent and the Witness departed. That he then tried to get a hold of **PW2** to find out what had truly transpired and PW2's phone was unreachable. The Witness stated that he tried a few more times that evening to get in touch with **PW2** to no avail and added that he had not heard from **PW2** since then.

6.101. In Cross – examination **RW4** told the Court that the three (3) vehicles used during the time of campaigns only ferried PF party officials and youths. The Witness further submitted that none among the said team were Security personnel or detail. The Witness also clarified that he did not inform **PW2** that he intended to distribute regalia after the conclusion of the 1st Respondent's public address at Shuka. **RW4** stated the when he was informed of the confusion that had erupted, he hadn't

known or contemplated that **PW2** had been assaulted. He however concluded cross examination by stating that he took no steps beyond calling **PW2** to find out exactly what had transpired on the material day.

6.102. There was no cross examination of the Witness by the 2nd Respondent and there was no re-examination.

6.103. The fifth Witness on behalf of the Respondent **RW5**, was **Sister Cecilia Chilufya**, a nurse, midwife and sister in charge at Mulanga Rural Health Center. **RW5** attended Court under subpoena to produce documents and testify. She told the Court that her duties are to supervise the health facility, conduct deliveries and inspect and examine patients at the facility. She produced before Court, health records from the facility covering the period from as far as the 1st of February 2018 to September 2021. She also produced before Court patient files, which opened between the periods June 2021 to August 2021.

6.104. **RW5** testified that according to her records, now part of the Courts' record and marked R1, there was no evidence demonstrating that **PW7**, Henry Mulenga, was ever admitted to their facility in the month of July to August 2021 or at all.

6.105. In Cross – examination the Witness testified that what she tendered before Court was an in-patients register, which register contains the names of all patients admitted at the health facility with the exemption of maternity cases. She stated that every patient that visits the facility would then open a file which would be entered into the admission register. In relation to out-patient records **RW5** testified that the Outpatient Register also contained record of all patients who came into the facility through the Outpatient Department. The Witness confirmed that even patients placed on bed rest would be included in the Register before Court and clarified that no matter the amount time a patient spent there be it minutes or hours, they would be included in the record. The Witness stated that she did not have the Outpatient Register with her. There was no cross examination of the Witness by the 2nd Respondent and there was no re-examination.

6.106. The Sixth Witness on behalf of the Respondent, **RW6** was one **Gibson Mweemba Habondo**, a Medical Licentiate Practitioner occupying the office of District Health Officer for Shiwang'andu. The Witness was attending Court in response to a *subpoena*.

6.107. RW6 testified that on the 11th of August, 2021, he in the company of the District Health Planner and Senior District Environmental Officer visited Mutitima Health Post to engage the village headman in important discussions. He stated that he made request for the village headman to organize the community to mould bricks in order that a new structure could be built at Mutitima Health Post.

6.108. According to the Witness, the health post was already fully functional prior to the 11th of August 2021, therefore the said health post was not being commissioned on the said date. The Witness stated that the 1st Respondent was not part of or in attendance during the said program as the attendees were officials from the District Health Office and village headmen.

6.109. In Cross – examination, the Witness stated that Mutitima Health Post was constructed in 2016 and at the time of its construction had no staff house, the construction of the staff house was later commenced in 2020 and completed in July 2021. The Witness further testified that staff began to occupy the staff house between the 3rd and the 6th of July 2021.

6.110. RW6 testified that Mutitima Health Center was made functional through the offering of health services while

waiting for the official opening of the health center. The Witness stated that he as a District health director in the company of the District health team and the staff assigned to the health center declared it functional. **RW6** concluded his testimony by stating that no invited guests attended such opening as such opening involves giving guidance to the staff on how the facility is to function and what services are to be provided to the community.

6.111. RW7 was one **Andrew Mukapashinga Kampyongo** a business man from the Kalalantekwe village of Shiwan'gandu. The Witness stated that he was assigned duties of being a polling agent on the day of elections being 12th August 2021. **RW7** also testified concerning the events of the 6th of August stating that on the morning of the said date the PF campaign manager informed him that their team would be holding campaigns in the Shuka, Sele and Kabangwe areas in Shiwan'gandu. **RW7** testified that on this date he was assigned the role of driver for the campaign manager **RW4**. He also told the Court that he ferried the manager in a white PF branded Toyota Hilux registration number BAR 6489.

6.112. RW7 stated that the first location at which campaigns were held was Shuka and the team then headed to Sele. He stated that upon their arrival at Sele, the campaign manager

proceeded to play his role while he dropped the driver's seat of the car awaiting conclusion of the meeting before heading to the final destination as per their schedule.

6.113. RW7 submitted to Court that he was the driver of one of the three vehicles that was among the campaign convoy. He testified that the other two being Toyota Land cruisers one of which was driven by one **Mwansa** who carried the PA (Public Address) system. Following conclusion of the said meeting **PW7** stated that the campaign manager returned to the vehicle and instructed him to drive to the next and final destination: Kabangwe, which he did. **RW7** stated that after the meeting at Kabangwe which ended quite late the team left Ilonda and each retired to their places of residence.

6.114. The Witness in his evidence in chief also testified that he was registered to vote at Matumbo as per the document at page 40 of the 1st Respondents Bundle of Documents. The Witness in response to allegation of damage to property specifically made against him by one Mike Mulenga, stated that he was not involved in any such act and was in fact in Mpika refueling his vehicle on the 10th of July 2021 as there are no filling stations within Shiwan'gandu.

6.115. In cross-examination, the Witness testified that the PF had no security personnel, detail or wing at the time of the campaigns or beyond. The Witness testified that his voter's card at page 40 reflects two names being **Andrew Kampyongo** while his National Registration Card has four. He maintained that on the election day he voted at his designated polling station. **RW7** specifically denied having been present during the assault of the Socialist Party candidate **PW2** and concluded his testimony submitting that there was no violence in Shiwan'gandu during the campaign period.

6.116. The final Witness on behalf of the Respondent was the 1st Respondent himself: **Stephen Kampyongo - RW8**. **RW8** testified that he had been Member of Parliament for the Shiwan'gandu Constituency for the past Ten (10) years and has been active in politics since the year 2011. In the recently contested elections of 2021, **RW8** testified that he emerged victorious having polled 16,451 votes against the petitioner who polled 7,214 votes.

6.117. **RW8** testified that in accordance with the campaign period set up by the 2nd Respondent he appointed a campaign manager one **Steven Mutale (RW4)** to assist him with adhering to the campaign time table crafted by local elections authorities within Shiwang'andu. **RW8** stated that he was

able to attend all meetings that were called by the Conflict Resolution Committee of the 2nd Respondent and noted to the Court that he began and mostly carried out his campaign within the first week of July 2021.

6.118. RW8 submitted that his other officially elected agents were Frank Ng'andu and Andrew Mwape. The Witness described his relationship with the Petitioner as long-standing and submitted that he regarded the Petitioner as a young brother whom he frequently visited in the United States where the latter is a permanent resident. The Witness further testified that he was among the people that recommended him to become the Zambian Consular within the State of Seattle in the United States. In relation to his interactions with the petitioner during the campaign period of 2021 the Witness submitted that the Petitioner and other candidate contesting as member of parliament in the Shiwan'gandu Constituency began their campaigns two months ahead of him due to his absence in Shiwan'gandu. He told the Court that prior to his arrival in Shiwan'gandu the Petitioner would share with him some incidents of some political skirmishes that would take place in a few selected areas of which **RW8** reassured him he would address at the time of his arrival within the Constituency to ensure that peace and harmony prevailed.

6.119. In reference to the WhatsApp communication between himself and the Petitioner exhibited at page 1 – 37 of his bundle of documents **RW8** testified that the exchanges between himself and the Petitioner were cordial and involved campaign related information and the conduct of their members and supporters on both sides. **RW8** stated that upon his arrival in Shiwan'gandu he called for the meeting facilitated by the Zambia Police command wherein himself and the Petitioner together with their supporters were in attendance. According to the Witness, it was resolved at the said meeting that all parties were going to work in harmony and ensure that whoever became unruly and disregarded the electoral regulations would be dealt with by the appropriate authorities. **RW8** also referred the Court the video evidence at page 38 of his supplementary bundle of documents tendered in support of his testimony.

6.120. **RW8** stated that, to resolve all the incidents of political skirmishes reported to him during the time of his absence in the Shiwan'gandu Constituency, he held meetings in the alleged 'hot spots' to encourage peace and harmony within the District. Some of his visits were a meeting at Kalalantekwe facilitated by the commissioner of Police at the time Nelly Chikwanda where he and the Petitioner engaged supporters of the Patriotic Front Party and those of the United Party for national Development. The second one was

at Matumbo where he and the Petitioner also engaged their supporters and the same was facilitated by the Police. The final engagement was at Matumbo trading center. According to the Witness, following these reconciliatory engagements, it was agreed that some of the cases that were before the Police could be withdrawn and this led to his Constituency leader **RW1** who had been a victim in a case of abduction in which a Fuso truck had been impounded pending investigations withdrawing his case before Court. The Witness testified that from that point there existed a peaceful environment and party campaigns generally proceeded

6.121. RW8 in his evidence in chief specifically denied all allegations contained within the Petition. He categorically stated that because he had previously had the privilege of serving as the Minister of Home Affairs and Member of Parliament his office was subject to much scrutiny and he would not act in any way that tarnished the integrity of the reputation he had built. He further stated that no proof was led to connect him to the allegations espoused within the Petition and he as an individual would not perpetrate or tolerate any form of lawlessness.

6.122. In relation to the occurrences of the 6th of August 2021. **RW8** testified that on the material day his campaign manager **RW4** who was responsible for arranging his campaign programs informed him that he had engaged the Socialist Party candidate **PW2** in line with the guidance given by the 2nd Respondent and **PW2** consented to his request to allow the 1st Respondent and his team to campaign in the Mwiche and Ichingo Wards of Shiwan'gandu. **PW8** espoused that what had necessitated this request was the fact that his mother had been hospitalized and had been critically ill at the time he was initially designated to campaign within these areas. The Witness testified that on the 6th of August, 2021, after concluding a meeting at Sele, he and his team proceeded to Shuka to chair a second meeting. According to the Witness, following conclusion of the meeting he was requested to go to the headmaster's office where he held a meeting with village headmen and the headteacher of the school. During the meeting **RW8's** campaign manager **RW4** sent word for him to briefly step out of the meeting and when he did, **RW4** informed him that **PW2** was at the said location and asked his advice of which the Witness suggested leaving as he had concluded his address. **RW8** stated that he went on to excuse himself out of the meeting, informing the village headmen and headteacher that he would return to hear their concerns after the elections and proceeded to leave Shuka for his next meeting in Kabangwe.

6.123. In relation to the testimony of **PW7, Henry Mulenga, RW8** denied the allegations made against him and submitted that he knew **PW7** who was a former Patriotic Front official. He testified that **PW7** had crooked tendencies and the said tendencies are what got him expelled from the Patriotic Front. **RW8** further stated that he last saw **PW7** between the years 2014 and 2015 until this time he appeared as a witness before Court. **RW8** added that he never sponsored the football tournament at Matumbo and only accompanied Professor Nkandu Luo who is a princess in the Chibesakunda Chiefdom where Matumbo is located, to the football match that was played in her honour.

6.124. In relation to the allegation of giants having been accommodated in Shiwan'gandu at the instance of the Witness, he stated that one John Chipili was his store keeper whose assistant was Mathews. He stated that Mr. Chipili's responsibility was to secure campaign material, ensure all chitenge materials were cut and made ready for distribution at campaigns. **RW8** averred that the said individuals did not accompany them to any campaigns and the allegation that the aforementioned were threatening people within Shiwang'andu District was false. **RW8** ended his examination- in-chief by stating that he was simply loved by the electorate who accorded him due support because of his respect for them.

6.125. In Cross-examination, the Witness stated that the conversation in the Whatsapp communications between him and the Petitioner centered around violence that happened in Shiwan'gandu District. He further submitted that he did offer a solution on how to resolve the said issue of concern, the said violence at the time.

6.126. The Witness also confirmed that according to the agreed time table, the candidate that was meant to be in the Mwiche and Ichengo Wards on the 6th of August 2021 was **PW2** and not himself. The Witness also confirmed that in accordance with the letter at page 39 of his Bundle of Documents that he participated in the funding of the construction of the mortuary at Matumbo because he was a Member of Parliament at the time the project was begun.

6.127. When referred to page 3 of the 1st Respondent's Supplementary Bundle, the Witness confirmed that the report by the Conflict Resolution Committee stated that some Government programs such as social cash transfer and the Ministry of Health program were politicized and also that it said that Patriotic Front cadres were unruly. **RW8** concluded his testimony by testifying that he agreed with the report

when it stated that Shiwanga'ndu did not record a lot of serious cases as expected.

The 2nd Respondent's Evidence at Trial

6.128. The 2nd Respondent did not call any Witness.

7.0. SUBMISSIONS

7.1. There were written submissions tendered on behalf of all the parties in this matter which I have taken into account and will refer to in the course of my judgment. I have also very carefully considered the *viva voce* evidence of all the witnesses that testified in this election petition and analysed the documents that are on record. I wish to express my gratitude to Counsel for all parties for their spirited arguments and submissions.

8.0. JUDGMENT

8.1. It is a fact that is not in dispute that the Petitioner and the 1st Respondent were both Parliamentary Candidates in the Shiwan'gandu Constituency Parliamentary Elections held on

the 12th of August, 2021. It is also a fact not in dispute that the Petitioner contested that election as a parliamentary candidate under the United Party for National Development (UPND) Political Party, while the 1st Respondent contested the election as a parliamentary candidate under the Patriotic Front (PF) Political Party. It is similarly a fact that the 1st Respondent was declared the duly elected Member of Parliament for the Shiwan'gandu Constituency and it is that election result that the Petitioner challenges.

8.2. I will, for the sake of clarity and sequence, address the allegations in the Petition in order of presentation. To this end, the numbering of the paragraphs will remain unchanged.

8.3. In his Petition filed on 25th August 2021, the Petitioner advanced various allegations of electoral malpractice, vote buying, bribery, corruption, intimidation and acts of violence and seeks the reliefs as set out within the Petition and reiterated under part 2.22 of this Judgment. Perusal of the Petition shows that the allegations against the 1st Respondent are outlined in paragraph 5 – 23 of the Petition.

The Standard of Proof and Burden of Proof

8.4. At the outset, it is pertinent to establish that the governing law in relation to the challenging of election petition results in Zambia is **Section 97 of the Electoral Process Act (1)**. The provision states in part:

97. (1) An election of a candidate as a Member of Parliament, mayor, council chairperson or councilor shall not be questioned except by an election petition presented under this Part.

(2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councilor 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;

8.5. The burden of proof in an election petition lies with the Petitioner to prove that the candidate committed: a corrupt practice, illegal practice or other misconduct in relation to the election or that the same was done by another with his/her knowledge and consent or approval; or of that candidate's election agent or polling agent. **Part VII (Sections 81 – 95) of the Act**, which is of similar importance outlines corrupt, illegal practices and other election offences.

8.6. In addition to proving the aforestated, **the Act** provides that a petitioner must further prove that the said misconduct prevented or may have prevented the majority of voters in a constituency, district or ward from electing the candidate whom they preferred.

8.7. On this aspect, the Constitutional Court, in the case of **Austin Liato v. Sitwala Sitwala (1)**, pronounced itself as follows:

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

- 8.8. The standard of proof for an election petition has to be proved to a standard higher than the mere balance of probability which later standard applies to ordinary civil suits. The Constitutional Court in the case of **Austin Liato v. Sitwala Sitwala (1)** afore cited, stated that:

“... the balance of establishing any one of the grounds lies on the person making the allegation and in election petitions, it is the petitioner in keeping with the well settled principle of law in civil matters that he who alleges must prove. The ground(s) must be established to the required standard in election petitions namely a fairly high degree of convincing clarity.” (J53)

Further, on the same principle, in the **Sunday Chitungu v. Rodger Mwewa (2)** case, the Constitutional Court of Zambia held that;

“The standard of proof in an election petition is higher than the civil standard of a mere balance of probabilities. The standard of proof demanded is a fairly high degree of convincing clarity.”

8.9. The legal threshold and principles of law outlined above in relation to election petitions have been established, upheld and reiterated by the Constitutional Court in some of its earlier decisions. I am therefore fortified by the decisions of the said Superior Court in the cases of **Nkandu Luo and another v. Doreen Sefuke Mwamba and another (3)** and **Giles Chomba Yambayamba v. Kapembwa Simbao and 2 others (4)**. The Supreme Court in the case of **Michael Mabenga v. Sikota Wina, Mafo Wallace Mafiyo and George Samulela (5)** held as follows regarding the burden and standard of proof in election petitions;

“An election petition is like any other civil claim depends on the pleadings and the burden of proof is on the challenger to that election to prove to a standard higher than a mere balance of probability.”

8.10. The enacted law and established principles are the guidance on which this Court places its reliance in determining this Election Petition or case *in casu*.

8.11. The Court cautions itself on the weight to attach to the evidence of the various witnesses for the parties, who appeared before it.

8.12. The said witnesses can be classified into various categories namely;

- i. Witnesses who are supporters of the Petitioner or the Respondent; These may have their own interest to serve as they are partisan;
- ii. Witnesses who are supporters of the respective candidates, but give evidence which is not supportive of the candidate; if they are truthful their testimony could be more cogent; and
- iii. Witnesses who are independent, who are non-partisan; such as those appearing under *subpoena*.

8.13. The Court takes note that the witnesses who appeared are largely supporters of the Petitioner or 1st Respondent and are members of the UPND or PF parties. I have to consider the

credibility of the said witnesses as the same will speak to the ultimate decision I shall make in this Petition.

8.14. I take note of her Ladyship R. Kaoma. J's words in the case of **Christopher Kalenga v. Annie Munshya and Others (6)** when she quoted the Ugandan case of **Nabukeera Hussein Hanifa v. Kibule Ronald and Another (2011UGCH72)**, on the nature of evidence presented in election petitions;

"In an election petition just like in an election itself each party is set out to win. Therefore, the court must cautiously and carefully evaluate all the evidence adduced by the parties. To this effect evidence of partisans must be viewed with great care and caution, scrutiny and circumspection. It would be difficult indeed for a court to believe that supporters of one candidate behave in a saintly manner, while those of the other candidate were all servants of the devil. In an election contest of this nature, witnesses most of them are motivated by the desire to serve victory against their opponents will deliberately resort to peddling falsehoods. What was a hill will be magnified into a mountain?"

9.0. ALLEGATIONS OUTLINED IN THE PETITION:

ELECTORAL MALPRACTICE, VOTE BUYING, BRIBERY AND CORRUPTION

9.1. Under paragraph 7, the Petitioner alleges that the 1st Respondent acting together with Ms. Evelyn Kangwa directed the Police to impound a Fuso Fighter truck which motor vehicle was being used for campaigns by the Petitioner and the same was detained by the Police for 34 days to the detriment of the Petitioner.

9.2. Evidence to support this allegation as led by **PW1** and **PW5**. In the evidence led by **PW1** he stated that his main campaign vehicle was impounded for over 30 days by the Police and he was, on occasions unspecified, verbally told by Police that the same was at the direction of the 1st Respondent. He submitted that after much pleading by himself and other people a Court order was issued for the release of the vehicle and the same was released to him as per the document at page 4 of his bundle. The Witness testified that he still did campaign during the time the vehicle was impounded, though his campaign was severely affected by the impounding of the vehicle.

9.3. PW5, the driver of the truck, on the other hand testified that on the 13th of June, 2021, he was told by the officers who apprehended him and impounded the Fuso truck he was driving that the same was done under the 1st Respondents instructions. He stated that from the time the vehicle was impounded, campaigns were not carried out because the said vehicle was the vehicle to be used for such exercise. **PW5** also testified that following his collection of the Court order for the release of the vehicle, he handed the same over to the Petitioner.

9.4. The 1st Respondent, in his answer and oral evidence denied these allegations.

9.5. None of the witnesses that testified concerning the allegation under paragraph 7, gave evidence of hearing for themselves, the 1st Respondent or indeed the named Ms. Evelyn Kangwa issue instructions for the impounding of the said vehicle. It would be a gross misapplication of Judicial authority to rely on the evidence of **PW1** and **PW7** concerning the alleged instruction by the 1st Respondent to the Police to impound the Petitioner's Fuso truck. Taking such testimony into consideration would otherwise be deemed as admitting into evidence statements considered as hearsay.

9.6. Furthermore, I find that the document placed before me at page 4 of the Petitioner's Bundle of Documents is a hand-written note titled: '*HAND OVER CERTIFICATE*' with no Police date stamp or specific mark to prove that the said handover of the vehicle was made between **PW1 or PW5** and the Police.

9.7. I do not find that the ground under paragraph 7 has been established with a high degree of convincing clarity. I reiterate the sentiments of the Supreme Court expressed in the case of **Brelsford James Gondwe v. Catherine Namugala (7)** wherein it was held that:

"The burden of establishing any one of the grounds lies on the person making the allegation and in election petitions, it is the petitioner in keeping with the well settled principle of law in civil matters that he who alleges must prove. The ground(s) must be established to the required standard in election petitions namely a high degree of convincing clarity."

9.8. I am further fortified by the Constitutional Court case of **Nkandu Luo and another v. Doreen Sefuke Mwamba and another (3)**, [p. J78] in which was cited with approval the case of **Lewanika v. Chiluba (8)** wherein the Supreme Court 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”

9.9. Section 2 of the Electoral Process Act No 35 of 2016 (1) provides:

“Election agent” means a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate’s nomination paper”

9.10. Neither of the Police officers nor the people who were said to have occasioned the impounding of the vehicle were named as agents of the 1st Respondent or, better yet, even named at all. I find that the allegation under paragraph 7 has not by the Petitioners evidence been proven to the requisite standard and hereby dismiss the same for the foregoing reasons.

9.11. The allegation under Paragraph 10 of the Petition provides that: on the 8th of July 2021, the 1st Respondent instructed potential

voters at a rally held at Matumbo village not to allow other political party candidates from holding campaign meetings in that area.

9.12. Despite the 1st Respondent's rebuttal of the allegation: No evidence was led by the Petitioner to prove the said allegation; it was seemingly abandoned and I therefore dismiss it.

9.13. The allegation under Paragraph 11 of the Petition provides that: on the 10th of July 2021 the Petitioner was denied permission to hold a campaign meeting at Matumbo village on the orders of the 1st Respondent and the District Commissioner one Ms. Evelyn Kangwa.

9.14. Despite the 1st Respondent's rebuttal of the allegation: No evidence was led by the Petitioner to prove the said allegation at paragraph 11. It was to me, therefore seemingly abandoned and I hereby dismiss it.

9.15. Under Paragraph 12 of the Petition the Petitioner alleges that on the 6th of August 2021 the 1st Respondent in the company of Ms. Evelyn Kangwa opened a mortuary at Matumbo Health

Center for purposes of inducing the electorate in that area to vote for him.

9.16. Evidence to support this allegation as led by **PW1**.

9.17. In his evidence, **PW1** stated that the 1st Respondent who was a mere candidate in the election like himself, officiated the opening of a mortuary on the 6th of August 2021. He stated that the 1st Respondent was at the said event coercing voters to vote for him and perpetuating unfair electoral practice by misguiding voters. **PW1** stated that he and the 1st Respondent should have had an equal opportunity to access voters as well as the ability to campaign freely. **PW1** stated that he attended this function at a distance of about 50 meters and was mostly listening in rather than watching the event. **PW1** therefore could not ascertain whether the Permanent Secretary or any other Government official was in attendance of the said event.

9.18. The 1st Respondent (**RW8**) denied this allegation and on the contrary led oral evidence that he attended the official opening of the mortuary as an ordinary invited guest. He referred the Court to page 39 of his Bundle of Documents which contains a letter from the Council Secretary of Shiwan'gandu to the Permanent Secretary of Chinsali inviting him to hand over the

newly constructed mortuary at Matumbo. The 1st Respondent stated that he had been involved in the funding of the mortuary whose construction began in 2020 when he was a Member of Parliament. Ms. Evelyn Kangwa, the former District Commissioner who appeared as a witness herein as **RW3** and did also confirm attending the official opening of the mortuary at Matumbo and stated that the 1st Respondent was present at the event as an invited guest.

9.19. No further evidence, either by an official or attendee was led to corroborate the evidence of **PW1** and support his allegation within the Petition. I have before me at page 39 of the 1st Respondent's Bundle of Documents – a letter of 12th July 2021 from Shiwan'gandu Town Council, to the Permanent Secretary Chinsali to hand over the newly constructed mortuary at Matumbo to the Ministry of Health. The letter in its second paragraph states, and I quote:

“The Permanent Secretary may wish to note that the project was funded through the Constituency Development Fund (CDF), Honourable Member of the Constituency Mr. Stephen Kampyongo and other funds at a total cost of...”

9.20. From reading of the aforesaid; it is my understanding that the project – being the construction of the mortuary at Matumbo was a Government project. Owing to the dissolution of the Parliament at the time of the hand over, I find credence in the testimony by RW6 and RW8 that the 1st Respondent was no more than an ordinary invited guest despite his former position. It follows therefore that in such an event, he then would've been an ordinary invited guest. No evidence has been led to suggest that the 1st Respondent was invited in a capacity other than a mere attendee or that he performed any official duty during the handover or at all. The letter of 12th July 2021 that invites the Permanent Secretary to officially hand over the said mortuary makes reference to the 1st Respondent but not in relation to attendance. The invitation is instead extended to the Permanent Secretary of Chinsali whom by consideration would be expected to represent the Government at such an event.

9.21. In this instance I reiterate the standard of proof to be met by the Petitioner herein, which is that the Petitioner must prove his allegations with a high degree of convincing clarity that the candidate committed a corrupt practice, illegal practice or other misconduct in relation to the election or that the same was done by another with his/her knowledge and consent or approval.

9.22. I, in addition, see no evidence led to demonstrate a link, relating or connecting the 1st Respondent's attendance at the event with the elections.

9.23. On these premises, I dismiss the said allegation as it has not been proven to the requisite standard by the Petitioner.

9.24. Paragraph 14 of the Petition alleges that on the 11th of August 2021 the 1st Respondent commissioned a health post at Mutitima village and during the opening ceremony issued threats to the community telling them not to vote for the Petitioner or else they would not be allowed access to the services at the health post. The said allegation is connected to the allegation at paragraph 15 which states that the 1st Respondent was captured on video donating ZMW1,000.00 to villagers at Mwilwa village on the said date which money was purportedly a contribution towards a community clinic project for purposes of inducing the electorate to vote in his favour.

9.25. Evidence to support this allegation as led by **PW1**.

9.26. **PW1** stated that on the 11th of August 2021, the 1st Respondent while parading as if he was still occupying the position of a minister, commissioned a health post at Mutitima village. The Witness categorically stated that he was not in attendance at the said event, but was given the said information by a firsthand attendee of the event. No other evidence was led or tendered by the Petitioner in relation to the allegation at paragraph 15.

9.27. The 1st Respondent (**RW8**) denied the said allegations and stated that he neither attended such event nor donated money to villagers at Mwilwa village. On the contrary, the Witness submitted to the Court that the distance between Mwilwa and Mutitima was about 130 kilometers and he was in neither of these two places on the 11th. **RW6, Gibson Mweemba Haabondo** the District Health Officer (DHO) for Shiwan'gandu led oral evidence stating that on the 11th of August, 2021, he in the company of the District Health Planner and District Health Environmental Officer visited Mutitima Health post to have discussions with the village headman. He categorically stated that their program did not involve the official opening of the health post which was already fully functional. He also stated that the 1st Respondent was not in attendance at the said program on the said date.

9.28. I am once again faced with the invitation to take into account the testimony of a third-party witness to events, which third party was not brought before Court to testify to himself and be cross – examined on what they heard and perceived. I for the second time reject such invitation on the premise that relying on such testimony would be tantamount to admitting into evidence statements that are clearly hearsay.

9.29. I find that no material evidence was led to demonstrate or support the allegations at paragraph 14 and 15 of the election Petition and for this reason dismiss the said allegations.

9.30. The allegation under Paragraph 17 of the Petition is, that the 1st Respondent on a date unspecified and via a phone call ordered the Presiding Officer at Matumbo Polling Station to allow the 1st Respondent's brother Andrew Kampyongo, Mwamba Matumbo and S. N. Mutale to vote at the said polling station at which they were not registered.

9.31. Evidence around this allegation was led by **RW7, Andrew Mukupashinga Kampyongo** who stated that he did his voters registration at Chinsali and elected to vote at Matumbo as per his voter's registration card produced at page 41 of the 1st

Respondents Bundle of Documents. **RW7** further stated that he did vote at Matumbo on the polling date as he had found his name on the (voters) list published at the Polling Station. In the cross – examination of **RW7**, Counsel for the Petitioner put it to the Witness that **RW7** was denied access to vote at Matumbo to which he answered in the negative and reaffirmed that he cast his vote and was not in any way restrained or attempted to be restrained from doing so.

9.32. I take note that the document at page 41 of the 1st Respondent's Bundle of Documents is a voter's card of one Andrew Kampyongo, **RW7** who is the 1st Respondents brother. I further note that the same records the Polling District as Matumbo and the Polling Station as Matumbo Primary School. Similarly, I take note that the document at page 42 of the 1st Respondents Bundle of Documents is a voter's card of one Mwamba Matumbo whose Polling District is recorded as Matumbo and Polling Station: Matumbo Primary School. Contrary to the allegation at paragraph 17 of the Petition, I find that the said persons named in the Petition were duly registered voters in the Matumbo Polling District. Further, I find that the lack, on the part of the Petitioner, to proffer evidence in support of this allegation or ground results in its failure. I ask myself why the Petitioner's polling agent or local monitors did not lodge a formal complaint of this as it surely would have been picked up at the time?

9.33. On the above premise, I dismiss the said allegation as it has not been proven to the requisite standard by the Petitioner.

9.34. Paragraph 20 of the Petition alleges that, on dates unspecified, the 1st Respondent's agent Evelyn Kangwa (the District Commissioner) supplied Disaster Management and Mitigation Unit relief mealie meal to PF cadres who in turn distributed the same to would be voters on their way to vote on the election day.

9.35. Evidence to support this allegation as led by **PW1** and **PW6**.

9.36. **PW1** testified that he saw the District Commissioner of Shiwan'gandu **RW3** distribute mealie meal around the District in the weeks leading up to the election. He testified that she continued to carry out the said distributions even on the day of the election itself. **PW1** stated that he witnessed this in Matumbo and Ilondola villages of Shiwan'gandu. Pertaining to the time that he saw her in Matumbo he stated that he was standing on the main road being Chama Road, while she distributed the mealie meal to houses along Chama Road. He stated that though he does not recall the brand of the mealie-meal, villagers from the target villages told him that they did received mealie meal distributed by **RW3**. **PW1** further told the

Court that when he engaged **RW3** her response to him was that she was distributing Disaster Management Mitigation Unit supplies to citizens though he observed that the only citizens that received those supplies were Patriotic Front Party supporters and cadres. **PW1** also stated that he did not see the 1st Respondent issue instructions to **RW3** to distribute the said mealie meal.

9.37. PW6, Moses Mulenga, testified that on the 7th of August 2021 **RW3**, the District Commissioner in the company of other people unidentified, visited the Chamsenga Ward and began to offload 14 bags of mealie meal, cooking oil and sugar out of a white Canter into one Charles Zabangwa's residence – the Patriotic Front treasurer within the ward. According to the Witness, upon his engaging **RW3**, she stated that the 1st Respondent had instructed them to do in Chamsenga as they had done in other places within Shiwan'gandu and further instructed them to do the same on the day of elections. It was noted on record that the Witness had contested as a councilor under the UPND in the 2021 election and petitioned the results before the Local Government Elections Tribunal under cause number 2021/F/LGET/15.

9.38. **RW3** denied the allegations by **PW1** and **PW6**. She stated that though she was, through her office, one that was mandated to provide disaster relief as and when it was required in the District of Shiwan'gandu, the distribution of mealie meal by her office ended in May which was long before the campaign period. She produced before Court at page 8 and 9 of the 1st Respondent's Supplementary Bundle; delivery notes for the issuance of 1,200 bags of mealie to the Shiwan'gandu District issued by the Disaster Management and Mitigation Unit. **RW3** further testified that she had never met the Petitioner in person.

9.39. It is not in dispute that **RW3**, Ms. Evelyn Kangwa the District Commissioner at the time was not among the duly appointed election agents of the 1st Respondent. As a matter of fact, the 1st Respondent in his testimony led evidence which was not disputed that his official electoral agents were one Frank Ng'andu and Andrew Mwape. **Section 2** of the **Electoral Process Act** explicitly classifies election agents as persons that are appointed by a candidate for the purpose of the elections and whose names are specified on such candidate's nomination paper.

9.40. It is not in dispute that **RW3**, Ms. Evelyn Kangwa who was District Commissioner of Shiwan'gandu was not the duly appointed election or polling agent of the 1st Respondent and the said Respondent is not answerable for any of the alleged actions purported to have been carried out by herself and without his knowledge. I am fortified by the case of **Lewanika v. Chiluba (7)** afore cited and the provision of the law that creates the threshold that any corrupt practice, illegal practice or other misconduct in relation to an election should have been done by the candidate or done by another with his/her knowledge and consent or approval; or by his election agent or polling agent.

9.41. In any event I find it rather absurd that **PW1** and **PW6** who witnessed the alleged acts of malpractice neither reported the same to the Police or the 2nd Respondent. More particularly **PW6** who according to him was aware that the alleged food items offloaded at one Charles Zabangwa's home, were stored for future distribution being on the election day – this in my opinion would've provided substantive grounds to the Police or 2nd Respondent.

9.42. I do not find the evidence convincing, that **PW1** and **PW6**, at the material times mere bystanders or by a further stretch of

imagination – strangers to **RW3**; made inquiry concerning the said bags of mealie and RW3 responded candidly and in the manner, they alleged she did given her position at the time.

9.43. By reason of the aforestated I dismiss the allegation under paragraph 20 of the Petition.

9.44. The allegation under Paragraph 22 of the Petition states that, on the date of elections, the 1st Respondent forced poll staff at Matumbo Polling Station to allow an unregistered voter, Anthony Makwaya, to vote using his father's voter's and national registration cards.

9.45. Despite the 1st Respondent's rebuttal of the allegation, no evidence was led by the Petitioner to prove the said allegation; it was seemingly abandoned and I therefore dismiss it.

9.46. The allegation under Paragraph 23 of the Petition provides that: on the date of elections, the 1st Respondent was seen giving cash handouts of ZMW20.00 notes to voters on their way to various polling stations as an inducement to vote in his favour.

9.47. Despite the 1st Respondent's rebuttal of the allegation, no evidence was led by the Petitioner to prove the said allegation at paragraph 23, it was seemingly abandoned and I therefore dismiss it.

9.48. Therefore, I find that the allegations of electoral malpractice, vote buying, bribery and corruption as contained within Petition in the said paragraphs have not been proved to the requisite standard and are hereby dismissed.

10.0. INTIMIDATION AND ACTS OF VIOLENCE

10.1. Under Paragraph 5 of the Petition the Petitioner alleges that the 1st Respondent being a former Minister of Home Affairs engaged in various acts of violence against other candidates and their campaign agents for both parliamentary and local Government elections with impunity.

10.2. Evidence to support this allegation as led by **PW1**. In his evidence, **PW1** stated that he saw the 1st Respondent committing acts of violence "*verbal and physical violence*". He further clarified stating that the said verbal violence he

witnessed were threats by the 1st Respondent against individuals. **PW1** submitted on record that he did on at least three (3) occasions, whose dates he cannot recall, witness the 1st Respondent beating people and smashing a vehicle. The places, names of people and any names of bystanders or other witnesses to the incidents and what followed were not provided.

10.3. I find the testimony of **PW1** in this instance lacking in sufficient detail to prove the said allegation within the Petition. Not one occurrence of the said "*various acts of violence*" highlighted under the Petition was espoused by this testimony. Not one of the other candidates in both parliamentary and local Government elections or their campaign agents were said to have been victims of the alleged violence perpetrated by the 1st Respondent.

10.4. I further find that **PW1**, the Petitioner herein being fully aware of the complaints procedure with the 2nd Respondent, where if such incidents really occurred would have in the least reported the candidate for such alleged malpractice. In any event, **PW1** who alleged he was a witness to these events neither lodged a complaint against the 1st Respondent to the Police or 2nd

Respondent or encouraged the victims to lodge such complaint.

10.5. Irrespective of the afore-said I will rely on the evidence on record which I reiterate is insufficient in proving the allegation. The Petitioner has not, with a high degree of convincing clarity proved the allegation at paragraph 5 of the Petition, for this reason I dismiss the said allegation.

10.6. Under Paragraph 6 of the Petition the Petitioner alleges that cadres belonging to the Patriotic Front Party damaged a Motor Vehicle: Toyota Land Cruiser Registration number ABG 6830 at Mukwikile Camp on the 21st of May 2021.

10.7. The 1st Respondent refuted this allegation and further averred on the stand as **RW8** that he only arrived in Shiwan'gandu for campaigns in July and could therefore not have known that that particular vehicle was at the said location on the said date. The 1st Respondent also stated in his answer, that the matter concerning damage to the Motor Vehicle ABG 6830 was investigated and adjudicated upon by the Magistrate Courts of Chinsali without any implications whatsoever laid upon himself. This later argument cannot stand as the 1st Respondent has to prove any facts in rebuttal he may wish to rely on in this

case as per Supreme Court holding in the case of **Annard Chibuye v. Zambia Airways Corporation Limited (9)**, where the Court held that;

“The result of a criminal trial cannot be referred to as proof of a fact which must be established in a civil court; and this applies whether the criminal trial resulted in a conviction or in an acquittal.”

10.8. No evidence was led by the Petitioner to prove the said allegation; it was seemingly abandoned and I therefore dismiss it.

10.9. The allegation under Paragraph 8 of the Petition provides that: on an unspecified date, the 1st Respondent through a Mr. S. Bwali (PF council chairperson candidate) and campaign agents masquerading as PF cadres assaulted Mr. Derick Simuchindo, the United Party for National Development (UPND) candidate for councilor in Mayembe Ward.

Despite the 1st Respondent's rebuttal of the allegation, no evidence was led by the Petitioner to prove the said allegation; it was seemingly abandoned and I therefore dismiss it.

10.10. Under Paragraph 9 of the Petition the Petitioner alleges that on the 11th of July, 2021, the 1st Respondent assaulted PW4 (the UPND council chairperson candidate) together with his family at his home for reason that he was a member of the UPND.

10.11. Evidence around this allegation was tendered by **PW4**.

10.12. PW4 testified that in the second week of June 2021 the 1st Respondent **RW3**, Ms. Evelyn Kangwa and one Simon Sampa Bwali brought huge people (giants) within the Shiwan'gandu District known as *100 percent*. He told the Court that Malama and Sokopipo who were part of these giants gave him information about them and gave away their leader's names being Mathews and Chipili. The Witness stated that the said giants were accommodated in four main places but scattered within Shiwan'gandu and their main purpose was to cause intimidation to people. **PW4** testified that himself together with other candidates of the UPND wrote a letter to the 2nd Respondent which letter appears at page 6 of the Petitioners Bundle of Documents.

10.13. When referred to paragraph 9 of the Petition in cross – examination by Counsel for the 1st Respondent, **PW4** stated

that he was assaulted by Sokopipo, Sebastian and other PF cadres but did not just bring up the said incident in his testimony in chief. **PW4** stated that he did also report the same incident to the Police.

10.14. The Petitioner in his answer as well as oral evidence denied this allegation.

10.15. **PW4** did not produce before me any Police report obtained by him following the alleged assault. **PW4** also neglected to explain where he was allegedly assaulted and the reasons for which such act by the assailants was carried out or any additional detail to prove the assault. The Petition specifically provides that the 1st Respondent through the named assailants carried out the assault because he was a candidate for and member of the UPND and no evidence was led to prove this specific detail. This evidence tendered therefore does not meet the threshold of proving allegations within election petitions with a high degree of convincing clarity.

10.16. In any event, I have painstakingly given due consideration to the evidence led by **PW4**. I find that no evidence was led to relate the alleged violent act (if at all it happened) to the

election and the same was not proven to have been carried out by the 1st Respondent or by the assailants with the 1st Respondent's knowledge and consent or approval; or even that of his election or polling agents aforementioned.

10.17. I, on the above premises dismiss the said allegation as it has not been proven to the requisite standard.

10.18. Under Paragraph 13 of the Petition, the Petitioner alleges that on the 6th of August 2021, Andrew Kapasa Kalulu, a parliamentary candidate and member of the Socialist Party was brutally assaulted and left unconscious by cadres and members of the Patriotic Front in the presence of the 1st Respondent as he was on his campaign trail in Mwiche and Ichingo Wards. The Petition goes on to allege that the said incident was captured on video.

10.19. Evidence to support this allegation as led by the Petitioner: **Albert Munanga (PW1) and Andrew Kalulu Kapasa (PW2).**

10.20. In his evidence **PW1** stated that the victim **PW2** following the assault reported to him that he was beaten by the 1st

Respondent's campaign team members in the presence of the 1st Respondent while on campaign trail.

10.21. PW2, testified that on the 6th of August 2021 when he arrived at Shuka Polling Station to carry out his campaigns, as per the agreed time table, he found the 1st Respondent and Patriotic Front party members carrying out campaigns at the said polling station even if they were not scheduled to be there. The Witness stated that he was approached by one of the 1st Respondent's people who introduced himself as security personnel who issued threats against him for having shown up at the location but upon production of the campaign timetable by **PW2's** campaign manager the said security officer conceded that he and his team were the ones in the wrong and pleaded with **PW2** to await as he engaged the 1st Respondent and sought a solution to the matter.

10.22. PW2 stated that following the close of the 1st Respondents campaign meeting the 1st Respondent went into the headmaster's office for about 5 minutes and immediately walked out toward his vehicle whose engine was already running. **PW2** stated that before the 1st Respondent got into his vehicle, he spoke to the person that had earlier had a discussion with **PW2**, though **PW2** could not make out what

he said as he was not within hearing distance. **PW2** stated that as the 1st Respondents three (3) vehicle convoy began to leave one of the cars in the convoy, driven by the 1st Respondent's brother **Andrew Kampyongo - RW7** made a U-turn and headed at full speed toward **PW2**. He stated that everybody inside the vehicle except the driver **RW7** got out of the vehicle and began to physically assault him and a fight broke out between their people and his people. **PW2** stated that he was struck and fainted and only regained consciousness at Ilondola clinic where he was rushed for medical attention and given a referral letter to Chinsali District Hospital. **PW2** stated that he also gave a statement of the said events to an officer identified as Mr. Zulu at Chinsali Central Police.

10.23. PW2 stated in cross examination that he gave a statement reporting **RW7, Andrew Kampyongo** as the assailant as he did not know the names of the other people that attacked him. The Witness confirmed that in the video evidence tendered before court **RW7** or any other person did not appear because it was a video of him laying down after having been injured. He also confirmed that at the time of the alleged assault **RW7** did not alight from his vehicle but was simply an accomplice of the assault against him. He further stated that he wouldn't know if the 1st Respondent

issued any of his team members instructions to attack him as he did not hear what was discussed between the 1st Respondent and his people. The Witness confirmed that following the incident of assault his party wrote the letter at page 3 of the Petitioner's Bundle, to the Chairman of the Electoral Commission of Zambia.

10.24. RW7, denied having carried out the alleged assault. He stated that on the 6th of August 2021, he was actually driving a Toyota Hilux and not a Land Cruiser. He also stated that following the conclusion of the 1st Respondents meeting at Shuka the 1st Respondents campaign manager approached the vehicle he had been sitting in as he awaited conclusion of the meeting and informed him of their next destination which he drove to immediately. **RW7** stated that only his and the 1st Respondents vehicle proceeded to their next destination, Kabangwe while one driven by Mwansa remained behind handing out t-shirts and other campaign material.

10.25. The Petitioner **RW8** also denied the allegation and testified that during his address at Shuka he was approached by his campaign manager who told him that **PW2** had arrived at the venue. **RW8** stated that he was at that moment taken aback

because he, through his campaign manager, had sought the permission of the said candidate to be in that place on the said date. **RW8** said that he then concluded his meeting and quickly bid farewell to the village headmen in the headmaster's office at Shuka and left the said location for Kabangwe.

10.26. I note that the pictures and video evidence produced before me at page 2 of the Petitioners bundle are that of **PW2** laying on the ground with injuries after having been assaulted. It is not in dispute that the said **Andrew Kalulu Kapasa, PW2** was on the 6th of August 2021 at Shuka assaulted. The pictures and video evidence before me do not however demonstrate who the perpetrator of such violence was. There has not been produced before me, evidence of the Police statement made by the victim to the aforementioned officer Zulu or any other statement.

10.27. It is the evidence of **PW2**, the victim himself, that he was attacked by people unknown while **RW7** remained in the driver's seat of the vehicle that allegedly sped toward him. It is also the evidence of the **PW2** that he did not hear the Petitioner issue instruction concerning the alleged assault or the violence that erupted. I accept the version of events of

PW2 and not that of **RW7** and **RW4** as I do not believe that **PW2** who had parked away from the PF rally and was observing the goings on at the 1st Respondent's rally has an interest to serve whereas **RW4** and **RW7**'s versions do not add up leading me to conclude that they both have an interest to serve and their testimony is not to be relied on regarding these events as they have glaring omissions and contradictions between each other and that of the 1st Respondent. **RW8** did not bring Mwansa the driver who **PW7** and **RW4** claim was driving the vehicle they left behind and who **RW4** claims informed him that the villagers had attacked **PW2** to continue the story where **RW4**, **RW7** and **RW8** left off as they claim they left him at Shuka. **PW2** saw what he saw and I find that **RW7** and **RW8** the 1st Respondent were present at Shuka when **PW2** was attacked.

10.28. I reiterate the statutory threshold established by **section 97 of the Electoral Process Act** that the Petitioner must through his evidence prove that the 1st Respondent committed the said misconduct alleged, in relation to the election or that the same was done by another with the 1st Respondent's knowledge and consent or approval; or of that his election agent or polling agent.

10.29. In **Part VII** of the **Electoral Process Act**, wherein it outlines Electoral offences the act at **Section 83** provides:

83. (1) A person shall not directly or indirectly, by oneself or through any other person—

(a) make use of or threaten to make use of any force, violence or restraint upon any other person;

(c) do or threaten to do anything to the disadvantage of any person in order to induce or compel any person—

- (i) to register or not to register as a voter;**
- (ii) to vote or not to vote;**
- (iii) to vote or not to vote for any registered political party or candidate;**
- (iv) to support or not to support any political registered party or candidate; or**
- (v) to attend and participate in, or not to attend and participate in, any political meeting, march, demonstration or other political event;**

10.30. The above further fortifies the position of the law that requires for the misconduct or malpractice committed to be committed in connection with the election and that the same should have induced or compelled people or a person as per **Section 83 (c)** to register or not register to as a voter; to vote or not to vote; to vote or not vote for a particular party or candidate; or to attend or participate or not attend or participate in any political meeting or event.

10.31. A perusal of the evidence will show that there were violent clashes between political party cadres, members and supporters, I am not on this aspect satisfied that the Petitioner adduced evidence with a high degree of convincing clarity that the 1st Respondent or his duly appointed election agents knew of or ordered all of the attacks. While I am of the opinion that the 1st Respondent breached the agreed campaign time-table the same is not tantamount to electoral malpractice. However, the testimony of **PW2** which I have accepted leads me to the conclusion that the 1st Respondent had prior knowledge of and consented or approved the violence meted on **PW2** on 6th August.

10.32. I note through the evidence on record at pages 1 – 37 of the 1st Respondent's Bundles of Documents which evidence is

communication between the Petitioner and himself that the 1st Respondent strongly condemned incidents of violent clashes reported to him and further undertook that he would address the same once he arrived within the Shiwang'andu Constituency. The 1st Respondent in this regard testified on the stand that upon his arrival within the Constituency he called for a meeting between himself, the Petitioner and both parties' supporters facilitated by the Zambia Police Command wherein all parties resolved to work in harmony and ensure that any disregard of the electoral regulations would be reported to the appropriate authorities. I have before me video evidence relating to the said reconciliatory meeting at page 38 of the 1st Respondents Bundle of Documents. This action by the 1st Respondent is commendable and all candidates should emulate it. **RW8** also admitted to "skirmishes" taking place.

10.33. I revisit the threshold established under **Section 97** of the **Electoral Process Act**. On the first limb, I find that the same has been met by the Petitioner as I found above, that the 1st Respondent though he did not personally commit the alleged misconduct or act of violence against **PW2** he had knowledge of or ought to have been aware of and consented or approved the same as I have accepted **PW2's** version of the events on that day, part of which testimony was that **RW8** was within the vicinity of the violence some 20 or so metres away. **PW2's**

testimony meets the threshold set by the law in the **Liato v. Sitwala** case and **PW2's** testimony was adduced with a high degree of convincing clarity that directly connects the 1st Respondent to the violence by his presence and the violence starting immediately he got into his car before he drove off.

10.34. Regarding the events attested to by **PW10** which were reported to Matumbo Police station on 10th July, 2021, the Petitioner has not adduced evidence that the 1st Respondent or his agents were aware of or had knowledge and consented or approved the same. The standard of proof which I find that the Petitioner has not met, as it has not been proven with a high degree of convincing clarity is that the said misconduct carried out by people other than the 1st Respondent or his agents happened with his prior knowledge consent or approval. Finally, I also find that the evidence on record has not met at the second limb because it cannot be proven that the assailants on 10th July were any of the 1st Respondent's duly appointed election or polling agents. Lastly the said violence has not been shown to have been widespread. The evidence of the violence of 10th July does not prove the allegation to the requisite standard and is dismissed.

10.35. Regarding the violence against PW2 on 6th August, I am fortified in my finding by the holding of the Constitutional Court in the case of **Richwell Siamunene v. Sialubalo Gift (10)** wherein it was established that:

“When Section 83 is read with Section 97, it is clear that the violence or threat of violence must be perpetrated by the candidate or with the candidate’s knowledge and approval or consent or that of his election or polling agent.”

10.36. The final limb the Petitioner must prove for the events of 6th August to form a basis for his allegation to succeed is found in **The Electoral Process Act in Section 97 (2) (a) (ii)** which provides that, in addition to proving the misconduct, a petitioner must further prove that the said misconduct prevented or may have prevented the majority of voters in a Constituency, District or Ward from electing the candidate whom they preferred.

10.37. In considering such threshold, I am further fortified by case of **Margaret Mwanakatwe v. Charlotte Scott (11)**, wherein the Court stated:

“The 1st Respondent did not adduce any evidence to prove that the prohibited act was widespread and affected the result of the election by preventing the majority of the electorate from electing their preferred candidate and so rendered the election a nullity.”

10.38. I reiterate the guidance of the Constitutional Court in the **Liato v. Sitwala Sitwala (1)** case wherein it was stated;

“.... It is not sufficient for a petitioner to prove only that a candidate committed an illegal or corrupt practice or engaged in another misconduct in relation to the election without proof that the illegal or corrupt practice or misconduct was widespread and prevented or may have prevented the majority of voters in the Constituency, District or ward from electing a candidate of their choice.”

10.39. The Oxford Languages Dictionary, 2021, Oxford University Press has the following definition for the word “widespread” as;

“Found or distributed over a large area or number of people.”

10.40. The above definition of widespread talks of geographical coverage and includes a large quantity or number of people. I find that the acts of violence against **PW2** cannot be said to have been proved to have been so widespread in Shiwang'andu Constituency, that it prevented or may have prevented the majority of voters in the Constituency, District or Ward from electing a candidate of their choice.

10.41. In this case, multiple allegations of violence have not satisfied some of the limbs under **Section 97 of the Electoral Process Act** as I have found above. I find that the Petitioner did not further and more importantly prove that the lone alleged act of violence involving **PW2** of which two (2) limbs have been proved, also meets the third (3rd) limb that it was widespread and also negatively affected the voting pattern in the Shiwan'gandu Constituency to so result or merit in rendering the election a nullity. It should be noted and I am well guided in *casu* that the Shiwan'gandu Constituency contains 17 wards. The establishment or demonstration of violence in 1 or 2 Wards out of 17 whose population numbers were not given to see how many people may have been affected in their

decision to vote or who to vote for, is not enough to be called widespread and falls below the established/required legal threshold.

10.42. For the reasons aforementioned I find that the allegation at paragraph 13 of the Petition has not been proven to the requisite standard and I hereby dismiss it.

10.43. Under Paragraph 16 of the Petition the Petitioner alleges that, on the day of elections, at Chiseko Primary School Polling Station: the 1st Respondent's agent, Ms. Evelyn Kangwa the District Commissioner, threatened to chase away and demolish all houses belonging to members of the UPND in Chiseko Village.

10.44. No evidence was led by the Petitioner to prove the said allegation; it was seemingly abandoned and I therefore dismiss it.

10.45. The allegation under Paragraph 18 of the Petition alleges that, on the 12th of August 2021 the 1st Respondent's agents namely Andrew Kampyongo, Mathews Chilekwa and Phily

Sinkala brutally assaulted UPND members at Kalalantekwe and the said incident was captured on video.

10.46. No evidence was led to prove this allegation, it was seemingly abandoned and I therefore dismiss it.

10.47. The allegation under Paragraph 19 of the Petition provides that: on the day of elections, the 1st Respondents agent Evelyn Kangwa (District Commissioner) acting with other unknown PF cadres stopped the Petitioners polling agents from entering Kasashi Polling Station. Similarly, the said 1st Respondents agent threatened voters in queue at Kasangala Polling Station on the basis that voting was closed because it was past 18:00 hours. No evidence was led to prove this allegation, it was seemingly abandoned and I therefore dismiss it.

10.48. The allegation under Paragraph 21 of the Petition provides that: on the date of elections the 1st Respondent's agent: the Headman of Macheleta village threatened villagers in his village with reprisals of removing them from the list of social cash recipients and confiscating the bicycles donated to them by the 1st Respondent if they did not vote for him. No

evidence was led to prove this allegation, it was seemingly abandoned and I therefore dismiss it.

10.49. It is necessary to note on record that a perusal of the record or proceedings will result in the informed conclusion that there were indeed violent clashes involving party cadres, members or supporters during the 2021 campaign period within the Shiwan'gandu District leading the candidates to make Public Statements. I wish to state that the Courts of justice detest and condemn all forms of electoral violence and misconduct perpetrated by anybody. For purposes of the case in *casu* however the violent act against **PW2** though proved has not been shown to my satisfaction that have been so widespread as to have affected the outcome of the election results in Shiwan'gandu Constituency.

10.50. I therefore find that the allegations of intimidation and acts violence as contained within petition have not been proved to the requisite standard and are hereby dismissed.

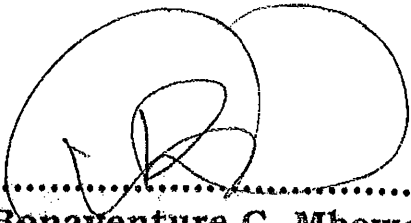
11.0. CONCLUSION

11.1. Based on the foregoing I find that the Petitioner has failed to prove all allegations against the Respondent as set out within the Petition. I hereby dismiss the Petition in its entirety and make no order as to costs.

11.2. I, in the premises declare that the 1st Respondent herein Mr. Stephen Kampyongo was duly elected as Member of Parliament for Shiwan'gandu Constituency in the Parliamentary Election held on 12th of August, 2021 and the said result is valid pursuant to the relevant provisions of the **Electoral Process Act No. 35 of 2016**.

11.3. Leave to appeal is hereby granted.

Delivered at Chinsali this 24th day of November, 2021.


.....
Bonaventure C. Mbewe
HIGH COURT JUDGE