

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT CHIPATA**
(Constitutional Jurisdiction)



**2021/HP/EP/0019
2021/HP/EP/0051**

IN THE MATTER OF:

**THE PARLIAMENTARY ELECTION PETITION
FOR MILANZI CONSTITUENCY SITUATE IN
THE KATETE DISTRICT IN THE EASTERN
PROVINCE OF THE REPUBLIC OF ZAMBIA
HELD ON 12TH AUGUST, 2021**

AND

IN THE MATTER OF:

**ARTICLE 73 (1) OF THE CONSTITUTION OF
ZAMBIA AS READ WITH SECTION 89 (C) OF
THE ELECTORAL PROCESS ACT NUMBER 35
OF THE 2016**

AND

IN THE MATTER OF:

**SECTION 81 OF THE ELECTORAL PROCESS
ACT NO. 35 OF 2016**

AND

IN THE MATTER OF:

**SECTION 83 AND 87 OF THE ELECTORAL
PROCESS ACT NUMBER 35 OF 2016**

AND

IN THE MATTER OF:

**SECTIONS 97, 98 AND 99 OF THE
ELECTORAL PROCESS ACT NO. 35 OF 2016**

AND

IN THE MATTER OF:

**THE SCHEDULE TO THE ELECTORAL
PROCESS ACT NO. 35 OF 2016**

IN THE MATTER OF:

**THE ELECTORAL (CODE OF CONDUCT)
REGULATIONS 2011 STATUTORY
INSTRUMENT NO. 52 OF 2011**

AND

IN THE MATTER OF:

**THE ELECTORAL COMMISSION OF ZAMBIA
ACT NO. 25 OF 2016**

AND

IN THE MATTER OF:

**SECTION 97 OF THE ELECTORAL PROCESS
ACT NO. 35 OF 2016 OF THE LAWS OF
ZAMBIA**

AND

IN THE MATTER OF:

PARLIAMENTARY ELECTION FOR MILANZI
CONSTITUENCY HELD ON 12TH AUGUST,
2021

AND

BETWEEN:

CHRISTINE PHIRI

1ST PETITIONER

ROSEMARY BANDA

2ND PETITIONER

AND

MELESIANA PHIRI

1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2ND RESPONDENT

BEFORE THE HONOURABLE MRS. JUSTICE M. C. KOMBE

For the 1st Petitioner:

Mr. G. Phiri – Messrs PNP Advocates.

For the 2nd Petitioner:

*Mr. N. Muyatwa and Mr. C. M. Bwalya –
Messrs KBF & Partners.*

For the 1st Respondent:

*Mr. B. M. Mwelwa – Messrs Linus Eyaa &
Partners.*

For the 2nd Respondent:

*Mr. A. M. Musoka – Messrs Nhari
Advocates.*

J U D G M E N T

Cases referred to:

1. Nkandu Luo (Prof) and Another v. Doreen Sefuke Mwamba and Another (Selected Judgment No. 51 of 2018).

2. **Morgan and Others v. Simpson and Others (1974) 3 ALLER 722.**
3. **Muhali George Imbuwa v. Enock Kaywela Mundia (Selected Judgment No. 12 of 2018).**
4. **Herbert Shabula v. Greyford Monde (Appeal No. 13 of 2016).**
5. **Sunday Chitunga Malaba V. Rodgers Mwewa and another (Appeal No. 4 of 2017).**
6. **Mubika Mubika v. Poniso Njeulu (SCZ Appeal No. 114 of 2007).**
7. **Christopher Lubasi Mundia v. Sentor Motors Limited (1982) Z.R. 66.**
8. **Kamanga v. Attorney General and another (2008) ZMSC 20.**
9. **Anderson Kambela Mazoka and others v. Levy Patrick Mwanawasa and others (2005) Z.R. 138.**
10. **Green Nikutisha and another v. The people, (1979) Z.R. 261.**
11. **Boniface Chanda Chola and 2 Others v. The People (SCZ Judgment No. 16 of 1989).**
12. **Steven Masumba v. Elliot Kamondo (Selected Judgment No. 53 of 2017).**
13. **Akashambatwa Mbikusita Lewanika v. Fredrick Titus Jacob Chiluba [1998] Z. R. 79.**
14. **Karokaro v. Electoral Commission and Kagonera (EP No. 2 of 2001).**
15. **Edward Jack Shamwana v. The People (1985) Z. R. 41.**
16. **Austin Liato v. Sitwala Sitwala (Selected Judgment No. 25 of 2016).**
17. **Giles Chomba Yamba Yamba v. Kapembwa Simbao and 2 Others (Selected Judgment No. 6 of 2018).**
18. **Khalid Mohamed v. The Attorney General (1982) Z. R. 49 (S.C).**
19. **Breslford James Gondwe v. Catherine Namugala (SCZ Appeal No. 129 of 2012).**
20. **Robert Chiseke v. Naluwa Mwene (Appeal No. 5 of 2017).**
21. **Christopher Kalenga v. Annie Munshya and 2 Others (2013) ZMSC 27.**
22. **Mulondwe Muzungu and Elliot Kamondo (2010/EP/001 unreported).**
23. **Moore v. Lambeth County Court Registrar (1969) 1 W.L.R. 141**
24. **Happy Mbewe v. The People (1983) Z.R. 59 (H.C.) 212**
25. **Subramanian v. The Public Prosecutor (1956) 1 W.L.R. 956.**

26. **Richwell Siamunene v. Sialubalo Gift (Selected Judgment No. 58 of 2017).**
27. **Michael Mabenga v. Sikota Wina and 2 Others (2003) Z.R. 110 (SCZ).**
28. **Ndongo v. Moses Mulyango and Roostico Banda (SCZ Judgment No. 4 of 2011).**
29. **Abiud Kawangu v. Elijah Muchima (Appeal No. 8 of 2017).**
30. **Mbololwa Siabulwa v. Kaliye Mandandi (Appeal No. 81 of 2016).**
31. **Margaret Mwanakatwe v. Charlotte Scott and Attorney General (Selected Judgment No. 50 of 2018).**
32. **Webster Chipili v. David Nyirenda (SCZ Appeal No. 35 of 2003).**
33. **Christabel Ng'imbu v. Prisca Kucheka and Electoral Commission Zambia (Selected Judgment No. 2 of 2018).**
34. **Charles Kakoma v. Kundoti Mulonda (Appeal No. 5 of 2017).**
35. **Effisah v. Ansah (2005-2006) 943 (Ghanian Supreme Court).**
36. **Kapembwa v. Danny Maimbolwa and another (2005) Z.R. 128.**
37. **MM Integrated Steels Limited v. African Trading Limited and 3 Others (Appeal No. 47 of 2018).**
38. **Chrispin Siingwa v. Stanley Kakubo (Appeal No. 7 of 2017)**
39. **Kufuka Kufuka v. Mundia Ndalamei (Appeal No. 80 of 2008) ZMSC 33.**

Legislation and other work referred to:

1. **Halsbury's Laws of England, 4th Edition and Vol. 15.**
2. **Black's Law Dictionary (8th Edition).**
3. **Electoral Process (Code of Conduct) Regulations of 2016.**
4. **The National Registration Act Chapter 126 of the Laws of Zambia.**
5. **The Electoral Process Act No. 35 of 2016.**
6. **The Constitution of Zambia (Amendment) Act No. 2 of 2016.**
7. **The Electoral Process (General) Regulations Act of 2016.**
8. **Halsbury's Laws of England Elections and Referendums Vol. 15 (3) (2007 Reissue).**
9. **The Registration and Development of Villages Act, Chapter 289 of the Laws of Zambia.**
10. **The High Court Rules, Chapter 27 of the Laws of Zambia.**

This is the 1st Petitioner and 2nd Petitioner's petition to contest the results of the elections held on 12th August, 2021 with regard to the Milanzi Constituency Parliamentary seat.

As a way of background, two separate petitions were filed on 27th August, 2021 at the Principal Registry, against the 1st Respondent Melesiana Phiri and the 2nd Respondent Electoral Commission of Zambia (ECZ). The petition under Cause No. 2021/HP/EP/0019 was filed by **CHRISTINE PHIRI** and the petition under Cause No. 2021/HP/EP/0051 was filed by **ROSEMARY BANDA**.

At a scheduling conference held on 7th September, 2021, the two petitions were consolidated as the Petitioners had petitioned the same Respondents. It was ordered that two the petitions would be heard at the same time for the purpose of these proceedings.

At the same conference, Orders for Directions were made and a time table was set out on how the matter would be managed. Trial was scheduled to commence on 28th September, 2021.

I will begin with the 1st Petitioner, **CHRISTINE PHIRI**. In her petition, she averred that she was a candidate in the Parliamentary election for Milanzi Constituency situated in the Katete District of the Eastern Province of the Republic of Zambia having duly filed her nomination in May 2021. She contends that:

The Milanzi Parliamentary Constituency consisted of twelve (12) wards which were wholly in Katete District. That the 1st Respondent benefited from the Patriotic Front's Government's and the 2nd Respondent's registration of Mozambican nationals to vote in the elections on 12th August, 2021.

That the 1st Respondent further unduly influenced voters in the constituency to vote for her and perpetrated bribery of voters not to vote for the Petitioner and these acts affected the results obtained by the Petitioner.

She also averred that three political parties validly filed their nominations for the said elections, including four (4) independent candidates namely, the United Party for National Development (UPND) whose candidate was Christine Phiri (Female); the Patriotic front (PF) whose candidate was Melesiana Phiri (Female); the Socialist Party (SP) whose candidate was Matthew Mwale (Male). The Independent candidates were: Tylad Lungu, Whiteson Banda, Rosemary C. N. Banda and Lilian V. Chimwala.

The Petitioner also averred that there was non-compliance with the provisions of the Constitution of Zambia and the Electoral Process Act No. 35 of 2016 relating to the conduct of elections and this non-compliance affected the result of the election as the 2nd Respondent in cohort with the Patriotic Front registered Mozambican voters on the Voters Registration and these were allowed to vote in the elections held on 12th August, 2021 to advantage the 1st Respondent and the PF Presidential candidate.

On Poll Day, the 1st Respondent or her agents but with the 1st Respondent's knowledge and with active facilitation of the District Commissioner for Milanzi, Mr. Duma Makukula, ferried Mozambican nationals on trucks for them to vote in the elections on 12th August, 2021 and they were allowed to vote at night by the 2nd Respondent. The 2nd Respondent further delayed to close and commenced counting the ballots in order to give allowance to the said foreign nationals to vote which stretched the process of voting and counting to two days.

The 1st Petitioner further averred that the Mozambican nationals who voted in the Zambian elections were possessed with Zambian National Registration Cards and Voters Cards as well as Mozambican nationality identity cards whose issuance was facilitated by the 2nd Respondent in concert with the then Patriotic Front Government.

The wards that were mostly affected and infiltrated with Mozambican voters were Kapoche, Kafumbwe, Yowoyani and Milanzi as these border Mozambique and the saturation of the Mozambican voters in Milanzi constituency was aimed at saturating the Petitioner's votes.

It was also averred that the District Commissioner for Milanzi Mr. Duma Makukula campaigned for the 1st Respondent throughout the campaign period while using Government vehicles and resources and was seen in the company with the 1st Respondent while campaigning and was involved in the distribution

of PF campaign regalia and threatened farmers' cooperative officials that they would be excluded from distribution of fertilizer.

The 1st Petitioner further averred in her petition that the 1st Respondent or her agents but with the 1st Respondent's knowledge, was involved in the distribution of food stuffs to voters and these included: mealie meal, rice and cooking oil in order to induce the voters to vote for her or refrain from voting for the Petitioner.

The 1st Respondent's electoral infamy extended to herself or her agents but certainly with her knowledge engaged in threatening people that the payment of Social Cash Transfer would be halted if they did not vote for her and PF Presidential candidate as the programme was portrayed to the electorate to belong to the PF Presidential candidate. That the electorate in Milanzi constituency were also forced to pay for fertilizer in advance and were warned that they would only receive the said fertilizer if they voted for the 1st Respondent.

Another allegation was that the Patriotic Front government begun to grade the Dole/Katawa Road in July 2021 in order to advantage the 1st Respondent while a borehole was sunk at Mbatata and Kafumbwe and the electorate were urged by the 1st Respondent to vote for her because of these developments thereby inducing the voters to vote for her and refrain from voting for the Petitioner.

Furthermore, that the 1st Respondent or her agents but with the knowledge of the 1st Respondent caused the Petitioner's polling agents in Katiula Polling Station in Katiula Ward, Kapala Polling Station in Kasambandola Ward and Simon Polling Station in Dole Ward to be removed but with the connivance and acquiescence of the 2nd Respondent. The PF agents were not removed and this whole injustice was falsely premised on the alleged prevalence of the Covid-19 virus.

That the aforesaid acts of illegalities were widespread and affected the majority voters in all the wards that constitute Milanzi Constituency resulting in the prevention of the majority of voters from voting for a candidate whom they preferred and they were perpetrated by the 1st Respondent or her agents with her knowledge.

It was also averred that there was widespread non compliance both of the Electoral Process Act and the Electoral Code of Conduct as the 1st Respondent and her sponsoring party the Patriotic Front (PF) took advantage of the electorate's desperate economic conditions to induce them to vote for the 1st Respondent.

On Saturday the 14th August, 2021, the Returning Officer declared the 1st Respondent Phiri Melesiana as duly elected Member of Parliament for the Milanzi Parliamentary Constituency.

The results of the Milanzi Parliamentary elections were as follows:

- (i) Melesiana Phiri of the Patriotic Front (PF) received 6,846 votes;
- (ii) Lungu Tylad (Independent) received 4,991 votes;
- (iii) Whitson Banda (Independent) received 3, 283 votes;
- (iv) Christine Phiri of the United Party for National Development (UPND) received 2,782 votes;
- (v) Rosemary C. N. Banda (Independent) received 2,433 votes;
- (vi) Lilian V. Chimwala (Independent) received 627 votes;
- (vii) Matthews Mwale (Socialist Party) received 264 votes;
- (viii) 974 votes were rejected as invalid;
- (ix) Total number of votes cast were 22,200.

The 1st Petitioner therefore, prays that she be granted the following reliefs:

- (a) *A declaration that the 1st Respondent was not duly elected and therefore the election was NULL and VOID AB INITIO;*
- (b) *A declaration that the illegal practices committed by the 1st and 2nd Respondents and or their agents materially affected the election results so that the same ought to be nullified.*
- (c) *Costs of and incidental to this Petition;*
- (d) *Such declaration and orders as this Honourable Court may deem fit.*

The 1st Respondent **MELESIANA PHIRI** tendered her Answer and made no comment to the contents of paragraph 1 and 2 of the Petition as the facts therein were not in contention.

The 1st Respondent denied the contents of paragraph 3 of the petition and averred that she conducted her election campaigns in accordance with the Electoral Process Act No. 35 of 2016, the regulations thereto and that the election results reflected the will of the people of Milanzi Constituency. She therefore subjected the Petitioner to strict proof.

The 1st Respondent acknowledged the contents of paragraph 5 of the Petition only to the extent that Milanzi Constituency was in Katete District and accordingly denied the rest of the contents of paragraphs and that she would aver at trial that to the best of her knowledge, the election was conducted on conformity with the Electoral Process Act No. 35 of 2016.

The 1st Respondent averred that she had no knowledge of any arrangement between the Patriotic Front and the 2nd Respondent to register Mozambique voters on the voters register and she had no knowledge of any person from Mozambique who was allowed to vote in the 12th August, 2021 General Election.

The 1st Respondent denied the contents of paragraph 6 of the petition in its entirety as she and her agents as defined by law never participated or had

knowledge and approval of any person who ferried Mozambican nationals on trucks for them to vote in the election on 12th August, 2021.

In further response, the 1st Respondent averred that the said Mr. Duma Makukula was not her election agent and neither did she or her agent's consent, approve or had any knowledge of the allegations contained in paragraph 6 of the petition. That she did not give approval or consent to the use of a government vehicle to distribute fertilizer or campaign materials as well as issue threats to the electorates.

In relation to paragraph 11 of the petition, the 1st Respondent maintained that the distribution of Social Cash Transfer was within the mandate of the Ministry of Community Development and that there were specific people who were entitled to that Social Cash Transfer. She further denied that neither she nor her election agents ever portrayed that the Social Cash Transfer belonged to the Patriotic Front Presidential candidate.

In relation to the contents of paragraph 14, the 1st Respondent disputed the same and averred that at no material time did she or her agents ever connive with the 2nd Respondent to remove the Petitioner's agents from the named polling station.

The 1st Respondent also averred that the people of Milanzi Constituency exercised their free will to vote for the candidate of their choice but the

Petitioner had refused to accept defeat. That there was substantial conformity with the requirements of the Electoral Process Act No. 35 of 2016.

Regarding the declared results, the 1st Respondent averred that going by the voter margin the 1st Petitioner was simply not a popular candidate as she was also been beaten by two independent candidates in the name of Lungu Tylad and Whiteson Banda.

In this regard, she averred the 1st Petitioner was not entitled to any of the reliefs claimed in the said petition as the will of the people prevailed. She prayed that the election petition of Christine Phiri should be dismissed with costs for being destitute of merit.

The 2nd Respondent **ELECTORAL COMMISSION OF ZAMBIA** tendered in its Answer and averred that it was a constitutional body established under Article 299 of the Constitution of Zambia mandated to conduct elections, referenda, voter registration and delimitation of electoral boundaries.

That on 12th August, 2021, it conducted General Elections which comprised of Presidential, Parliamentary and Local Government elections.

The Milanzi Parliamentary elections were held on 12th August, 2021 and the Returning Officer announced and declared Melesiana Phiri of the Patriotic Front (PF) who received 6,846 votes to be duly elected.

The 2nd Respondent averred that the Registration of voters for the 12th August, 2021 General Elections was done by the 2nd Respondent and only Zambian nationals with the original "Green" Zambian National Registration Card who had attained eighteen (18) years or more were registered.

It was also averred that the election was conducted in conformity with the Constitution of Zambia Act Chapter 1 of the Laws of Zambia and the Electoral Process Act No. 35 of 2016, together with Regulations passed thereunder. Further, at no point did the 2nd Respondent register any Mozambican nationals as voters and no Mozambican nationals cast their vote in Milanzi Constituency. The 2nd Respondent also denied that it allowed any Mozambican nationals to vote at night.

In relation to the contents of paragraph 8, it was averred that the delay in closure and commencement of counting of voters in some polling stations was caused by delay in opening the said polling stations which was as a result of failure to secure enough furniture.

That none of the polling stations in Milanzi Constituency closed later than 18:15 hours on 12th August, 2021 and only the voters who had queued up before the time of the announcement of closure of the polling stations by the Presiding Officers were allowed to vote.

The 2nd Respondent denied the contents of paragraph 7 of the petition and averred that its mandate was limited to issuance of voters' cards to Zambian nationals in possession of "Green" Zambian National Registration Cards and that the 2nd Respondent did not facilitate for issuance of either the "Green" Zambian National Registration Cards or the Mozambican national identity cards.

Furthermore, the 2nd Respondent averred that at no time did it aid and or connive with the 1st Respondent and or her agents to remove the Petitioner's polling agents in Katiula Polling Station in Katiula Ward, Kapala Polling Station in Kasambandola Ward and Simon Polling Station in Dole Ward.

That due to lack of adequate space in the Polling Station and the large number of agents from political parties and Civil Society Organizations, the Presiding Officers were advised to ask the agents to rotate when monitoring the elections to afford an opportunity to all the parties and organizations to monitor the elections despite the challenge with space.

It was thus averred that the 2nd Respondent acted properly, openly and publicly in the conduct of the Milanzi Constituency elections. In this regard, the 2nd Respondent averred that the petition lacked merit and that the Petitioner was not entitled to any reliefs sought.

It therefore prayed that the 2nd Respondent that the petition be dismissed with costs against the Petitioner.

Turning to the 2nd Petitioner's petition she averred that she contested the Milanzi Constituency Parliamentary seat as an independent candidate. The others who contested this seat were Christine Banda, the 1st Petitioner.

The 2nd Petitioner alleged that the said elections were not free and fair and further, and the said elections were conducted amidst breaches of the Electoral Process Act No. 35 of 2016.

She averred that the 1st Respondent impugned her rights enshrined in Section 29(2) of the Electoral Process Act through her agents by engaging in various acts of violence against the supporters found wearing the Petitioner's politically branded regalia and forced to wear the 1st Respondent's regalia and further, were stopped from putting up posters of the Petitioner in public areas.

The 2nd Respondent also through its agents breached the provisions of Section 75 (1) of the Electoral Process Act as Ballot boxes at Kafumbwe Totaling Center had been tampered with and opened before the official totaling result could be verified, and this was without reasonable explanation except that the Electoral Officer who opened the said ballot boxes fell sick in the night and left the said boxes unattended.

It was also averred that on 12th August, 2021, the 1st Respondent through its agents acted in contravention the provisions of Sections 81 (1) (a) and (c) by visibly distributing money to voters on the voting queues and further, mealie meal marked "DMMU" being the initials of the 'Disaster Management and Mitigation Unit, through distributing to voters on the said date as voting was underway and throughout the campaign.

Furthermore, that the 1st Respondent through her agents and contrary to Section 83(1) (a) of the Electoral Process Act, did on days unknown assault Paul Phiri, an agent and supporter of the 2nd Petitioner, caused him to forcefully wear the political regalia of 1st Respondent in substitution of the Petitioners regalia which he was wearing at the time of the assault.

Further, the 1st Respondent through the agent, Chieftainess Kawaza, Contrary to Section 83(1)(c) of the Electoral Process Act issued threats to her subjects whilst targeting registered voters in terms of possible land grabbing in the instance that subjects did not vote for the 1st Respondent's political party.

The 2nd Petitioner also averred that on days unknown but between 1st August and 12th August, 2021, the District Commissioner, Mr. Joseph Makukula was seen on multiple occasions campaigning for the 1st Respondent with the use of a government vehicle registration number GRZ 229 CM.

Further on days unknown but between 1st August and 12th August of the year 2021, during her campaigns, the 1st Respondent employed a rampant use of insulting language and character attacks on the Petitioner.

The 2nd Petitioner wrote to the Electoral Commission of Zambia on the 17th and 20th July, 2021 complaining about the attacks. The said complaint was only addressed two days before the date of elections.

Furthermore, on days unknown but between 1st August and 12th August 2021, the Chieftainess' indunas were spotted distributing the 1st Respondent's campaign materials using a vehicle allegedly belonging to the 1st Respondent.

On days unknown but between the months of March and July 2021, numerous Mozambique nationals were issued with Zambian National Registration Cards and voter's cards and, on or about the 11th day of August of the same year, the said Mozambique Nationals were ferried and paid by the District Commissioner Joseph Makukula in an endeavor to inflate a favourable voter turnout for the 1st Respondent.

On or about 12th August, 2021, the Petitioner received a Gen 20a form from the Electoral Officers showing anomalies in the inscription of the Petitioner's number of votes, which anomalies the Electoral officers tried to clarify; however, the said forms were further noted to have not been signed by the representatives of the Petitioner or any other political party involved.

In answer to the 2nd Petitioner's petition, the 1st Respondent averred that to the best of her knowledge, the elections were conducted in substantial conformity with the Electoral Process Act and the regulations.

On the allegation of violence, the 1st Respondent denied the allegation that she never at any time engaged in acts of violence against the 2nd Petitioner's supporters and did not stop them from putting up posters in any public place. She added that she had no knowledge of the activities complained of in paragraph 6 and that she never instructed any of her agents to do the activities that were indicated therein.

On the alleged breach of Section 75(1) of the Act, she averred that the said provision related to proceedings at the polling station while the alleged breach by the 2nd Respondent happened at the Totaling Center after the results from the polling station had been counted in accordance with Regulation 44 of the Electoral Process (General) Regulations 2016. Hence there was a way of verifying the results contained in the ballot boxes with those indicated in the Gen 20a form.

The 1st Respondent also denied the allegation that she and her agents distributed money to the electorate or distributed mealie meal marked DMMU throughout the campaign period.

The allegation of the assault on Paul Phiri was denied as he was unknown to her and that at no point did the police ever summon her to answer assault charges.

The 1st Respondent also denied that she issued threats through Chieftainess Kawaza as the Chieftainess was never at any time her agent. She also averred that the 2nd Petitioner made two complaints to the 2nd Respondent against the District Commissioner and against a man known as Allan Mvula. That none of the issues raised by the 2nd Petitioner had anything to do with her.

It was also averred that the District Commissioner was not a member of her campaign team and neither was he her agent. Furthermore, she averred that the issuance of National Registration cards and voter's cards was not within her powers but that of the Ministry of Home Affairs and voter registration and issuance of voters' cards was primarily the responsibility of the 2nd Respondent.

She maintained that she was duly elected as Member of Parliament for Milanzi Constituency with the 2nd Petitioner trailing at number 5.

In answer to the 2nd Petitioner's Petition, the 2nd Respondent also averred that the election was conducted in conformity with the Constitution of Zambia and the Electoral Process Act together with the Regulations passed thereunder.

In relation to paragraph 8, it was averred that the ballot boxes at Kafumbwe Totaling Center were opened after stakeholders were engaged and had

consented that they be opened. This was done to facilitate for the removal of envelopes that contained Gen 20 forms, Record of Proceedings Forms, Statement of Rejected ballots forms that were mistakenly sealed together with ballot papers in the ballot boxes by some Presiding Officers.

On the allegation of issuance on voters' cards, it was averred that the preserve was with the 2nd Respondent and only Zambian nationals upon production of an original 'Green' National Card were registered as voters and that only upon production of these documents were Zambians allowed to vote on 12th August, 2021.

On the allegation of anomalies of the Gen 20 form, it was averred that there were no anomalies with the form issued by the electoral officers and the failure by political parties' agents to sign the said forms did not invalidate them.

It was therefore averred that the 2nd Petitioner's petition lacked merit and that she was not entitled to the reliefs sought.

1. THE 1ST PETITIONER'S CASE

The 1st Petitioner called ten (10) witnesses.

PW1 was the 1st Petitioner **CHRISTINE PHIRI** aged fifty-six (56). She stated that she took part in the just ended parliamentary elections on 12th August, 2021 in Milanzi Constituency under the United Party for National Development (UPND) ticket. She believed that the elections were not free and fair because

Mozambicans who were illegally registered by Electoral Commission of Zambia (ECZ) came and voted in Milanzi constituency which was on the boarder of Zambia and Mozambique. These people had both Mozambican and Zambian voters' cards.

To show proof that Mozambicans were registered, she told the Court that she made photocopies of the same voter's cards which she got from eight (8) people. These were at pages 1 to 32 of the 1st Petitioner's bundle of documents and stated that the names had been disguised but the photos were similar with the actual persons. The witness identified the Mozambican card at page 1 for Paulo Sizala Tadzeracuti. Asked if there was a voter's card for that person at page 1, she first referred the Court to page 25 which showed a voter's card for Paul Mwale and later showed the Court that the Mozambican card for Paul Mwale was at page 5 which card showed the name of Dinis Paulo Sezario.

PW1 also testified that the Patriotic Front also bought food for the voters on voting day; gave out money and mealie meal from Disaster Mitigation Management Unit (DMMU) that was meant for relief food.

When asked who was involved in this, she stated that it was the constituency chairman for PF Mr. Nyoni, the youth chairperson Mr. Masauso who resided in Kapoche and the candidate herself. She stated that the food was distributed in the whole constituency as they were twelve wards. However, they

concentrated mainly in Kapoche, Kafumbwe, Milanzi and Yowoyani in Chisimbiko area.

When asked why they concentrated in these areas, she told the Court that they were targeting the Mozambican voters so that they could entice them to vote for PF.

PW1 also told the Court that their polling agents were chased from the polling station on the pretext that they had to observe COVID guidelines. That this was done so that the PF could remain on their own.

The witness also stated that a Non- Governmental Organization by the name of GOZA was involved in the distribution of cooking oil, food stuffs and empty grain bags during the campaign period in Katiula ward and in the whole constituency but to their surprise on voting day, they were polling agents.

She further stated that the 1st Respondent with her agents namely Mr. Nyoni who was the constituency chairperson for PF threatened voters in Katiula ward that they would not receive Social Cash Transfer if they did not vote for the 1st Respondent. That the threats were issued in the whole constituency but mainly in Kazala, Dole and Kamphambe wards.

When asked how she knew about this, she stated that they went for a meeting and the electorate complained bitterly and asked her if President Hakainde Hichilema would continue paying Social Cash Transfer.

The witness also stated that the 1st Respondent lied to the people across the constituency that they had to pay in advance for fertilizer under Farmer Input Supply Programme (FISP) and that they would get the fertilizer before the election date. That people paid for this through the District Commissioner (DC) who was like the campaign manager for the 1st Respondent and then to the District Agriculture Coordinating officer (DACO). This was strange as it had never happened before because the usual thing to do was to pay after they had sold their produce and this happened in August and October. However, people were made to pay as early as March and that they would be given fertilizer in July. So, they had to sell their soya beans in order to raise money to pay.

The witness further stated that the DC used to behave like a cadre and yet he was a Civil Servant as he used to work closely with the 1st Respondent using Government motor vehicle GRZ 228, a Toyota Hilux gray in colour. He even used to distribute party regalia from his office. That the DC used a truck from the correctional facility to distribute relief food whilst in the company of the 1st Respondent.

Another allegation which PW1 referred to was that the 1st Respondent through the PF brought in a bull dozer to grade the road in Dole ward where she comes from and had family members.

She prayed that as a result of what she had told the Court, the election should be nullified so that they could be held in a free and fair manner.

In cross examination by Mr. Mwelwa, counsel for the 1st Respondent, she told the Court the 1st Respondent engaged Andrich Construction Company and she took photographs of the bull dozer; that she spoke to the men on site as there was no time for her to go to the offices and that the men on site told her that the company was for the 1st Respondent.

Asked why in paragraph 13 of the petition she didn't mention that the company was for Andrich as she was told that, she stated that Andrich was PF, the 1st Respondent was PF and the Government in power was PF, that's why she mentioned in paragraph 13 that it was the PF Government. She further stated that she wanted the Court to believe that it was the 1st Respondent who hired the grader. The witness further confirmed that the PF Government hired and graded the road.

The 1st Petitioner also told the Court that Mozambicans were allowed to vote illegally as they were issued with NRCs and voters cards illegally; that the NRCs were issued during the voter registration. She stated that what gave a person the right to vote was the NRC and that someone could not be denied to register as a voter if he was in possession of an NRC. She however stated that it was not right for Mozambicans to vote; that if a person lived in Zambia, he had the right to vote.

When asked why a report was not made about the illegal registration of foreigners, the 1st Petitioner stated that they could not do that as they were

living under captivity and she feared to be arrested as they had no freedom to speak against the previous government. That she attempted to make a report and she was almost locked up. However, she had no evidence to show for that.

When referred to page 2 of the 1st Petitioner's bundle of documents, she told the Court that what was written on the card was Electoral Commission of the Republic of Mozambique; that on page 1, the card was for Paulo Sizala Tadzeracuti, the date of birth was 26/10/1973; the card was obtained from Tete in Macanga. In answer to a question which document in the bundle of documents showed that this person was a Zambian, the witness stated that maybe it was the document at page 25 for Mwale Paul. She further stated that the picture at page 5 looked similar to the picture at page 1; that she had spoken to the person who was at page 5 and that she would call him as a witness and that he was the same person at page 5 and 25.

The witness further stated that she got more votes than the 1st Respondent in the border areas. She confirmed to the Court that Bombwe was in Kafumbwe and that it was her evidence that the 1st Respondent concentrated in Kafumbwe constituency. Asked if she did not get more votes than the 1st Respondent in Kafumbwe despite the allegation of threats, the witness did not proffer a response.

When referred to page 35 of the 1st Petitioner's bundle of documents, she stated that at Bombwe polling station, she got 136 votes and the Respondent got 101 votes.

The 1st Petitioner also stated that she saw the 1st Respondent giving out money in Katiula but she didn't talk to her because it was during campaigns, they could have ended up fighting. She also stated that although she knew that there was a District Conflict Management Committee (DCMC) she didn't complain to the Committee because they were compromised as they supported the government of the day. She however confirmed that all the allegations that she had made had not been brought before the DCMC. She also confirmed that despite knowing that there was voter verification exercise, she didn't bring this issue about registration of foreigners to the attention of the 2nd Respondent, Electoral Commission of Zambia.

Asked if she had a police report about the threats that were allegedly made by the 1st Respondent, she stated that no report was made because it was a taboo to report the Chief.

The witness further told the Court that she didn't know who the 1st Respondent's campaign manager was as she just used to see the DC and Mr. Nyoni who used to act as though they were her campaign managers. That she had not seen Mr. Nyoni in Court. Asked whether she knew the 1st Respondent's election agent, she stated that she knew some of them that is Masauso, Ruth

and Hazele. When referred to the 1st Respondent's bundle of documents, the witness stated that Mr. Nyoni's name didn't appear on that document only the name of Jackson Banda. She admitted that she didn't see Mr. Banda distributing food.

The witness also confirmed that paragraph 13 of the petition was correct in its entirety and that the 1st Respondent in her personal capacity graded the Dole Road. She also confirmed that the person at page 1 of her bundle of documents was the same as the one at page 25 and that she was going to call him as a witness.

Furthermore, when asked to confirm that the person at page 7 was the same as the person at page 31, she stated that she could not do so unless she looked at the originals. When asked if she wanted this Court to take the documents that she was also doubting, she stated that not really.

In further cross examination by counsel for the 2nd Respondent Mr. Musoka, she told the Court that she was allowed to campaign by the 2nd Respondent during the campaigns; that she registered as a voter because of her NRC. Asked what she understood by polling agent as she stated that GOZA were polling agents, she stated that a polling agent was a person from the political party who stood in for a candidate. So GOZA stood in for the party and not the 2nd Respondent.

The witness also told the Court that she knew that she had the right to object to any person voting but that she didn't object to any Mozambicans voting. Asked about the documents at pages 1 to 16 of the 1st Petitioner's bundle of documents, she stated that they were Mozambican voters' cards and National Registration Cards. She denied that anyone used them to vote in the Zambian elections as all who voted used the Zambian voters' cards and National Registration Cards. She however denied that such people were Zambians and were allowed to vote but that one was a Zambian if they had a Zambian NRC.

In relation to the documents at pages 17 to 32 of the 1st Petitioner's bundle of documents, she stated that those were Zambian voters' cards. When counsel referred the witness to read paragraph 7 of the petition, she stated that those who voted were Zambians and not Mozambicans. She also stated that although she alleged that the 2nd Respondent facilitated the issuance of NRC's, the 2nd Respondent did not issue NRC's but voters cards.

In re-examination, she agreed that pages 17 to 32 showed Zambian voters' cards. When asked to clarify on the position she gave regarding the person at pages 1, 5 and 25 of the 1st Petitioner's bundle of documents, she stated that the person at pages 5 and 25 was the same person but that she referred to page 1 because it indicated the same name and the picture somehow.

The witness also stated that although she had high votes compared to the 1st Respondent in Bombwe, this polling station was not near the border as the polling stations such as Bambe and Kukulu were directly near the border line.

On the question whether she reported to the DCMC, she stated that she reported to the Council Secretary who was part of the Committee and he asked her to write to the Committee.

She also stated that she referred to Masauso, Nyoni, Ruth and Hazele because they were leaders in the PF in the constituency; that GOZA were polling agents for the PF.

Asked if she objected to the Mozambicans voting, she stated that she did not tell the 2nd Respondent but she used her initiative and told the Mozambicans not to vote.

PW2 was **ELEBAT PHIRI** aged forty-seven years old of Chimsithu village, in Lunga ward told the Court that he was once a member of the PF. That one day whilst he was at home, the DC for Katete Mr. Duma Makukula visited him together with the Councilor for Kafumbwe ward, Milanzi Constituency, by the name of Akilen Banda. He was told that since he was from PF, they wanted to register people from Mozambique as voters. He was surprised and asked the DC if that was possible and if it had ever happened in Zambia to register voters

from other countries. He stated that he was told that that was how the Tonga's did it if they wanted more voters.

When he heard that, he was told to recruit four ladies who would be cooking for people and that he would be assist the Mozambicans to get the NRCs since others were elderly.

Once they agreed, the Mozambicans started coming for registration and the DC would bring nine (9) chickens per day and five (5) bags of mealie meal and ten (10) liters of cooking oil. He stated that they used to cook for them and others who could not manage would spend a night at his house and proceed the following day to Mozambique. That they would assist about six hundred (600) people per day from 06:00 hours to 18:00 hours. This was in the year 2020.

When the program came to an end, he realized that this was a lie and he decided to defect from PF to UPND. When the voter registration period started, those people would come on their own and they would not need him to speak for them. Therefore, he was never involved when getting the voters' cards.

Asked how he knew that they were Mozambicans, he stated that he knew these people and saw them with his own eyes because they were the same ones who came and got the NRCs. He stated that he did not know the whole six hundred as others were strangers who came from distant places. That the Mozambicans got their voters' cards from Lunga School which was in Kafumbwe ward,

Milanzi constituency. That he knew that they were Mozambicans because they used to go to his house to get water.

In cross examination by Mr. Mwelwa, he stated that he joined UPND in 2020; that he confirmed that Mozambicans came to Zambia and were issued with NRCs with his help and that he helped about two thousand (2000). PW2 also stated that he found out that they were Mozambicans although he did not know Portuguese language as he used to communicate with them using Chewa.

He further stated that he was able to identify the people he helped obtain NRCs like Lumphani Amercos and Liyaya Willisone and that these also came and got voters cards. When referred to the 1st Respondent's bundle of documents, he stated that he helped those at pages 1, 7, 9, 19, 27, 15, 13 and 11. When referred to page 19 which was a Zambian voter's card, the witness stated that the NRC had not been produced for that person because it had been misplaced. Further, he told the Court that the Mozambican identity card for the person at page 19 was at page 15; that the name of that person was Nelia Mvula Wezulo and that the name at page 19 was Neliya Phiri.

When asked if the person at page 5 and 25 was one and the same person, the witness stated that these were different people as he knew them. However, the one at page 7 was the same as the one at page 31.

The witness stated that Mr. Makukula was a government official and that it was the same government that issued NRCs and that in this case, it issued NRCs to the people he helped.

In further cross examination by Mr. Musoka, he stated that it was his evidence that he was only in Kafumbwe ward and that Milanzi had twelve wards. When asked if he reported these crimes of registering foreigners after he defected from PF to UPND, he stated that he didn't report to the 2nd Respondent or the police because he had no authority. That he was not aware that he could be arrested for these crimes but that he would be able to defend himself.

The witness further stated that he saw the people he helped obtain NRCs vote but that he didn't know who they voted for.

PW3 was **LUMPHANI AMERCOS LUMPHANI** a Peasant Farmer aged 38 years old from Daison village in Mozambique.

He told the Court that he was a Mozambican national. That while he was at his home in Mozambique, Chief Iback Phiri announced in the village that since they obtained medical, educational and agricultural services in Zambia, there was information that had come that they should go and get registration cards in Zambia.

So, they started off on foot the following morning to come to Zambia and obtained the NRC. That his place was about fifty (50) km from Zambia. When

they arrived in Zambia, they waited at Elebat's house and ate from there since they were so many of them.

When they eventually got the NRCs, they went back to their homes. After some days, he heard from the Headman that they should go back to Zambia and get the voters cards. They came to Zambia and got the voters cards which were being issued from Lunga School in Chimsithu village.

He stated that he got a voter's card and it was in the 1st Petitioner's bundle of documents. That the name which was on the voters' card was Yohane Phiri which was a Zambian name and he started using it after he got the NRC. This card was at page 23 of the 1st Petitioner's bundle of documents. Asked whether he had two different names, he stated that when getting the Zambian NRC, he was asked to change the name by the person who was doing the registration as the Mozambican card had Lumphani Amercos Lumphani. He was told that Zambians would not manage to use his Mozambican names but was asked to use names like Phiri, Zulu and Banda.

The witness stated that the card at page 9 of the 1st Petitioner's bundle of documents was his Mozambican card which had his picture and that he used it for voting and for moving around as it was a representation that he was Mozambican. He also stated that according to this card, the date of birth was 22/07/1983 and the date on the Zambian voter's card was 14/09/1991.

When asked to explain the discrepancy on the date of birth, he stated that he was asked to reduce on his age by the person who was capturing the numbers. He stated that if the ages showed that they were old, it would be difficult for them to get the NRC. His age was therefore reduced only on his voter's card.

He further stated that before voting day, they received a paper which indicated that Mozambicans should not come to Zambia to vote and so they didn't come. Whilst at home on 12th August, 2021, a Canter came around 12:00 hours with two occupants. One of them told them to get on the vehicle so that they could go to Zambia and vote. Most of them were scared to come to Zambia but the DC Mr. Makukula told them to come to Zambia and vote and so they came and voted at Lunga School.

After voting, they went to a house where food was prepared for them by the DC and they ate. He added that he saw the DC during the campaigns in Lunga where they stayed as there was a meeting at Chimsithu. A lot of people were in attendance. Also in attendance were the Councilor, the 1st Respondent and the DC who spoke at the meeting. The DC showed them where to vote for the 1st Respondent and the Councilor Acrain and that they were given wrappers and clothes.

The witness further stated that the DC and the 1st Respondent Melesiana spoke at the meeting and she asked them to vote for her. After the meeting, they went back home.

In cross examination by Mr. Muyatwa, he stated that he had a Zambian NRC but it was not issued in 2020. What was issued in 2020 was the voters' card. Then again, he stated that he came to Zambia in 2020 and he was issued with a Zambian NRC; that he got the Mozambican card before he got the Zambian NRC. The witness stated that he didn't renounce the Mozambican nationality when he got the Zambian NRC.

He confirmed to the Court that he voted in the Mozambican election as well as the Zambian election; that he didn't make any application for dual citizenship as they were just told to come and get the Zambian NRC. He also confirmed that he saw the DC at a rally in Chimsithu village with the 1st Respondent and that they came together. The DC told them to vote for the 1st Respondent at the rally and that she never objected to what was said by the DC.

PW3 also told the Court that the DC threatened them that if they did not vote for the 1st Respondent, they would not receive services from Zambia. The village that bordered Daison village in Zambia was Lunga where he voted from. He further stated that there was an official border between Daison and Lunga but on that day they were told not to block anyone by someone from Zambia who he didn't know. He also confirmed that a Canter was sent to ferry them from Mozambique to Zambia and that he found the DC at the place where the food was being cooked from but he never spoke to them. He further stated that apart from Daison village, other people came from Mkokekeza, Atwell and Akufa

villages as he saw them when voting. He added that Lunga was not the only village they voted from as others voted from Mutipha village.

In cross examination by Mr. Mwelwa, he stated that he was picked around 12:00 hours to come and vote in Zambia and went back around 15:00 hours. That Mkokekeza and Daison village were only five (5) kilo meters apart. The nearest villages to Zambia were Daison, Akufa and Atwell villages. The people from Atwell were picked up after they dropped them which was around 12:00 hours to 13:00 hours and when the people from Atwell came, they found them there.

Asked if he had a passport when he came to Zambia, he stated that he didn't have one and so he could not state with certainty that he was from Mozambique. When he was told by counsel that he was a liar as he did not come from Mozambique, he stated that he didn't want to come but since they told them to come, that's why he came.

When further asked how he entered Zambia, he stated that they were just shown some papers which had their images and that his friend who was outside asked him to come. Asked if there was evidence that he was a Mozambican apart from his assertions, he stated that truly there was no evidence considering the way he had left home.

In further cross examination, he stated that he attended the meeting which was addressed by the DC and the 1st Respondent in July, 2021. He couldn't remember the date and year when he obtained his NRC because they used to be picked up frequently. On the voter's card, he stated that he might have obtained it last year towards the farming season. However, he confirmed that he had a Zambian NRC and voter's card and also an identification card for Mozambique.

Asked if he had the original documents for these documents, he stated that one was at home; that he only saw the photocopies of the other documents here. When it was put to him that they were photo shopped documents that's why he didn't have the originals, he stated if they were needed, he would have brought them. He admitted that it was difficult to believe him since he didn't have the originals.

The witness further stated that the 1st Respondent was not there when they picked them but that he didn't know who Jackson Banda was.

In cross examination by Mr. Musoka, he confirmed that he obtained the NRC from Zambia and that he was issued with the same at Lunga in Chimsithu but he didn't know the organization.

Asked how the process was in obtaining the NRC, he stated that they were told by the Headman from Zambia not to give the names of the villages in

Mozambique but the Zambian villages. That he spoke to the person who was issuing the NRC and he told him that he was from Padoko village. That he was told to lie to that person that he was from that village. The witness further admitted that according to what they were told, they had cheated. He further admitted that they had lied.

When asked what would stop him from lying now since he had lied before, he stated that they were just told to lie by someone who told them that there would be elections in Zambia. He denied that someone would equally tell him to lie in Court.

The witness also stated that they didn't have any passports because whenever they came to Zambia like to the grinding mill or to see Chief Gawa Undi, they just moved without any pass. He thus confirmed that he freely came to Zambia and got his NRC and voter's card.

PW3 further confirmed that he voted at Lunga School which was in Kafumbwe ward but that he didn't know who the others voted for since they were many. Asked that he came to Zambia to vote for food, he answered in the affirmative and stated that they voted and they ate. He also stated that since they were uneducated, they were corrupt.

In reexamination, he stated that since he was uneducated, then maybe that was corruption. However, the person who corrupted them was the Headman

from Mozambique who informed them to come to Zambia. He reiterated that he came to Zambia freely and that he didn't have a passport.

LIYAYA PHIRI, aged twenty-three years (23) old from Daison village Chief Kacha, Chifunde District in Mozambique was **PW4**.

It was his testimony that he lived in Mozambique and that whilst there, a letter came through their Chief that they should come to Zambia to get NRCs. When they got the NRCs, they were told to come and get the voters' cards.

When they got the voters cards, they were told by the Headman that there was a meeting in Zambia. The meeting was at Lunga in the football pitch although he could not remember the date it took place.

At the meeting, the 1st Respondent, Akcrain the councilor and the DC for Katete told them to vote for them and the DC told them that if they did not vote for the 1st Respondent, they would close their schools, clinics and hammer mills. When the meeting was over, they gave them wrappers and t-shirts and they went back to their homes.

He further stated that before the election date, they were some documents which they received to the effect that they should not go to Zambia to vote and that if they did, they would be killed.

On 12th August, 2021, the date of voting, a Canter came and they were informed that they should go and vote. After voting, they were sent to the house where food had been cooked for them and they ate. Thereafter they went back to their villages with the driver who had picked them up.

The witness also told the Court that he voted in the Zambian elections using a voters' card which had his face and name Liyaya Phiri. He also stated that he was a Mozambican national and he had Mozambican documents to show for that. He therefore identified the Mozambican voters' card at page 7 of the 1st Petitioner's bundle of documents and a Zambian voters' card, which he used to vote in Zambia at page 31.

When asked to explain why the names were different on the Zambian voter's cards and the Mozambican card, he stated that in Mozambique they were required to indicate both the father's name and the grandfather's name but in Zambia, they only indicated your name. That his grandfather was Liyaya and his father's name was Willy.

Asked if Phiri was his name, he stated that it was his father's surname. When he was referred to the Mozambican voter's card which had a different date of birth from the Zambian voter's card, he stated that they were required to reduce their ages in Zambia if they saw that you were older. In his case, they reduced the year because they thought he was very old.

In cross examination by Mr. Muyatwa, he confirmed that he got fertilizer from Zambia and not Mozambique and that they sold the grain in Zambia, received medical services in Zambia and their children went to schools in Zambia. That in this regard, his sister went to Lunga School in Zambia which was in Kafumbwe District.

Asked if he had a Mozambican identity card, he answered in the negative but stated that he had a Mozambican voter's card which was the only document they had. He thus stated that he didn't need to have a passport to move and that he came to Zambia freely. However, he didn't voluntarily come since he was asked to come and get a Zambian NRC and that to his knowledge, the letter which was received by the Headman came from the DC.

The witness also confirmed that he knew Elebat but that he never went to his house. It was only visitors like the DC, the 1st Respondent and Acrain who used to go there. However, Elebat was the one who used to help them get NRC's and they were threatened by the DC that if they didn't register and vote for the 1st Respondent, and Acrain as Council Chairperson, they would stop getting services from Zambia. As a farmer, he felt bad when they were told these words.

The witness further stated that at the meeting he attended at the football pitch, the DC was the moderator and he was working with the 1st Respondent. He also stated that he didn't see the DC and the 1st Respondent before voting. After

they voted, they went and ate at Padoko in Lunga and that the DC was there seeing how the people were eating. The 1st Respondent was not there.

When he was asked if he had renounced his Mozambican citizenship before he obtained the Zambian NRC, he stated that he didn't know if the people had informed them. That he knew who Rosemary Banda, the 2nd Petitioner was but he never heard the DC and the 1st Respondent mention the 1st Respondent at the rally.

In cross examination by Mr. Mwelwa, the witness informed the Court that he knew the 2nd Petitioner and confirmed that at the rally the 1st Respondent never mentioned the 2nd Petitioner. It was only the DC who mentioned her as he told the people not to vote for the 2nd Petitioner.

He also confirmed that he voted at 12:00 hours and denied having knowledge of the Mozambicans that voted at night. When asked if he saw the letter which came from the Headman, he answered in the negative and stated that they were told by word of mouth by the Headman who announced the contents of the letter in the village that the letter had come from Zambia. However, he couldn't confirm where the Headman got the letter from.

He further confirmed that he saw the DC when he gave the letter to the Headman in Lunga at Chimsithu but could not remember the date and that he

was alone. When asked why he did not tell the Court earlier, he stated that he forgot as he was a very forgetful person.

PW4 further told the Court that his real name was Liyaya Phiri. Willy was his father's name and Liyaya was his grandfather's name. That he was born in 1998 and the information on page 32 of the bundle of documents that he was born on 03/02/98 was correct. When he was reminded what he told the Court earlier on that they were being told to reduce on their ages, he stated that the people who had issued the NRCs were the ones who had reduced the age. The witness denied that his age was reduced. When asked to show the Court how his age was reduced since he had stated earlier that his age was reduced, he stated that he didn't know because he didn't go to school and so he was uneducated.

When he was referred to the meeting at Lunga, he stated that he was not just there with the 1st Respondent and the DC but that there were a lot of people. After they voted, they went back home around 15:00 hours. He further stated that he did not have a passport and that he was Mozambican and that a Mozambican could not use his NRC and voter's Card to vote in Zambia.

He confirmed that his father was born in Zambia and his mother was Mozambican and that he was a Zambian who lived in Mozambique with NRC and a voter's card. Since he was Zambian, he didn't need a passport to return

to Zambia and that he voted for a person of his own choice because he was entitled to vote.

In cross examination by Mr. Musoka, PW4 confirmed that he voted in Zambia in the past election but he denied knowing who the other people voted for in the past election.

In re-examination, he confirmed that the Headman was the one who told them that there would be a meeting in Lunga in Chimsithu. He clarified the position of his nationality and stated that he lived in Mozambique and that he was Mozambican. He further clarified that he was threatened to vote but that he choose the person to vote for.

PW5 was **PHIRI LINGILILANI** aged thirty-eight (38) years old a Farmer of Zakonka Section, Kamphambe in Katete District.

He testified that the leaders of Zakonka, which was a cooperative called him with the leaders from UPND. They were told that the leaders had gone to DACO, the Agricultural leaders and they were informed that money had been refunded to eight people. When they were told this, they refused that FISP did not deal with politics.

Later, there was a political rally at Zakonka cooperative which was in Kamphambe ward where Mr. Misheck Nyoni, the PF Constituency chairman

told them that all those who were following the UPND would not get fertilizer. The 1st Respondent was at the meeting and she repeated the same words.

In cross examination by Mr. Muyatwa, he further stated that Zakonka Cooperative had one hundred and twenty-five members (125) members and that the objective of forming the cooperative was for agriculture purposes. That these members had paid for FISP but the people to be refunded were eight. If the money was refunded, their families would then not have anything to use. He further stated that the DC was not at the meeting at which the 1st Respondent spoke. He further confirmed that he saw and heard the 1st Respondent telling the people that they would not get fertilizer if they voted for UPND.

Cross examined by Mr. Mwelwa, he stated that the DC did not attend the meeting at which the 1st Respondent threatened them and that they passed on this information to the 1st Petitioner. However, he didn't know if she had specifically brought this complaint to Court. He further stated that throughout the campaign he never saw the DC campaign for the 1st Respondent.

The witness also confirmed that he campaigned for the UPND Presidential and Parliamentary candidate in Milanzi constituency and that he voted for the people he wanted to win and that they were not restrained from voting for the people they wanted to vote for. He confirmed that DACO was a government official and that FISP was a government programme. He also confirmed that

the 1st Respondent was not connected to FISP programme and that the threat had no effect on him but his followers were scared and they stopped moving with him. He added that he didn't care if they didn't give him FISP because what he wanted was for his people to win.

No questions were asked in re-examination.

PHIRI NJILA aged thirty-three (33) years old a Farmer of Milanzi Zakonka Section in Katete District testified as **PW6**.

He testified that when the campaign started, he received a phone call from the PF Milanzi Constituency Chairperson Mr. Misheck Nyoni who told him that he had heard that he had joined UPND. He agreed. He was further informed that the DC had informed him that whoever supported the UPND would not get fertilizer. He told him to cut the call because he wanted to talk to OP and from there they never spoke.

Under cross examination by Mr. Muyatwa, he stated that he had lived in Zakonka for many years and that he never attended any PF campaign rallies. When asked if he had ever seen the DC, 1st Respondent and Mr. Nyoni working together in Zakonka section, he stated that he had not seen them.

There were no questions in cross examination from Mr. Mwelwa and no re-examination.

PW7 was David Banda aged sixty-five (65) years old a Farmer of Chikalusa village in Katete District.

His evidence was that the last Saturday in the month of July the DC Joseph Makukula went to Katiula School in Katiula ward and held a meeting there. There were a lot of people. After the meeting started the DC told the crowd that he had gone there to let them know about the coming elections. That the DC warned them that they needed to be careful with the elections for that year 2021 and that they needed to vote for the 1st Respondent because if they didn't vote for her, the farmers would not be given fertilizer.

He further stated that the DC told them that on the day of voting, he would go round the polling stations to see those persons who would vote well and those who would not. Those who would not vote would not be given fertilizer.

The witness further stated that the DC informed the crowd that he was the one handling the Social Cash Transfer and that if they didn't vote for the 1st Respondent, they wouldn't receive that money. Thus, they were told that they should vote in a uniform manner starting with the President, Council Chairperson, Councilor and Member of Parliament.

For that reason, PW7 told the Court that when it was time to vote, people were scared that they would not get the Social Cash Transfer and fertilizer. That he

knew that people didn't vote for their choice because they lost as they voted for the 1st Respondent.

The witness further told the Court that that was the first meeting at which the DC spoke. The second meeting the 1st Respondent went to Katiula where she repeated the same words that the DC had told them.

In cross examination by Mr. Muyatwa, the witness confirmed that he was not forced to testify in Court but that he had come freely and voluntarily to help the Court. He also confirmed that the DC and the 1st Respondent used to work together and that the DC used to campaign for the 1st Respondent.

He also stated that at the meeting, the 1st Respondent told the crowd that they should vote for her because she was female and that she was new. That they should not vote for any old person although the names were not mentioned. He also confirmed that Mr. Allan Mvula spoke at that meeting but he did not say much as he only sang a song that "throw away old bones". However, he never mentioned anyone's names.

In continued cross examination by Mr. Mwelwa, he stated that he saw all the candidates and the 1st Respondent was the youngest among them all. When asked if the songs referred to all other older person, the witness answered in the affirmative. PW7 also confirmed that he was a member of the UPND and that the 1st Respondent never issued any threats.

In re-examination, he recalled that while singing along, Daniel mentioned the 2nd Petitioner who was also a Parliamentary candidate.

PW8 was **IREEN BANDA** aged thirty-four (34) years old a Farmer of Chimsithu village in Chimsithu village.

She told the Court that on 7th July, 2021, the DC and 1st Respondent held a meeting at Chimsithu village in Kafumbwe ward. At that meeting, the DC informed them that they should vote for the young lady he had taken there and that if they didn't vote for the 1st Respondent, they would not receive fertilizer and Social Cash Transfer that year.

In cross examination by Mr. Muyatwa, she stated that no one forced her to testify in Court and that she came out of her own free will. She confirmed that the DC and the 1st Respondent worked together and that the 1st Respondent agreed with what the DC stated that if they didn't vote for her, they would not receive Social Cash Transfer. When she was asked how she felt over the issue of not receiving fertilizer and Social Cash Transfer, the witness responded that she felt bad and that affected how she voted since she didn't feel good.

In cross examination by Mr. Mwelwa, the witness stated that the 1st Respondent never said anything over the issue of the Social Cash Transfer and fertilizer but that she agreed with what the DC had told them. When counsel reminded the witness what she had earlier told the Court that the 1st

Respondent never issued any threats, she stated that she didn't lie as the 1st Respondent spoke about fertilizer.

PW8 also stated that she was a member of UPND and that she was upset because they lost the election in Milanzi. That was the reason she had come to Court so that the Court could nullify those elections.

In re-examination she denied having given three statements as she only gave two. The first statement was that the 1st Respondent told the crowd that if they didn't vote for her, they wouldn't receive fertilizer. The second statement was what the DC had told them that if they didn't vote for the 1st Respondent, they would not receive Social Cash Transfer.

HAMILTON BANDA aged forty-six (46) years old a Farmer of Kalukula village testified as PW9.

He told the Court that in July, 2021 during the campaign period, he saw a grader grading the Dole/Katawa road. When he saw this, he called Christine Phiri, the 1st Petitioner who contested on the UPND ticket as a Member of Parliament on the phone. He asked the 1st Petitioner if it was in order to start working on the road during campaigns. The 1st Petitioner told him it was not in order. The road was graded until Mutelemuka School. The witness passed through to see and after grading the grader went back.

He further stated that in August, an excavator and tipper went to the same site and started putting gravel. That when the door-to-door campaigns were conducted as there were no rallies, they were informed that they should vote for the 1st Respondent who had started working on the road. He was also told that the Company which was working on the road was Andrich. After voting on 12th August, he noticed that the heaps of gravel had not been properly applied even.

In cross examination by Mr. Muyatwa, he stated that he had not been forced to testify in Court. He further stated he couldn't manage to estimate the number of days the works on the road took. That during non-working hours, the equipment used to be packed at a rented house and the owner was James Banda but that he was not a member PF.

In continued cross examination by Mr. Mwelwa, he stated that it took one week for the road to be graded and that he invited the 1st Petitioner to come and check what was happening. When she came, they moved all the way to Mutelemuku and they spoke to Alick Sakala and Cambridge Miti who lived in Mutelemuku. However, they didn't talk to the people on site who were grading the road.

Asked if he called the 1st Petitioner when the tipper truck took the gravel, he stated that he did but they didn't do anything and that they didn't talk to the people who had brought the tipper truck. He confirmed that when he was with

the 1st Petitioner, they never spoke to the people on site and that he was never told that the 1st Respondent had spoken to them.

When asked if he knew the owner of Andrich construction, he stated that he did not know the owner. He agreed that as a person who was concerned about the grading of the road, he didn't find out if the Company belonged to the PF. However, he denied that the grading of the road was a government program. That even if it was a government programme, the grading was done during the campaign period. He added that he didn't know if the government stopped functioning during the campaign period.

The witness also confirmed that he was a member of UPND and that he was still upset that they lost Milanzi elections and that's why he was testifying before the Court.

There was no re-examination.

PW10 was **WILLIAM NYIRENDA** aged fifty-three (53) years old a Peasant Farmer of Katumba village.

The witness testified that during campaign period, he was monitoring the campaigns for his party the UPND. He saw that Dole/ Katawa Road was being graded and the other road which started from Muzime turn off to the Chief's palace. He found out based on what was written on the machinery that the company that was grading the road was Andrich construction. After inquiring

from the operator of the machinery, he was told that the company was for Andrich Lubusha who was the Provincial Chairman for PF in Eastern Province.

When he was given this information, he informed the party official about what was happening. He told the Court that he was from Chindwale ward and that during the door-to-door campaigns, he was told by the electorate that they would vote for the party in power since they had started the developmental projects.

The witness confirmed that he campaigned for UPND because he was the trustee for Milanzi at the Constituency level.

In cross examination by Mr. Muyatwa, he stated that he had been trustee since 2020. He also confirmed that he was in Milanzi throughout the campaign period but stated that he never attended any PF campaign meetings. He also never saw the DC campaigning and that he had not been forced to testify in Court. He was in Court to help the Court arrive at the truth.

Cross examined by Mr. Bwalya, he confirmed having seen the grader at Dole/Katawa Road. Based on his investigation, he found out the owner of the Andrich Construction was Andrich. He concluded that there was a connection with the 1st Respondent because the two were from the same party PF.

In continued cross examination by Mr. Mwelwa, PW10 confirmed that he was a UPND member and he had a membership card. However, he denied having

traversed the whole Milanzi Constituency and that he only campaigned in Chindwale ward. That he only used to receive information about what was happening in other wards through the phone from other leaders and also the media.

When asked if he knew about what used to happen in two or three wards, he stated that he didn't know. However, he knew about the Dole/Katawa Road which was in another ward because that was the road they used to use when going to Chindwale as there was no other road to use.

The witness also stated that he knew the DC for Katete Joseph Makukula, but that he never met him in his ward during campaigns and that he had no complaints of electoral malpractice against him. Asked if he had any complaint of malpractice against the 1st Respondent, he stated that his complaint was the grading of the road and nothing else.

He told the Court that PF was responsible for grading the road because the owner of the machinery was a PF member. He also told the Court that the government was responsible for roads and that the party in power ran the government. That's why he thought it was the PF.

He also confirmed that he was not happy that they lost elections and that was why he was in Court so that the election could be nullified. He added that he

had not been influenced by any acts of the DC or the 1st Respondent in their individual capacity.

In re-examination PW10 told the Court that the short cut road he could use when going to Chindwale was the Dole/Katawa Road.

That was the close of the 1st Petitioner's case.

2. THE 2ND PETITIONER'S CASE

The 2nd Petitioner **ROSEMARY BANDA** aged sixty-six (66) years old of Chadaka Farms testified as **PW11 or 2RW1**.

She told the Court that she filed a petition in Court which she signed in her capacity as an Independent parliamentary candidate for Milanzi constituency. The other candidates were the 1st Respondent, Tylad Lungu, Whiteson Banda, Christine Phiri, Lillian Chimwala and Mr. Mwale. The 1st Respondent was declared winner.

She further stated that there were twelve wards in Milanzi Constituency: these were Chindwale, Kapoche, Kapangulula, Milanzi, Kasambadole, Dole, Kazala, Kafumbwe, Kazakaloba, Katiula and Yowoyani. Some of these wards like Kapoche to the south, Milanzi in the middle and Kafumbwe to the east and Kapagulula to the south shared the border with Mozambique. That there was

no official border with Mozambique in Katete as the only official border was the Chanida border in Chadiza District.

That the largest ward which shared a border with Mozambique was Kafumbwe. On the eastern side of Zambia, there was Bombwe and also Muntimpha school which was also a polling station. There was also Lunga School which was also a polling station. The other outlet to Mozambique was Kapagulula ward which was also as big as Kafumbwe. The last one was Kapoche ward and the outlet was both at Kameta school to Mozambique and Chimwalala.

She further stated that of the four wards, the longest road was in Kafumbwe ward and Chisindikoko. The stretch for the Mozambique border in Milanzi Constituency was about sixty (60) kilometers from Kafumbwe to Kapoche.

In terms of the sizes of the wards in Milanzi Constituency, the 2nd Petitioner stated that the biggest wards were Kafumbwe, Kapagulula, Dole, Kazala and Katiula. The rest were the same size.

After giving this background, she told the Court that she filed the petition because the elections were not free and fair. She stated that the Kawaza Chieftainship was very big as it covered the whole of Milanzi and Sinda Constituency. However, Chieftainship Kawaza used to work with the 1st Respondent because the Chieftainship threatened his Headmen that they should tell their subjects in the villages across the constituency that they

should vote for the 1st Respondent and Edgar Lungu in the 12th August elections. If they didn't vote for her, their land and fields would be withdrawn from them.

She got this information from the Headmen who had come to Court to testify and also Tylad Lungu who stood as an independent candidate. She also added that since her home was along Mozambican road, she used to see the Headmen as they were going to the palace and that they used to use the Canter for the 1st Respondent which was branded with her pictures. The Headmen used to leave their bicycles at her place and got on the Canter.

When asked what she did when she was given this information, she stated that since the Chieftainess was the traditional leader, there was nothing that she could do about that. She added that to her knowledge if land was withdrawn, it meant that the Headmen would not have anywhere to do the farming.

The witness also stated that what happened in Milanzi constituency was not what was expected of election officers on Election Day. She stated that after people voted, all the ballot boxes were supposed to be taken to the Totaling Center which was Kafumbwe boarding school in Yowoyani ward. This was after all the polling agents had signed the GEN 20 forms and verified what had happened at the polling station.

She stated that she was informed by her agent Anita Miti who was at the Totaling Center that seven boxes were taken there on 13th August, 2021 around 10:00 hours but were not put with the other ballot boxes which were on top. When she arrived at the Totaling Center on 14th August, 2021, she found the Returning officer Mwila Mazunda with other officers. However, she didn't find the seven ballot boxes but only four, two of those boxes had been opened and the lids were on top.

When she asked the Returning Officer why the boxes had been opened when they were not supposed to be opened at the Totaling Center and that if they were opened all the stakeholders were supposed to be notified in writing, she stated that the Returning officer informed her that the person who opened the ballot boxes fell sick and went away leaving the ballot boxes unattended to. She told the Returning officer that that was a serious irregularity in the electoral process and so she asked that the election results for Milanzi Parliamentary constituency should not be announced. She then left.

However, she was called back by the election officers but she refused. As she approached her home, she received a phone call from an officer she didn't know, who requested that she goes back so that they could talk. After protracted refusal, she went back to the Totaling Center with her driver Emmanuel Phiri whom she asked to record a video.

She found the Returning Officer and a police officer who was the mediator. The police officer pleaded with her that the issue should be resolved just there. The Returning officer again explained that an officer from the 2nd Respondent fell ill in the night and left the boxes unattended to and the Returning officer acknowledged that opening the ballot box at the Totaling Center was an electoral offence.

She also stated that the polling agents were not given the GEN 20 forms for Kagoro polling station. That on this form, her results in figures were 345 but in words it indicated thirty-four (34). She followed the Returning officer on 15th August and asked her if she could be given a visible copy of the GEN 20 for Kagoro 2. She stated that the Returning officer wrote another form which was different from what she had been given as she reduced the number in figures from 345 to 34.

The witness identified the GEN 20 form at page 29 which she stated was written out by the Returning officer. That the Gen 20 form at page 28 was obtained from the polling station and it was the one which had anomalies.

The 2nd Petitioner also identified the pictures of the ballot boxes at page 23 of the 2nd Petitioner's bundle of documents. The empty boxes were red and black. In one of the boxes, there were three envelopes with seals and the ones which were not opened were the orange and purple boxes.

The 2nd Petitioner also testified that in the past elections, Mozambicans were allowed to vote in the elections. This was brought to her attention in 2020 by the Headman in Mozambique that the DC Mr. Makukula was involved in the ferrying of Mozambicans to come and get their NRCs in Zambia. That they used Lunga road which was in Kafumbwe ward.

On polling day, she stated that the Mozambicans came to vote in Zambia and that she had brought three (3) identity cards for each person being the Zambian NRC, voter's card and the Mozambican voter's card. She identified the documents at pages 1 to 13 of the 2nd Petitioner's bundle of documents.

The witness further stated that the 1st Respondent and her agents whom she used to move around with being the DC Mr. Joseph Makukula, Allan Mvula and Daniel Lungu were involved in character assassination. That the DC assassinated her character with the support from the 1st Respondent as he used to refer to her as a very very old woman who could not perform. That was why he had given the people a young person.

She stated that this information came to her attention through her leaders from the entire constituency. That at a rally in Kagoro area, Allan Mvula picked a bone and started dancing whilst singing a song that throw away the old bone. This was done at all the rallies in the constituency and she was informed that Allan did the same at a rally in Katiula.

In view of this, she wrote to the District Conflict Management Committee (DCMC). The first letter was written on 17th July, 2021 in which she complained about the DC but there was no response. So, she wrote the second one on 20th July, 2021 and the complaint was about the 1st Respondent and Allan Mvula. This letter was also not responded to. She therefore inquired from the Council Secretary whether she was going to be attended to.

Two days before the elections, the issues were discussed and those who attended the meeting were the DC, the 1st Respondent, the Reverend as Chairperson and four other members. However, Allan Mvula was not in attendance. The DCMC considered the complaint and at the end, the DC offered an apology for all the nasty words he had uttered.

The 2nd Petitioner identified the two letters of complaint that she wrote which were at pages 17 and 18 and also the minutes of the meeting at page 20. Page 22 had the names of the people who attended the meeting. At the end of the meeting, she stated that the members of the DCMC requested that they all take photos. She identified the photos which were at pages 32 and 33.

The other allegation that the 2nd Petitioner referred to was that the 1st Respondent was seen distributing DMMU mealie meal during the campaign period and also money to the electorates. This information was brought to her attention by the Headmen. She also stated that the DC was seen by the Headmen on several occasions campaigning for the 1st Respondent.

The 2nd Petitioner also told the Court that the Indunas for Chieftainess Kawaza used to distribute PF party regalia. That she knew about this as the Indunas used to go to her house.

The last allegation the 2nd Petitioner referred to was that her polling agent in Kamphambe ward by the name of Paul Njobvu was assaulted as he was walking on the road by the 1st Respondent and her cadres. The 1st Respondent was seated in the vehicle when this happened. Paul Njobvu was stripped off the T-shirt that he wore and was forced to wear a PF T-shirt.

In view of all this, the 2nd Petitioner prayed that the election results be nullified because there were a lot of malpractices.

In cross examination by Mr. Phiri, she confirmed that the 1st Respondent didn't restrain her cadres who beat and stripped Paul Njobvu off his T-shirt. She also confirmed that the 1st Respondent was present when Allan Mvula sang the song and that a Canter truck with the 1st Respondent's pictures was used to distribute PF regalia. The witness also confirmed that the Returning officer did not note down her concerns about the opened ballot boxes and that to her knowledge, the ballot boxes were not re-sealed in her presence.

The 2nd Petitioner also stated that Chieftainess Kawaza greatly interfered with the elections as she sided with the 1st Respondent; that her supporters and

agents saw the DC campaigning with the 1st Respondent across the whole constituency.

In cross examination by Mr. Mwelwa, she confirmed that it was a requirement in the electoral laws that there should be the DCMC whose role was to manage complaints that she had presented to Court. When asked if the complaints she had brought to Court could be handled by the DCMC, she stated that the DCMC only managed complaints that were reported and that if they were not reported, they could not be attended to.

She also stated that she accepted the apology that was given by the DC but that did not erase the damage that was done. That she knew that if the DCMC did not deal with a complaint, the National Conflict Management Committee (NCMC) had the mandate to deal with such a complaint and also that them had the mandate to disqualify a candidate.

Asked why she didn't take the other complaints she had to the DCMC, she stated that they took long to deal with her complaint and therefore, she could not take a complaint which was not going to be acted upon. She denied that she could have built a strong case if she took all the complaints to the DCMC because they didn't act on the first cases.

When she was further asked how many times she had stood in Milanzi constituency, she stated that she had done so three times: in 2001 when she won, but in 2016 and 2021 she lost.

The 2nd Petitioner also told the Court that she didn't tell the Court that she found four ballot boxes opened. What she told the Court was that two were opened: one was completely empty and the other one had envelopes.

It was also her testimony that Paul Njobvu reported to the police that the 1st Respondent's cadres beat him up. She didn't know where the voters were keeping the mealie meal that they were being given when going to vote. She admitted that Jackson Banda who was the 1st Respondent's election agent did not distribute mealie meal whilst people were voting.

The 2nd Petitioner also told the Court that Kafumbwe ward was near Mozambique but that Yowoyani was not. That she got 241 votes in Kafumbwe and she was the highest while the 1st Respondent got 84.

In cross examination by Mr. Musoka, she stated that as a Zambian, she was issued with a NRC by the Ministry of Home affairs, Department of National Registration. She therefore confirmed that the 2nd Respondent didn't issue NRC's. That she also voted in the just ended elections and what made her register as a voter was the NRC. However, the 2nd Respondent never investigated whether the NRC was fake because they proceeded to issue her

with a voter's card. She denied that those who voted in the election in Milanzi were Zambians. She agreed that she would not fault the 2nd Respondent for issuing a voter's card to someone with NRC and for 2nd Respondent allowing those with NRC and voter's cards to vote.

The 2nd Petitioner also stated that the ballot boxes could only be opened in the presence of stakeholders if they had to be opened at the Totaling Center. However, she didn't find any stakeholders when she went there. She also told the Court that she made a request to the Returning officer not to announce the results. Although the request was not in writing, there was video evidence to that effect.

She also denied that she was trying to benefit from the anomaly on the GEN 20 at page 28 of the bundle which showed that she got 345 votes. That this document was given to one of her agents at Kagoro 2 polling station but it wasn't the original document. She denied having altered the document at page 28 but admitted that the form was given to her by her agent and not the 2nd Respondent.

In re-examination she told the Court that she came to Court not because she was concerned about the numbers even though she got the highest in Kafumbwe but to inform the Court about the rampant malpractice in Milanzi constituency.

She also stated that her complaint to the DCMC was against the 1st Respondent because at the time the offences were committed, she didn't object as a candidate.

PW12 was **IBACK PHIRI** aged fifty-six (56) years old a Farmer of Daison village in Mozambique.

In his testimony, he told the Court that he was the Headman for Daison village in Mozambique which had sixty-four (64) families. His role as Headman was to look after the people in the village of Chief Kacha.

PW12 stated that he was in Court to testify for the 2nd Petitioner. He stated that last year, the DC from Zambia went and told them to come and get NRC's from Chimsithu village in Lunga so that they could vote. Everyone in the village came to Zambia and got the NRC's. When it was time to get the voters cards, they came again and got the voters cards.

During the time for campaigns, they were invited by the DC and the 1st Respondent and the invitation was in a form of a written letter to attend a meeting at Chimsithu Village. The letter was delivered by Headman Padoko from Zambia. Headman Daison and his people from Mozambique did not waste time because they did everything from Zambia so they went to hear why they were called. In the meeting the DC told them that they needed to vote for a young, beautiful lady and not for the 2nd Petitioner who was aged.

Before poll day, they received some papers which instructed them not to come and vote in Zambia. However, they didn't know the author of the instructions. On the poll day, a Canter from the DC was sent to pick them up from Mozambique and they came to Zambia. When they reached Zambia, the DC Mr. Makukula sent the same Canter back to go and pick more people.

The witness further stated that at Lunga, the DC asked them to vote for the 1st Respondent and that she would bring development and they voted. After they voted, they were told to go and eat nshima at the home of Headman Padoko and they went back home.

In cross examination by Mr. Phiri, he told the Court that the DC didn't go to Daison village but he knew him during the meeting at Lunga. At the meeting, the DC, the 1st Respondent and the Headman gave them clothing like caps and T-shirts. He was also given K100. He confirmed that he was not the only one who was given money, the Headmen were also given money by the DC and the 1st Respondent. When being given the money, they were told to vote for 1st Respondent as Member of Parliament. He told the Court that the 1st Respondent never spoke at the meeting but that she only asked them to vote for her.

PW12 confirmed that, they were threatened that if they did not vote for Patriotic Front's Edgar Chagwa Lungu and the 1st Respondent, they would not be able to access most of the services that they used to get from Zambia.

In further cross examination by Mr. Mwelwa, PW12 stated that he testified so that they should not be deprived of services in Zambia. He confirmed that he got his NRC in Zambia and that he voted in Zambia. When he was asked to show the Court his NRC and voter's card, he told the Court that he left the documents at his home although he had given his documents to his lawyers. When he was shown the 2nd Petitioner's bundle of documents which had a list of those who allegedly got NRCs from Zambia, he stated that his document was at page 5 of the bundle where he read his name as Banda and identified a picture of his face although his sight was not good.

PW12 confirmed that he was picked at 12:00 hours on 12th August, 2021 to come and vote but he didn't know the exact time he went back home since he did not have a watch but it was in the evening.

When asked why he hadn't brought the letter which he received from the DC, he stated that it was not written on an ordinary paper but on a small paper which he could not even be given to the lawyer. He also confirmed that he was given money so that he could vote for Edgar Lungu and the 1st Respondent.

He further confirmed that all the sixty-four families of Daison village registered as voters but not all of them voted because they were afraid. He denied seeing the 1st Respondent on 12th August, 2021 but that she gave him K100 and others also received the money at the meeting in Lunga. He was given the

money in the presence of Headman Chinsungwe and other Headmen from Chimsithu.

PW12 also stated that he didn't know where the letter that instructed them not to vote came from. When it was put to him that it came from the 1st Respondent because the campaign manager for the 2nd Petitioner came from that area, he told the Court that he didn't know about that issue.

He told the Court that he married his second wife from Chiwaza village where he heard that the husband for the 2nd Respondent came from. When it was put to him that as village Headman, he worked with the husband for the 2nd Petitioner and had organized a meeting to boost the votes for the 2nd Petitioner, he denied the allegations. He confirmed that he was a Mozambican because both his mother and father were from Mozambique but that he didn't have any documents to show the Court that he was from Mozambique.

The witness agreed that it was a crime to enter another country without a passport. However, he denied that he was an imposter and that he was a Zambian that was why he didn't have a passport to enter Zambia. He stated that the manner in which they lived, they crossed or visited other countries easily and that there were many Zambians who lived in Mozambique. He further stated that if the Zambians who lived in Mozambique came and voted in Zambia, it did not mean that they were Mozambicans as they were

Zambians. He confirmed that there were many Zambians who lived amongst the sixty-four (64) families in Daison village.

In cross examination by Mr. Musoka, he told the Court that many people from Mozambique voted but that he didn't know who they voted for. He stated that the reason he voted in Zambia was because of the help they used to receive from Zambia. He denied that he was a corrupt person and stated that the people in government made them commit the crime. He also stated that he married a Zambian and allowed her to live with him in Mozambique. He admitted that his wife came to Zambia and voted as she was entitled to vote.

In re-examination, he told the Court that the reason why he stated that the picture at page 5 was his when he was referred to the 2nd Petitioner's bundle of documents was because the document was his registration card. He also clarified that there were sixty- four families in Daison village and that twenty of these families were Zambians.

TYLAD LUNGU aged forty seven (47) years old, a Politician of David village in Milanzi Constituency, testified as **PW13**.

In his testimony he told the Court that he was a subpoenaed witness as he was requested to bring some documents before Court. These were the pictures from 1st Respondent's Facebook page which showed that the 1st Respondent stood in front of a Canter which carried mealie meal and some people in the Canter

were distributing mealie meal. He stated that he got the pictures using his phone and that the phone had always been in his possession and it had a password. The witness identified the pictures and they were admitted in evidence and marked **P1, P2** and **P3**.

In light of these pictures, he stated that his evidence was that all candidates were addressed by the Electoral Commission of Zambia (ECZ) never to distribute anything apart from party regalia but in the pictures, the 1st Respondent was seen distributing the mealie meal.

PW13 further told the Court that during campaigns, Headman Mbeza, Headman Kapala and Headman Chisombwe from Kafumbwe ward approached him and told him that they were being threatened by Chieftainess Kawaza. The threat was that if they did not vote for the 1st Respondent in Kafumbwe ward, they would have their maize fields withdrawn from them and that of their people.

In cross examination by Mr. Phiri, he confirmed that he downloaded the pictures from the 1st Respondent's Face book page on 24th July, 2021. He also confirmed that he saw the 1st Respondent campaigning in the company of the DC Makukula on several occasions where he had set up his camp in Chief Msoro's village. That the DC used to use his government transport. He confirmed that P1 was posted on 20th July and that there were bags of mealie meal in P1 and P2.

In cross examination by Mr. Mwelwa, he stated that the pictures he had produced showed that the people that the 1st Respondent used to move with used to distribute mealie meal. He confirmed that there was no picture which showed the recipients of the said mealie meal but that people received mealie meal. The reason why he had produced the pictures was to show that mealie meal was given to electorates but there was nothing to show that electorates received mealie meal.

When he was asked about Andrich being the PF Eastern Provincial Chairperson, he responded that at that point he had already resigned from the PF and didn't know who the Provincial Chairman was. He also stated that he didn't know who Andrich was but according to P1 the Provincial Chairman was Alexander Miti. He also confirmed that he resigned from the PF two months before elections as he was not adopted. However, he denied being a bitter person.

When he was asked about the manufacturers of the mealie meal, he responded that it was not branded but he was sure that it was mealie meal because what was distributed widely was mealie meal. That he wouldn't know if the regalia for PF were white because he was not in their camp.

The witness also told the Court that on polling day, he visited some polling stations like Bombwe and Kafumbwe. However, he did not find any heap of mealie meal whilst people were waiting to vote at these polling stations. He also

stated that he had election agents in all the forty-four polling stations but he had not received any information from the election agents that money was being distributed on the queues during voting and that his supporters did not receive money on the queue.

When asked if he witnessed the 1st Respondent utter any insults when they met in Muzine in Dole ward, he stated that he never heard 1st Respondent insult anyone. He added that he didn't personally see 1st Respondent distribute mealie meal.

In re-examination, the witness confirmed that money was given to his supporters a day before elections and that there were people who received mealie meal from 1st Respondent and the DC. The witness clarified that the people that received mealie meal told him that they were given mealie meal by 1st Respondent and the DC.

PW14 was No. 35925 D/Inspector **MATOMOLA MATOMOLA** aged forty-three (43) years old the Deputy Criminal Investigations Officer (D/CIO) based at Katete Police Station.

He appeared in Court on behalf of Chief Inspector Mwanza, the CIO Katete who had been subpoenaed but could not attend due to circumstances beyond his control.

He stated that he was in Court to produce the Occurrence Book (OB) where a criminal report of assault was reported by Paul Njobvu. The report on page 1 appeared in the OB bearing No. 63/32 of July, 2021. The witness identified the OB and it was admitted in evidence and marked **P4**.

In cross examination by Mr. Phiri the witness told the Court that D/W Constable Mbewe was the one who entered the report and was given the task of investigating the case. That she also gave him a brief about the case. The witness admitted that Paul Njobvu reported the case of assault but that he was not told that he was undressed and was forced to put on a P.F shirt. Furthermore, he stated that the assailants had not been apprehended to date because the reporter stated that he was beaten by unknown people to be identified if seen but that they were P.F supporters.

Cross examined by Mr. Mwelwa; the witness confirmed that he was informed by Mbewe who investigated the matter that the complainant was assaulted by cadres from P.F. However, that piece of information was not recorded in the O.B. He confirmed that the report he read out in Court was different from what he had told the Court that P.F cadres beat Paul Njobvu.

He also stated that he did not know if Paul Njobvu had been to the police to inform them about the people who had assaulted him were with. He also confirmed that the report didn't indicate that the complainant was assaulted by the 1st Respondent. He added that the report that he was assaulted by the

1st Respondent would have been in the statement and not the report. He also stated that if Mbewe had told him that the people who assaulted the complainant came from the 1st Respondent's vehicle, he could have summoned the 1st Respondent.

He therefore agreed that in the absence of the report and not being informed by Mbewe that the attackers came from the 1st Respondent's vehicle, the person who made the report could have concocted the story and that was the reason no one had been apprehended.

In re-examination the witness confirmed that what would have been in the statement was the narration of what happened as that could have contained the details.

PW15 was **KELEPINO BANDA** aged fifty-three (53) years old, a Headman of Lunga village in Kafumbwe ward in Katete District. He had been a Headman for ten (10) years in Chinsungwe village which had twenty-five (25) families.

He told the Court that he and other headmen were called by Chieftainess Kazawa at the palace where the Chieftainess told them to vote for the 1st Respondent and that if they didn't vote for her, their fields would be taken away from them. They went back to the village and told their people that they should vote for the 1st Respondent under P.F.

The witness told the Court that they were also told by the Chieftainess to cook for the people from Mozambique who would come to Zambia to vote. Therefore, the 1st Respondent gave them mealie meal and meat which was received by Headman Padoko, the Chairman for the Headmen.

He stated that he was given twenty-five (25) bags of mealie meal and he gave them to the people in his village but kept two bags of the mealie meal after the other bags were used to cook for the people from Mozambique. The witness identified the two (2) bags of mealie meal that he kept. These were admitted in evidence and marked **P5** and **P6**.

He further stated that during the campaigns, there was a meeting at Lunga at which the DC Makukula informed them that he had gone to advertise some business but that reference was made to the 1st Respondent. He told them to vote for her and not the 2nd Petitioner because she was old.

In cross examination by Mr. Phiri, PW15 confirmed that a group of two hundred or three hundred headmen were called to the Palace by Chieftainess Kawaza and that these meetings were called on several occasions. He confirmed that at these meetings, the Chieftainess told them to vote for the 1st Respondent and that the 1st Respondent attended the meeting at the palace twice. However, the DC Makukula would not attend the meetings at the palace.

The witness also confirmed that the Chieftainess used to threaten them and that he informed his subjects about the threats and they were afraid. So, they voted for the 1st Respondent. He also confirmed that the 1st Respondent took mealie meal to the Chairman of the Headmen sometime in July. He agreed that the 1st Respondent spoke at the meeting and asked the people to vote for her so that she could take development there. At the meetings, caps and T-shirts were distributed to the people. He confirmed that money was also given to the people during the meetings by the 1st Respondent and he was given K200 and was told to vote for the 1st Respondent. He further stated that it was at the same meeting where Allan talked about the old bone.

In cross examination by Mr. Mwelwa, PW15 told the Court that Allan Mvula sang that they should throw away old bones and they should get a new one. The name which was mentioned in the song was Rose. He confirmed that the mealie meal that was given to them a week before voting was for them to cook for the Mozambicans. When asked why they decided to distribute the mealie meal which was meant to be used for the Mozambicans, he stated that they cooked for the Mozambicans but they kept what remained.

He denied that there was hunger in the village but that the mealie meal was distributed because what remained was too much for him. He confirmed that he voted at Lunga and that they were not given money and mealie meal on the day of voting.

Asked what mode of transport they used when going to Chieftainess Kawaza's palace, he stated that they used bicycles which they would park at the 2nd Petitioner's place. From there, they would board the 1st Respondent's vehicle which would take them to the palace. He added that they went to the palace four times with the 1st Respondent's vehicle and that she would also be in the vehicle with them. He denied that he was a liar but when he was reminded that he told the Court that the 1st Respondent attended two meetings at the palace he did not respond.

He also told the Court that he knew that people voted for the 1st Respondent because she won the elections. However, he admitted that he didn't see anyone vote for the 1st Respondent because everyone voted on their own.

In further cross examination by Mr. Musoka, PW15 stated that he was given mealie meal and meat to cook on the day of voting.

He confirmed that Mozambicans voted for the 1st Respondent because she won the elections but that they were not the only ones who voted as Zambians voted as well. He admitted that it was a crime for Mozambicans to vote in a Zambian election but he did not report to the police or the 2nd Respondent because it was the P.F government that got the Mozambicans.

In re-examination, he confirmed that 1st Respondent went twice to the palace but that the four times they used the truck, the 1st Respondent used to be on the truck just to take the people to the palace and then go back.

ALFRED MBEWE aged forty-six (46) years old a Farmer of Mbeza village in Kazala ward in Katete District testified as **PW16**.

He told the Court that he was Headman Mbeza and that when the elections were about to begin, they were called at the palace by Chieftainess Kawaza. She instructed the Headmen that they should inform their people in the village to vote for the 1st Respondent. If they didn't vote for the 1st Respondent, she would confiscate their maize fields and that they would no longer be Headmen. That these meetings were held several times, sometimes twice a week until voting day. He also told the Court that the Chieftainess told them that the 1st Respondent would give them mealie meal and on voting day she would give them mealie meal, kapenta and meat.

After this, mealie meal was given to them by the 1st Respondent in a Canter and he got fifteen (15) bags which he gave to the people. He was also given relish to cook for people on the day of voting. After they cooked for the people, one and half bag of mealie meal remained which he kept in his custody. The witness identified the bags of mealie meal and the same were admitted in evidence and marked **P7** and **P8**.

He further stated that the past elections were worrisome because Chieftainess Kawaza was in the forefront in politics. In the past years, the Headmen and Chiefs were never involved in politics but that they were forced to be in politics.

In cross examination by Mr. Phiri, the witness told the Court that when campaigns started up to the time they voted, they went to the palace many times and that the specific message was for them to inform the people to vote for the 1st Respondent. He confirmed that they cooked for people on the day of voting and people ate because he had informed them that they should go and eat after voting. However, there were no Mozambicans amongst the people that ate. The witness also stated that Chinsungwe village was very far from Mbeza village and that it was not near the border with Mozambique.

The witness further told the Court he saw the 1st Respondent once when she went to their area where she held a meeting on 11th August, 2021 a day before the elections. However, he didn't know if she was with the DC Makukula because he didn't know Makukula. During the meetings, the 1st Respondent gave out chitenge materials, t-shirts and money publicly and he was given K100.

PW16 also confirmed that kapenta, cooking oil and mealie meal were taken to Mbeza village but that at the time the items were given out, he was the only one who was present.

In cross examination by Mr. Mwelwa, the witness stated that he did not tell the 2nd Petitioner all that he had told the Court. That he knew that the 2nd Petitioner had petitioned and that he came on his own to testify. Later he stated that he was called by the 2nd Petitioner to come to Court.

He further stated that he gave mealie meal to about three hundred people (300) who went to vote at Kazala. The witness clarified that he didn't give the bags of mealie meal to the people but that they cooked for the people that voted and that the bags of mealie meal were received on 11th August a day before voting.

When he was asked if he was supposed to keep the exhibit before the event happened, his response was that what he brought to Court was the mealie meal that remained after they cooked for the voters. He admitted that they followed what they were told which was to vote for the 1st Respondent and so they may have been corrupted because they were forced. He denied being corrupt and that the ones who were corrupt were Chieftainess Kawaza and the 1st Respondent who instructed them to do what they did.

He also told the Court that there were a lot when they were called to the palace and they used the 1st Respondent's vehicle but at no time was the 1st Respondent in the vehicle with them. He also added that he attended all the meetings at the palace and that the Chieftainess used to call all the Headmen at once. He insisted that the 1st Respondent attended the meeting once and that if anyone who stated that she attended twice lied to Court.

He confirmed the earlier statement that the 1st Respondent never used to be in the vehicle and that anyone who told the Court that she always used to be in the vehicle lied to the Court. The witness also denied that he used to use a bicycle when going to the palace as he always went with the 1st Respondent's vehicle and that his village was near the palace.

There was no re-examination

PW17 was **PAUL NJOBVU** a farmer from Kamphambe ward, Chilingondi village in Katete District

His testimony was that on 29th July, 2021 around 09:00 to 10:00 hours he went to buy talk time from a shop whilst wearing a t-shirt and a cap for the 2nd Petitioner. This was in Kamphambe ward, Chilingondi area. He then saw the 1st Respondent's vehicle which was branded with her stickers approaching. He moved away from the vehicle until it went in the diversion. When the vehicle stopped, he saw that the occupants of the vehicle were the 1st Respondent, Mr. Nyoni, another person who was a bit fat and about twelve (12) other people.

Some people jumped out of the vehicle and asked him to remove his t-shirt and the cap he was wearing but he refused. They beat him up and twisted his right hand. Then removed his clothes and got the cap and made him wear the PF party regalia. When this was happening, the 1st Respondent and Misheck Nyoni were just in the vehicle.

He went back home and slept and the following day he found money to go to Katete Police Station where he gave a statement that he had been beaten by the 1st Respondent's PF cadres. He was given a medical report and asked to go to St. Francis Hospital where he was examined by the doctor who prescribed some drugs.

He identified the prescription that he was given at the hospital and that Dr Tim, who examined him told him the medical report would be taken to the police by the hospital.

In cross examination by Mr. G Phiri, he told the Court that he wore a bluish cap and white t-shirt but that he did not know the reason he was beaten. He stated that in total, there were twelve (12) people including the ones who sat in front of the 1st Respondent's cruiser. However, he did not count how many people sat in front because it was an emergency and that he never heard if the 1st Respondent said anything when the vehicle stopped.

When cross examined by Mr. Mwelwa, he testified that he reported the matter to the police and told them that the people who assaulted him were almost seven (7) and they were with the 1st Respondent and Mr. Misheck Nyoni.

He further stated that he went to the hospital and was examined by Dr. Tim who signed his prescription.

PW17 also stated that he did not know the number of people who sat in front of the vehicle because it was an emergency and he got confused when the people disembarked from the vehicle and started beating him. That he was still a bit confused when he reported the matter to the police on 30th July and when he went to see Dr Tim. However, he was not confused when giving his testimony and that he was much better.

In further cross examination, he admitted that he helped the 2nd Petitioner with work and that he knew Misheck Nyoni but he had never told him that he had seen him in the vehicle when he was being beaten because he last saw him at the incident.

When it was put to the witness that the Police officer told the Court that he knew no one and that was why they had not arrested anyone because he had not given them a link, PW17 stated that it did not matter because the incident had already happened and that he had now healed. He further stated that he told the police that Mr. Nyoni was amongst the people who had beaten him up.

He further testified that he was attended to by Dr Tim, who was not a student but a qualified white doctor. When asked if he knew Agrippa and if he was the one who attended to him, the witness stated that he was attended to by Dr Tim who signed his prescription. When he was referred to page 15 of the 2nd Petitioner's bundle of documents and asked who signed the document, he told

the Court that he was not able to read. He stated that he had not told the Court lies because he was related to the 2nd Petitioner.

In re-examination, he told the Court that he did not know any of the people who beat him.

PW18 was **CHAILANI PHIRI** a farmer of Kapoche, Changuluka in Katete District. He told the Court that he was the Headman in Changuluka village in Kapoche ward.

He testified that as Headman Changuluka he received a letter for a meeting from the 1st Respondent. He therefore informed the people in the village that the meeting would be chaired by the 1st Respondent. When the 1st Respondent went to the village, she first met him as the Headman and gave him five (5) bags of mealie meal, relish and two (2) heads of cabbage and that the 1st Respondent told him that he was supposed to cook for the people so that when it came to voting, people could vote for her.

He cooked for the people and he was told to inform the people that they should vote for the 1st Respondent and if they did not, they would not be given fertilizer. PW18 also told the Court that there was a song to the effect that a letter had been received from Edgar Lungu informing the 2nd Petitioner that she had aged and should go back to the fields. This song was sang by the 1st Respondent at their village where she had gone for a meeting.

The witness identified the bags of mealie meal which they cooked at page 30 of the 2nd Petitioner's bundles of documents.

In cross examination by Mr. Phiri, he told the Court that the meeting was on 8th August, 2021 and about eighty (80) people from his village which was under Chief Kathumba were in attendance. The mealie meal and the cabbage were given before this meeting and they were given to him publicly. He told the people to meet at his home so they could feast and those who loved to eat went there and they ate. PW18 confirmed that the meeting took place and that the 1st Respondent did not give anyone money apart from himself as Headman who was given K50.

Apart from this meeting, he did not attend any other meeting addressed by the 1st Respondent although she had gone round other villages to hold meetings.

He testified that he knew the DC, Mr. Makukula and he saw him when they called them as Headmen at Kakula School where he told them to be attentive and choose people carefully. The Headmen in attendance were from the same area which was Kakula School at Kameta ward. However, the 1st Respondent was not present at that meeting. Mr. Makukula did not tell them who to vote for he just told them to be careful when it came to voting.

In further cross examination by Mr. Mwelwa, he told the Court he did not have the letter that was written by the 1st Respondent and that he never heard her

insult anyone at any of the meetings. He also stated that he did not receive any money on 12th August from the 1st Respondent as he went to vote and did not get any mealie meal while on the voting queue.

There was no re-examination.

PW19 was **PACHIKANI SAKALA** a Farmer from Kapala village, Kasambandola ward and Headman for Kapala village.

He testified that he was home when the Chairman by the name of Reuben visited him and told him that Chieftainess Kawaza wanted to see all the Headmen. The Chairman for the Headmen told them to vote for the 1st Respondent and the other Headman who was present at the Chairman's home was Headman Kazoole.

In cross examination by Mr. Phiri, he told the Court that they were at Chieftainess Kawaza's palace when she told them to vote for the 1st Respondent. However, he could not remember when the meeting was held but that the 1st Respondent was not in attendance.

He further told the Court that during the campaign period the 1st Respondent went to his village and addressed a rally. She also gave three Headmen, K50 each in their houses so that they could vote for her. When she addressed the people, she gave them chitenge materials and t-shirts. Neither the Headmen nor the people were given mealie meal.

The witness further stated that he was with the three Headmen when he went to Chieftainess Kawaza's palace at Kagoro and that there were about sixty other Headmen at the palace. The Headmen used bicycles to get to the palace and that Chieftainess Kawaza warned them that if they did not vote for the 1st Respondent, their village registers would be taken away. That meant that he would lose his Headman ship and his subjects would have nowhere to cultivate.

He stated that when they were told this, they were scared and conveyed this message to their people that they should vote for the 1st Respondent or they would lose their fields. The people voted for the 1st Respondent and she won.

In further cross examination by Mr. Mwelwa, PW19 told the Court that they attended a lot of meetings at the palace and he attended all the meetings. However, the 1st Respondent only attended once and at that meeting, she only told them that she would give them chitenge materials.

Responding to a question on whether he remembered requesting for a bicycle so that he could campaign, PW19 told the Court that the 1st Respondent gave the bicycles to all the Headmen. He admitted that he requested for a bicycle but denied that she refused to give the Headmen the bicycles as the bicycle she was given was at home. He also denied that the reason he was in Court was because she had refused to give him a bicycle.

When he was further asked what mode of transport he used when going to the palace, he stated that he borrowed another bicycle to go the palace and that he used the same bicycle he had borrowed to get back home. He confirmed that he attended all the meetings and that the Headmen used to use bicycles as a mode of transport to and from the palace. He also stated that he informed the 2nd Petitioner that the 1st Respondent had bought bicycles for the Headmen. He added that he didn't see anyone who used a vehicle when going to the palace.

ALIMONY PHIRI, aged forty-five (45) years old, a Farmer of Muthoseni village in Kazala ward in Katete District was **PW20**. He stated that he was the Headman for Muthoseni village which comprised of six hundred (600) people. He was also the Chairperson for sixteen (16) Headmen.

His evidence was that when the campaign period started, all the Headmen surrounding Milanzi were called by the Chieftainess Kawaza. When they went to the palace, she told them that she had called them as her children so that they could vote for the 1st Respondent.

He stated that when he went for this meeting, they used a Canter which belonged to the 1st Respondent. As a Chairperson he made more than ten trips to the palace. The trips were different as they depended on the different positions they had. There was one trip where the Chieftainess called all the

Headmen and the purpose for that meeting was for them to plan how they would campaign.

After this meeting, she would only call the top five that is him as the Chairperson, the Vice Chairperson, the Secretary and the Vice and also the Treasurer.

On all the trips they made to the palace, they used to be told to vote for the 1st Respondent and that if they did not vote for her, their land would be taken away from them. He added that the 1st Respondent attended the meetings seven times.

The witness also stated that there were about three trips for all the Headmen and the 1st Respondent was in attendance at all these meetings. On the first trip, they found her already at the palace. On the second trip she was not present but he requested for her to attend because when the Chieftainess asked how the campaign was going on in the village, he informed the Chieftainess that they were not going on well as the 1st Respondent was never seen in the village.

PW20 stated that the 1st Respondent confirmed everything that the Chieftainess stated at the meeting and she asked to inform their subjects to vote for her.

During cross examination by Mr. Phiri, he told the Court that the 1st Respondent went to Muthoseni village once and addressed a meeting but he could not remember the date when she went to the village but it was between 1st and 2nd August. That the 1st Respondent asked the people to vote for her and assured them that even the Chieftainess had stated that if they didn't vote for her, their land would be repossessed. That the people who attended the meeting received the information with fear. He also told the Court that she gave the people who attended money, T-shirt and chitenge materials. He and Headman Mjoro and Kalinde were given K100 each and the youths were given K300 in public. He added that he knew the DC Makukula but he never saw him campaign for the 1st Respondent.

When cross examined by Mr. Mwelwa, he told the Court that people accepted to vote for the 1st Respondent because of fear and this meant that people were ready to vote for her. Therefore, there was no problem with her candidature. Again, he stated that there was a problem because the Chieftainess forced them to vote for the 1st Respondent. That he couldn't tell the Chieftainess because of fear but that he had narrated before this Court what happened in Milanzi.

He further confirmed that he attended all the meetings that the Chieftainess called for and that the 1st Respondent attended the meetings about seven (7) times; three times when all the village Headmen were in attendance. Asked on the mode of transport they used to use, he stated that they used to use a Canter

which belonged to the 1st Respondent when all the Headmen were present at the meetings. He added that there were times he would leave the bicycle at the 2nd Petitioner's place but the Canter would be full and he would fear getting on the Canter. However, he never saw the 1st Respondent in the vehicle.

He told the Court that amongst the Headmen who told the Court they had seen the 1st Respondent at the meetings, he was the one who told the truth because 1st Respondent attended three meetings.

He further testified that he voted and was given K100 but not mealie meal on the queue for voting by the 1st Respondent. When she gave him this money, she asked him to vote for him. However, he didn't make a report to the police officer or the electoral officers who were at the polling station. He denied that the 1st Respondent was not at Milanzi polling station on 12th August.

In re-examination, he clarified that when they were called by Chieftainess Kawaza, she asked them how the campaign was going and his response was that the campaign was going on well but the problem was that the person they were asked to advertise was not seen.

He also stated that Headmen had different positions. There were trips for all Headmen and then there were some other trips for Headmen with certain positions. For that reason, the Headmen who stated that they had seen the 1st Respondent once and others twice was due to different positions they held.

PW21 was **EMMANUEL PHIRI**, aged thirty-five (35) years old, a driver of Chiphazi village in Lundazi District. He told the Court that he was the driver for the 2nd Petitioner. On 14th August, 2021, the 2nd Petitioner called him so that he could take her to Kafumbwe Totaling Center which was at Kafumbwe boarding school. The 2nd Petitioner asked him to capture what was happening and he used his phone. He recognized the voices of the people who were talking in the video as the 2nd Petitioner, a police officer and an official from the 2nd Respondent. At the end of the video the 2nd Petitioner stated that the results must not be declared.

The witness identified the people in the video but that he didn't pay attention to what was being discussed but there were two officers from the 2nd Respondent. One of them was Mwila Mazunda.

In cross examination by Mr. Musoka, the witness agreed that he did not know what happened to the ballot boxes and that he was not a polling agent at Kagoro 2 polling station. He confirmed that the language in the video was English and because he did not understand English fully, he did not understand certain things that were said in the video.

There was no re-examination.

PW22 was **ANITA MITI** a farmer aged 38 from Kalinde village in Kazala ward in Katete District.

Her testimony was that she was an election monitor at Kafumbwe Totaling Centre for the 2nd Petitioner. On 13th August 2021, ballot boxes which were being brought to Kafumbwe Totaling Centre would be placed on top. On 13th August, around 10:00 hours, seven (7) boxes were brought and they were placed on the floor not together with the others. On 14th August, around 15:00 hours the boxes had not been removed. She therefore decided to go and inform the 2nd Petitioner about the same around 15:00 hours. When the 2nd Petitioner and the witness arrived at the Totaling Center, she spoke to those in authority and had a discussion with them.

In cross examination by Mr. Phiri, she told the Court that she was present when the seven (7) boxes were brought to the Totaling Center and that the two boxes were not opened when they were taken to the Totaling Center.

When cross-examined by Mr. Musoka, she told the Court she was not a polling agent for the 2nd Petitioner at Kagoro 2. She also stated that she did not ask the officials why the boxes were opened and she did not know why the boxes were put up and the ones that arrived where put down.

There was no re-examination.

PW23 was **KALONGA PHIRI**, aged fifty (50) years old a Farmer from Daison village in Mozambique.

His testimony was that they received a letter from the DC Katete that they should come and get NRCs from Lunga.

After they got the NRCs from Mutipha village, they were told to go back and get the voter's cards so that they could help in voting. Asked if he had any proof that he had obtained a Zambian NRC, the witness answered in the affirmative. When he was further asked if he had any documents from Mozambique, he stated that they moved without any documents in Mozambique.

When his lawyer asked again that he had not requested for the document for making movements, but the document that he had before the letter from Zambia was received, he stated that he had the NRC from Mozambique. He referred the Court to page 5 of the 2nd Petitioner's bundle of documents and stated that the document on top indicated his name Calonga Farao John. He stated that in Mozambique, they included the father's name and grandfather's name. Farao was for his father and John was for his grandfather and Kalonga was his name. On the document at the bottom, he stated that it indicated the surname for Zambia which was Phiri. He added that the pictures on all the documents were his.

After they got the voters cards, the DC Mr. Makukula told them to vote for the 1st Respondent, a beautiful young lady and not an elderly person when they were at Lunga. They were also given clothes and that the 1st Respondent was

in attendance. They voted and after that, they passed through Padoko's place and ate nshima.

In cross examination by Mr. Phiri, he told the Court that he obtained his NRC from Zambia in 2020 and obtained his voters' card in 2021. He further stated that there were many Mozambicans who came from Daison and other villages to come and vote in Zambia.

He also stated that he attended the meeting in Lunga and he was given a T-shirt and a K100 by DC Mr. Makukula. When he gave him this money, he told him in the presence of the 1st Respondent that he should vote for her. The 1st Respondent didn't try to stop him.

Regarding the letter, he told the Court he knew it had come from Zambia because Headman Padoko had told them that there was a meeting at Lunga and he read it. The witness added that at the meeting in Lunga, they were threatened that if they did not vote for the 1st Respondent, they would not be able to access educational, medical and agricultural services.

He further agreed that transport was provided by the DC for them to come and vote on 12th August. They were also informed by the DC while at Lunga School, the day before voting that there would be food after voting at the Headman's house.

Cross examined by Mr. Mwelwa, he told the Court that his name was Kalonga Phiri and he was not a Zambian living in Mozambique. When obtaining the NRC, he went inside with Headman Chimsithu where the NRCs were being issued from. However, he told the officers his name and date of birth and not the Headman. The Headman only told the officers that he was from Katete district.

He stated that he knew the people on pages 1, 2, 3, 4, 7,9,10 and 12 of the Petitioner's bundles of documents; that they were together when they came to get NRCs in 2020. He however did not know the persons at pages 8 and 11.

He told the Court that he had remembered that he did not know where the person at page 12 lived as he lived in another village. He stated that others got their NRCs from Chisindikoko, Chimsithu and Muthipa in 2020 but on different dates. He stated that the persons at pages 11 and 12 got the NRCs in 2020. Later he changed and stated that the two got the NRCs on the same date but from different places. When he was told that the person on page 11 got her NRC in 2009 and that he lied to the Court, he stated that he did not lie but that he gave that response because of his reading disability.

When he was referred to the person at page 12, he stated that he could not confirm that the person obtained the NRC in 2006 but that he recalled that he had mentioned that she was from the neighboring village and she got the NRC on different dates but in 2020.

In relation to the person at page 3, he confirmed that he told the Court that the person obtained the NRC in 2020. When he was told by counsel that the person got the NRC in 2015, he stated that he did not know how to read and thought it was 2020. He stated that he did not lie that they came together to get the NRCs but he came with a group to vote.

He further stated that he knew the persons at pages 1, 2, 3, 4, 6,7,12 and that they all lived in other villages. He did not know the person at page 9. He confirmed that he did not lie that the people he confirmed to have known came to obtain NRCs on the same date in 2020. PW23 did not answer when further asked if he lied regarding the persons at page 6 and 9 whom he stated obtained their NRC in 2020 when in fact they obtained the NRCs in 2009.

The witness told the Court that he did not know how to read and had not come to mislead the Court. He admitted that there was a variance in his evidence because they obtained NRCs from different places.

When cross examined by Mr. Musoka, he told the Court that his evidence was at variance because he did not know how to read and his sight was not that good. That at the village where he lived, they were all Mozambicans with only one Zambian. When he was told that the Headman stated that there were twenty Zambian families in Daison village, he told the Court that there were twenty families in Daison village, amongst those families there were Zambians but, in his village, there was only one Zambian and this Zambian came in 2020.

Responding to a question that he had told the Court that he was from Daison village and that he had now changed his evidence, he stated that Daison had its own Headman but there were smaller villages. Their Headman was Headman Daison and his full names were Iback Phiri.

In further cross examination, it was his testimony that he voted in Zambia with other Mozambicans and he knew who those people voted for because they were taught. He stated that after voting they went to eat as they were told not to go back hungry.

The witness told the Court that he knew that obtaining an NRC in Zambia when one was not a Zambian was a crime and he felt bad about it because lying was a bad thing.

In re-examination by Mr. Muyatwa, he told the Court he knew who the Mozambicans voted for because they were taught that when they entered the booth, they should vote for the 1st Respondent.

Regarding the people he came with to get the NRCs in 2020, he stated that the ones he read through obtained the NRCs in 2020 and for the others, he did not know because they got at different times. He also clarified by stating that Headman Daison was the Head but there were other fellow headmen.

In further re-examination by Mr. Bwalya, he told the Court that they decided to come and vote because they were afraid that if they did not vote for the

person they were told to vote for, they would not be able to access services from Zambia.

PW24 was **CEFOLIANO MWALE** aged fifty-seven (57) years old a Farmer of Mundondongwe village, Yowoyani ward, in Katete District.

His testimony was that he was a Chairman for Chadaka Farms which had more than six hundred people (600) people and that he was before Court to testify for the 2nd Petitioner.

He told the Court that being the Chairman, he used to see what was happening. That they used to be called together with the other Headmen to the palace for Chieftainess Kawaza who told them that as leaders, they needed to work together with the ruling PF. They were therefore told to vote for the 1st Respondent.

After they received this message, they were told to inform their subjects that they needed to vote for the 1st Respondent. What happened after this was that during the campaign, the 1st Respondent brought T-shirts and chitenges at the sub-palace. He added that as leaders, they were forced to choose who to vote for against their rights by Chieftainess Kawaza that they needed to work together with the ruling party.

When cross examined by Mr. Phiri, he told the Court he was a Headman for the thirty-six farms in Chadaka which had their own leaders. However, he went to the palace in his capacity as Chairman of the Chadaka Farms.

He stated that at the palace, they were told to vote for the 1st Respondent in her presence but she did not say anything. He further stated that the 1st Respondent never attended any campaign meetings at the farms. He further stated that he knew the DC, Mr. Makukula, but that he never saw him campaign for the 1st Respondent although he heard that he used to.

Cross examined by Mr. Mwelwa, he told the Court that people from Chadaka Farms voted at different places. Others at Kafumbwe High School and others at Chiwoza Primary School. He stated that he voted from Chiwoza and that he was not a UPND member. He also denied being friends with the 2nd Petitioner.

The witness further stated that he attended the meetings at the palace repeatedly maybe five or six times because they used to be called often. He used to go to the palace with a bicycle but on one occasion he went with a bicycle and came back with the 1st Respondent's vehicle.

It was also his testimony that they were forced to vote for the 1st Respondent but that he did not know who had won at Chiwoza because they just informed the people. He further stated that he did not know that the 2nd Petitioner had

won at that polling station because he did not know the end result of the election.

When referred to page 24 of the 2nd Petitioner's bundle of documents, he told the court that Yowoyani was in his area and the 2nd Petitioner got 256 votes while the 1st Respondent got 16 votes. When he was asked why he stated that they were forced but meanwhile the 2nd Petitioner won in that area, he stated that what he knew was that they were told who to vote for but he didn't know what was in people's hearts.

When referred to page 24 of the 2nd Petitioner's bundles of documents, he told the Court that the 2nd Petitioner won at Kafumbwe polling station with 241 votes and the 1st Respondent got 84 votes. He could not agree that based on the results, people voted according to how they wanted and not because they were forced because the results were just from one ward. PW24 further agreed that in their ward, the issue of forcing did not work but it worked in other wards.

When referred to page 9 of the of the 2nd Respondent's bundle of documents, he told the Court that Whiteson Banda won at Dole 1 with 316 votes and the 1st Respondent got 71 votes. The witness told the Court he could not answer for another area whether the formula worked.

There was no re-examination and that marked the close of the 2nd Petitioner's case

3. THE 1ST RESPONDENT'S CASE

The 1st Respondent **MELESIANA PHIRI** opened her case and she testified as **RW1**, aged forty-four years old of 5 Stores Area, Dole ward in Katete District.

She told the Court that she was the Member of Parliament for Milanzi constituency but she had been petitioned by two losing candidates in the 12th August, 2021 General elections.

She started her campaigns in May, 2021 by constituting a team that consisted of herself, her campaign manager Mr. Sam Zulu, the election agent Mr. Jackson Banda. The Milanzi Constituency Chairperson Mr. Misheck Nyoni and she husband Mr. Alex Chibwe.

After constituting this team, she created three command centers. In each command center, there were four wards. Wherever they went during her campaign trail, she moved with her campaign team. In addition, they had three vehicles to assist in operations in the three command centers and also the secretariat which was based in Dole ward.

It was her testimony that in her tradition as a Chewa, she could not undertake a huge undertaking such as political campaigns in a chiefdom without paying

courtesy calls on the traditional leadership. Like any other candidate that participated in Milanzi Parliamentary Election, she paid courtesy calls on two Chiefs based in Milanzi Constituency as well as Chairmen for headmen and the headmen. The courtesy calls were held in the privacy of the respective traditional leaders being visited.

During the campaigns, all political activities in the three command centers and the secretariat were under the supervision of her campaign manager Mr. Sam Zulu. She told the Court that in relation to the evidence by some of the Petitioners witnesses that she had campaigned with the Katete District Commissioner Mr. Joseph Makukula, she stated that the allegation was not true as at no time did she ever move or campaign with Mr. Makukula.

That there were three vehicles that they used on their campaign trail and these were two (2) Canters and a Toyota Hilux which she used to move with her campaign team.

She also stated that there were some witnesses for the two Petitioners who alleged that she used a Canter to ferry bags of DMMU mealie meal. She stated that two Canters were used to ferry campaign materials which consisted of empty 50 kg grain bags, T-shirts, chitenges and caps. They used some of the empty 50kg bags that were branded 'VOTE PF' to pack their campaign materials.

The 1st Respondent denied the allegations in paragraph 6 of the 1st Petitioner's petition and told the Court she did not facilitate for the Mozambicans to come and vote because she was not the Electoral Commission of Zambia.

Concerning the allegations in paragraph 9 of the 1st Petitioner's petition, she stated that she did not campaign with Mr. Makukula and neither did she instruct him to do so. She also stated that in her campaign messages, she never threatened anyone and her message was based on what she was going to do for the people of Milanzi Constituency once elected as Member of Parliament.

She testified that she only had one election agent by the name of Jackson Banda and at no time was she involved in the distribution of mealie meal. In relation to the evidence from two witnesses who produced two bags of mealie meal labeled DMMU in Court, she stated she was not in any government position neither did she receive any DMMU mealie meal from the government.

She further told the Court that she did not threaten anyone regarding Social Cash Transfer and she was not in any government position to talk about Social Cash Transfer.

She testified that she did not work for the government for her to have talked about fertilizer at that time and she had no authority to threaten anybody that they would not get fertilizer if they did not vote for her.

On the allegation that she graded the Dole/Katawa Road, she stated that she was not in government to have been involved in the grading of the road. She also stated that she had no knowledge that polling agents were removed in Katiula polling station.

The 1st Respondent further told the Court that it was not true that she influenced the voting pattern in Milanzi Constituency. She stated that every candidate had their own strongholds where they won and that she was duly elected as Milanzi Member of Parliament as voters voted freely for the candidate of their choice. She added that the election in Milanzi was free and fair and she won convincingly with no undue influence on the voters and that there was no cause for the election to be nullified.

When referred to the allegations in paragraph 4 of the 2nd Petitioner's petition, she reiterated that the election was free and fair and that it was not held in breach of the provisions of the Electoral Process Act as alleged by the 2nd Petitioner.

She further testified that she was not involved in any political violence, neither was her election agent Mr. Jackson Banda. If there was any political violence involving herself or her election agents, she could have been arrested by the police.

The 1st Respondent denied giving anyone any money and mealie meal on the voting queues. She also denied assaulting anyone and forcing them to put on party regalia belonging to the PF.

It was her evidence that Chieftainess Kawaza was not her election agent and did not threaten her subjects that she would grab their land if they did not vote for her.

The 1st Respondent further told the Court that she did not insult anyone, not even as alleged that she insulted the 2nd Petitioner. She stated that she conducted a clean campaign and treated every candidate with respect, especially that the 2nd Petitioner was much older than her.

It was also her testimony that the 2nd Petitioner did not lodge a complaint against her, she was actually shocked that she was copied a complaint letter from her that she had written to the DCMC. She learnt later when she was called by the DCMC to be part of the spectators to listen and resolve the 2nd Petitioner's complaints against the DC. The matter was resolved after the DC apologized to her and she accepted the apology.

She further told the Court that no Induna used her vehicle to distribute campaign material and if they did then she did not know where they got it from.

She testified that all these allegations leveled against her were not true and that the Court would come to learn some of the untruths that had been

presented before this Court before this trial ended. She stated that there was no cause for the election to be nullified because the people of Milanzi voted for the candidate of their choice and she emerged as the winner. That she wanted the Court to believe her testimony which was backed by other witnesses that would testify and also to consider the replies before the court.

When cross examined by Mr. Musoka, she told the Court she did not ferry any Mozambican to come and vote in Zambia and did not facilitate the voting at night. She was a voter in the past election and for one to vote, they needed to have an NRC and a voters' card. She also told the Court she did not have any undue influence on ECZ prior, during or after the elections in Milanzi. She testified that she was not summoned by the DCMC over anything she was alleged to have done.

In cross examination by Mr. Phiri, she told the Court that she became a politician in April 2021. Before then, she used to work for Zambia National Broadcasting Corporation which was a public institution and that she retired in February, 2021. She had however not brought any proof that she retired in February, 2021.

She stated that her election agent was Jackson Banda and that he was not on the list of those who attended the meeting at the DCMC. That she was not sure whether the complaint arose out of what happened in Kafumbwe because she had not looked at the details of the letter. When referred to page 18 of the

bundles of documents, she confirmed that it was a letter dated 17th July, 2021, authored by the 2nd Petitioner. She admitted that she was in Kafumbwe on that date and met the headmen. Referred to page 17, which was the letter authored by the 2nd Petitioner, she told the Court that in paragraph 2, the complaint was against her and Allan Mvula making disparaging comments at Kagoro.

She told the Court that based on that, she was called by the DCMC and the resolution was based on the apology rendered by the accused person, Mr. Makukula which was that there should be no name calling.

In further cross examination, the 1st Respondent told the Court that the election agent did not attend other meetings because he was assigned other duties and that she did not state this in her evidence in chief.

She confirmed that she addressed meetings at Lunga but could not recall how many they were. She also could not recall how many times she paid courtesy calls on the village headmen and chairmen for headmen but she recalled paying four courtesy calls on Chief Kathumba and Chieftainess Kawaza in Milanzi Constituency. She stated that the courtesy calls were held in the privacy of their homes. Her campaign team used to escort her but were not part of the meetings she had with the Chiefs and their Senior Indunas who were above headmen. That the DC did not attend these meetings and she was not present

at some of the meetings he addressed where it was alleged there was character assassination of the 2nd Petitioner.

When asked when she started her campaigns, she stated that she got on the ground and started campaigning after nominations but was not sure of the exact dates. She was also not sure if any area in Milanzi was declared a disaster area in 2021 and as aspiring Member of Parliament, she would have known if the declaration was before she became a politician or being adopted.

When referred to 'P2' she told the Court the bag the gentlemen held contained campaign material. She stated that at page 34 of the 2nd Petitioner's bundle of documents, were bags with campaign material. The witness stated that her Canter was never used to ferry DMMU material. She agreed that only the department of DMMU under the Office of the Vice President had the authority to distribute relief maize.

The 1st Respondent testified she was not at Lunga on 12th August, 2021, or Chimsitu village and could not state whether Mozambicans ate or voted at night. She stated that she heard the witnesses testify that vehicles were used to ferry Mozambicans on voting day but it was not true. She also stated that she was not present when Misheck Nyoni was warning Mr. Njila, PW5 and PW6 about being removed from the FISIP program.

The 1st Respondent also stated that although she lived in Dole ward, she did not know who graded the Dole-Katawa Road and she was not sure whether equipment for grading the road were brought on site during the campaign period. She denied that the equipment was parked at her residence.

She testified that when she made an application to stand as MP, she was interviewed by the Provincial Committee and she confirmed that the substantive Provincial Chairman was Mr. Andrew Lubusha also MP for Chipangali Constituency. However, he had relinquished his position prior to the election because he had also applied to stand as MP for Chipangali under the PF. Mr. Alexander Miti was therefore appointed to act prior, and during elections. She also stated that she did not know that Mr. Andrew Lubusha was the principal for Andrich Construction and that he owned Andrich Bus Services that commuted between Chipata and Lusaka.

When referred to paragraph 12 of the 2nd Petitioner's petition she stated that she had not told the Court whether she was present when the person was being assaulted.

The 1st Respondent also stated that she was not present at the time of issuance of NRCs as she just visited during voter registration having registered from Lusaka to vote from Milanzi. She told the Court that she had no influence on the ECZ but that she heard the witnesses who stated that they were from

Mozambique and some of them stated they were Mozambican and had NRCs from Zambia.

In cross examination by Mr. Bwalya, she admitted that at the beginning of the campaign period, she and her fellow candidates for Milanzi were called for a meeting by the 2nd Respondent, although she attended only one meeting. At this meeting the 2nd Respondent guided on the dos and don'ts of the campaign period and that they were not allowed to make gifts of money, mealie meal, bicycles or any other thing to the electorate. She confirmed that if a candidate gave such gifts, it would constitute an illegal practice.

She stated that DMMU was a government program and she was not an agent of the DMMU. She told the Court that she had no right to distribute any mealie meal in the constituency and she did not distribute any mealie meal.

She further told the Court that she knew the DC Mr. Makukula and that she was aware that he was in the civil service and that civil servants were supposed to be non-partisan.

The witness told the Court that according to the complaint letter, the DC, Mr. Allan Mvula and she were the Respondents in the complaint made against them. She stated that she was a spectator but she was not told why she appeared on the form as a Respondent. She further told the Court that

paragraph 12 of the 2nd Petitioner's petition did not allege that she was the one who assaulted Paul Njovu.

She stated that Milanzi Constituency had twelve wards and that ten out of twelve wards were a significant majority. To her knowledge, she was not sure how many subjects Chieftainess Kawaza had and that she had great influence due to the size of her constituency. She could not confirm that if the Chieftainess had issued a threat on her subjects, the same would have greatly influenced the majority of the electorates.

The 1st Respondent stated that she was further not sure if the Chieftainess had given her support to one candidate. That if that was the case then that would have greatly disadvantaged the other opponents within the constituency in an election despite her controlling ten out of twelve wards.

When cross examined by Mr. Muyatwa, she told the Court that P1, P2 and P3 were taken from her Facebook page managed by her campaign manager and nothing was posted without her knowledge. She stated that Jackson Banda was not in the picture but Misheck Nyoni was there. There was no other member of her campaign team in the picture. She admitted that it was not correct that she moved with her campaign team everywhere she went. She stated that the Court would therefore not know that in the meetings where her campaign team was not present, the DC may have been there.

She confirmed that in her evidence, she told the Court that she paid courtesy calls on the traditional leaders in the privacy of their respective homes. She stated that she had not told the Court that she did not pay any money to the traditional leaders during these courtesy calls or give them any mealie meal to the traditional leaders. She further confirmed that she had not told the Court that during these meetings, she asked for votes. She reiterated that traditional leaders were non-partisan and in order to know what transpired, since she had not told the Court, the Court needed evidence from the traditional leaders that were present at those meetings.

The witness testified that she visited both Chieftainess Kawaza and Chief Kathumba four times and that in one of those visits she was together with the aspiring Patriotic Front Presidential Candidate. She however stated that at some of the meetings, it was not the headmen who were present but the Senior Indunas. She admitted that she had not told the Court that the headmen were not present but she heard what they told the Court that they were summoned.

Referred to P2 and page 34 of the 2nd Petitioner's bundles of documents, she told the Court they used the bags branded 'VOTE PF' to pack campaign materials which did not contain mealie meal. That the bags were sealed but from the photo was a bit obscured.

In re-examination, she told the Court that the letter of retirement from ZNBC was at home because if she had not retired, it would have been illegal for her to participate in the elections

She also stated that Mr. Jackson Banda did not attend the meeting at the DCMC because he was arranging another campaign meeting that she was scheduled to address. That the complaint letter of July, 2021 was against her and Mr. Mvula but it was not addressed to her and Mr. Allan Mvula was not her election agent.

RW2 was **HEZEKIAH NGOMA** a farmer of Katete stores, aged 75 years old.

He told the Court that he was a member of the DCMC representing the PF party. The committee consisted of eleven (11) members which included one member from the prisons and one police officer, another from ZANIS, an independent member, Mr. Mwanza from UPND, Christine Phiri from MMD, Mr. Phiri from Matunga and one from Socialist Party.

The purpose of this committee was to mediate when people had misunderstandings such as destroying other party's campaign materials, insulting and fighting. The committee was constituted in May 2021 and dissolved after elections ended on the 12th August, 2021.

He stated that the committee only received one complaint during the campaign period from the 2nd Petitioner who stood as an independent candidate. She

complained that one of the people from Katete district used demeaning words by referring to her as an old lady. The committee sent out letters informing the concerned when the meeting would be held. However, he asked for permission because he had to attend to something else. When he came back, he found that the issue had been discussed and he was given the minutes to go through.

The witness told the Court that he learnt that the matter had been resolved and the 2nd Petitioner, who was the complainant, apologized and when she apologized, they were told they were all one family and there should not be any misunderstanding over one issue. He stated that Mr. Makukula was the one the 2nd Petitioner complained against. He had forgotten the other people the 2nd Petitioner had complained against as time had passed.

During cross examination by Mr. Phiri, he told the Court he had been a member of the Patriotic Front for a long time since 2001 and had served in different positions in the party. However, he held no position currently but he had been constituency Chairperson and Treasurer previously.

He testified that he had not read the letters written by the 2nd Petitioner on 20th July but he was informed about them by the committee. He stated that it was possible that amongst those complained of, the 1st Respondent was also one of them.

When referred to page 20 of the 2nd Petitioner's bundle of documents, he told the Court that it could be that the complaint was against the DC, Allan Mvula and the 1st Respondent. The nature of the complaint was character assassination of the 2nd Petitioner's that she was an old bone. Based on the document, the Respondents were told to stop name calling. He also told the Court that it appeared that the DC was the one who apologized.

The witness confirmed knowing the DC but that he did not know if he was campaigning for the 1st Respondent. That he could not confirm whether there was name calling at the campaign meetings and whether the 1st Respondent and the DC shared the podium because he was not there. He denied campaigning for the Patriotic Front during the elections.

Cross examined by Mr. Muyatwa; he told the Court he knew what the Electoral Process (Code of Conduct) Enforcement Regulations of 2016 provided. He stated that he was aware that it was not all conflicts that were supposed to be referred to the DCMC and that he did not know which offences could be referred to the DCMC.

Cross examined by Mr. Bwalya; he told the Court he only saw one letter of complaint written to the DCMC. He confirmed that according to the letter at page 17, the complainant sought redress against the 1st Respondent and Allan Mvula.

He further stated that at page 18 was the first letter written on 17th July, 2020 and he did not know when the complaints were heard by the DCMC. When referred to pages 20 and 21 he confirmed that the complaint was heard on 10th August, 2021, after two (2) weeks had lapsed from the date the complaint was lodged when complaints were supposed to be resolved within 24 hours.

He told the Court that going by the form at page 21, the person who had apologized was Mr. Makukula.

There was no re-examination.

RW3 was **GUNDANI MWALE** a 71 years old farmer of Changuluka village from Chief Kathumba in Katete district.

He testified that he was headman Changuluka and he had the Village Register for Changuluka village which contained names of the people in the village. The same had been signed by Chief Kathumba. The first name in the Register was for Daniel Phiri. The Register was admitted in evidence and marked **R1**.

He further told the Court that Chief Katumba found out that he had come to Court. Now, according to the Chewa custom, he thought he had surpassed him because according to the rules, when one needed to go to Lusaka, that person required to get permission from Chief Katumba. The Chief was therefore concerned because he had heard that Headman Changuluka had appeared before Court and told the Court that the 1st Respondent had gone to his village

and given out mealie meal so that they could host a feast in the village. He denied that the 1st Respondent had gone to his village and distributed mealie meal.

In cross examination by Mr. Musoka, he told the Court that he was Gundani Mwale and the village name was Changuluka. The Senior Headman Changuluka was Daniel Phiri who was very old that he was called Changuluka so that he could represent him and oversee the village.

When he was told that someone came and testified that he was Headman Changuluka, he stated that Chailani Phiri, PW18, was not the Headman because he was the Headman and that he had been a Headman for eighteen years. He also denied that the 1st Respondent had distributed mealie meal and cabbage in their village as he had not seen those things. He reiterated and stated that Chailani Phiri was not the Headman as he was the Headman under Chief Katumba and that even Chieftainess Kawaza knew that he was the Headman. The witness further denied that he was threatened by the 1st Respondent that if they didn't vote for her, then the village registers and fields would be taken away from them.

Cross examined by Mr. Phiri, he told the Court that he was Headman Changuluka and Daniel Phiri, who was also in Court was Headman. However, Daniel Phiri was not related to Chailani Phiri. He admitted that Chailani Phiri, appeared as the sixth person in the register but he was not Headman. He was

just a child born into the family of Changuluka as he was the son to the young brother to Mr. Daniel Phiri. He stated that in Chewa tradition, a village could not have two Headmen.

He also stated that Mr. Daniel Phiri had not appointed Chailani Phiri due to his old age because that was not how it was done according to the Chewa custom. A nephew could not take over the throne. He also denied that Mr. Daniel Phiri had relinquished his position and appointed his nephew Chailani Phiri because that was a crooked way of doing things. When asked if he had brought any evidence that he had been appointed as Headman, he stated that the evidence was in the village register that he had produced. Even though his name was not indicated in the village register as such, his name was on number nine (9) and that Chieftainess Kawaza would confirm that he was the Headman, because he submitted to both Chief Kathumba and Chieftainess Kawaza. He admitted that Chailani used to be the leader of the Nyau dancers but he was removed by the Ng'oma group of Nyau dancers and replaced by Chatseka Banda.

The witness further told the Court that the 1st Respondent never went to Changuluka village but to Kakula School and also denied that the 1st Respondent took bags of mealie meal and cabbage. If that had been done, he would have been the one to have received them. However, he stated that he did

not receive any gift from the 1st Respondent because she was poor and could not afford to give anyone anything.

Cross examined by Mr. Muyatwa, he told the court that he knew the PF Councilor from Kapoche, Elesani Mwale and that he had seen him the previous day when he received a call that he was wanted by the Chief Kathumba.

There was no re-examination.

RW4 was **LAZAROUS PHIRI** aged 51 years old, a Farmer of Chikonza, Chief Kawaza in Katete who was a Headman as well as a Senior Induna for Chieftainess Kawaza.

He told the Court that he had been sent by Chieftainess Kawaza to come to Court because she had heard that some Headmen had testified that they had been threatened by the Chieftainess Kawaza that whoever did not vote for the 1st Respondent would be removed or have their lands taken away.

To show proof that he had been sent by the Chieftainess, he referred the Court to an introductory letter which was admitted in evidence and marked **R2**.

He stated that according to their tradition, someone could not see the Chieftainess in the absence of an Induna. In relation to the allegations that the Chieftainess had threatened the Headmen, he told the Court that the 2nd Petitioner visited the Chieftainess's palace and she met with him then and

explained that she wanted to see the Chieftainess. The 2nd Petitioner met the Chieftainess and in their discussion she told the Chieftainess that she wanted to bring development by sinking a borehole. She also asked for land for Queen Elizabeth II Foundation to help women and the Chieftainess agreed and told her to go ahead and find a place to sink a borehole and the borehole was sunk. When the borehole was sunk, he was called together with other Headmen and the 2nd Petitioner told the people that she had provided them with water but her main intention was that she wanted to contest and wanted their support.

Concerning land, when the Chieftainess realized that the 2nd Petitioner was contesting, she told him as Senior Induna in charge of land allocation not to give her land.

He further stated that when there was a request to see the Chieftainess, the Chieftainess advised those people to first see their Headmen and that she never allowed political contestants at the palace.

Responding to the allegation in paragraph 4 of the 2nd Petitioner's petition that the Chieftainess had threatened the subjects, he told the Court that there was no time when the Chieftainess got out of the palace and issued threats to her subjects concerning politics. According to their tradition, the Chief, Indunas and Headmen were not supposed to participate in politics because whoever was contesting in politics was considered her subject. He was the one who oversaw the Indunas welfare and activities every time.

On the allegation that the Indunas were distributing campaign material, he told the Court the Indunas were not involved in politics.

Concerning the testimony of PW16, Alfred Mbewe, Headman Mbeza of Kazala ward, he told the Court that he knew all the Headmen under Chieftainess Kawaza and the headman Mbeza. He stated that the village of Mbeza ceased to exist in 1978 that was the time when the late Chief Kawaza put up a school called Kazala. Therefore, village Mbeza never existed but there was just a school with only about five houses. According to the tradition of the village register, a village comprised of at least twenty-five (25) households. Therefore, there was no headman as any headman would have a village register which confirmed that he was indeed a headman.

In relation to the testimony of one Headman who alleged that the Chieftainess had asked him how the campaigns for the 1st Respondent were going, RW4 told the Court that there was no time when Chieftainess Kawaza mentioned anything about her subject's being involved in politics. They had about eight hundred and sixty-eight (868) Headmen in Chieftainess Kawaza's Chieftaindom. He also stated that there was never a time when a meeting was held at the palace where the 1st Respondent was in attendance as no one was allowed to hold political meetings at the palace.

He also told the Court that he knew the village Chisungwi but was not familiar with the Headman, unless he saw him. However, when he was asked in relation

to what this witness had told the Court that the Chieftainess had threatened them, he stated that there was no time that the Chieftainess left the palace without the Indunas and there was no time when she held a political meeting where she encouraged the headmen on who to vote for amongst the candidates who contested.

He added that according to their tradition, for one to be recognized as Headmen, they needed to have a village register and also to be granted permission to testify before Court and also confirmed by the Chieftainess. In this regard, he testified that Headman Chisungwi was not known to them.

In cross examination by Mr. Phiri, he told the Court that he worked at the Chieftainess Kawaza's palace but lived in Chikonza village where he was Headman. That the lawyer for the 1st Respondent was the one who told him that people testified that the Chieftainess had threatened her subjects.

He confirmed that everything he had told the Court was according to their Chewa tradition and that a village needed to have at least twenty-five (25) members. Regarding Mbeza village he admitted there were only five houses and the school that was there was a government school. He confirmed that the school existed where there was no village.

Concerning his evidence that the 2nd Petitioner sunk a borehole at Kagoro, he told the Court that the same was sunk around June or July 2021 and not

December, 2020. He would however not know that there were receipts which showed the dates when the company sunk the borehole.

He also admitted that the 1st Respondent had asked for land but was not allocated the said land. That it was legal to ask for land at the right time but she asked at the wrong time when she wanted to contest.

He admitted that the Headmen were not called on several times to the meeting by the Chieftainess at the palace. Therefore, the six (6) Headmen who included Kelepeno Banda, Alfred Mbewe, Chailani Phiri, Pachikani Sakala, Alimony Phiri and Mwale Cefeliano who testified before Court that they were called to the palace for a meeting lied to the Court. He added that there were no Headmen with those names in Kazala as they were known by the name of the village.

RW4 admitted that he was not always with Chieftainess Kawaza and that the 1st Respondent visited the palace several times just like any other person. However, when the 1st Respondent visited the palace, the Headmen were never present. He also stated that Chief Madzimawc visited the palace and that there was a big meeting that happened in Kapoche but the Chieftainess was not in attendance only the Headmen. However, the meeting which was allowed to proceed by Chieftainess Kawaza was a developmental meeting and not a political one.

When cross examined by Mr. Muyatwa, he told the Court that the 2nd Petitioner went to see the Chieftainess over the borehole and land but it was not in July, 2020. He stated that the borehole and foundation for women were not charitable projects.

On the issue of the Headmen coming to Court without village registers, he told the Court that he was Headman Chikonza and he had not brought the village register but he came with an introductory letter from the Chieftainess which showed that he was Headman. He admitted that the introductory letter he came with did not however refer to him as the Headman.

He also confirmed that the 1st Respondent visited the palace and one of those times she went there with the PF President. He however denied that during some of the meetings, the Headmen were told to stand outside a tree and so he knew what was discussed when the PF President visited the palace.

The witness also denied that he had told the Court that he was not present at the meetings at the palace because he was unwell. He told the Court he was never sick. He however confirmed that there were a lot of meetings which were held at the palace but they were not political. He denied that all the Headmen attended the meetings at the palace because there were about eight hundred (800) Headmen and so only the top five Headmen met every month. He stated that if the Chieftainess had any instructions to issue, she would not issue them at these meeting.

When cross examined by Mr. Bwalya he stated that he had come to Court to represent Chieftainess Kawaza according to the letter and he was aware of the contents of the letter. Based on the letter, there were things he was permitted to tell the Court as he had a meeting with the Chieftainess before he came. However, he denied that he was told what to tell the Court.

He stated that Chikonza village was in Kagoro, Kapangulula ward and the palace was also in Kagoro, Kapangulula ward. He admitted that the 2nd Petitioner sunk a borehole and he was there at the launch of the borehole as he was invited although he could not remember that the date indicated on the placard was 9th April, 2021.

He also told the Court that traditional leaders were not involved in politics. That he knew the Paramount Chief Gawa Undi but he could not answer any questions relating to the Chieftaincy because he was too junior. He only worked with Chieftainess Kawaza and could not comment on Gawa Undi.

In further cross examination, he told the Court he was not with the Chieftainess all the time and he admitted that the 1st Respondent visited the palace several times during campaign. He stated that he used to be present when she visited but there was no time when they held political meetings. The other Headmen were not present when the 1st Respondent visited.

There was no re-examination.

RW5 was **SAM ZULU**, aged 46 years old of 1843 plot Ibex Hill Lusaka, and Manager for Welfare Zambia Limited.

He told the Court he was testifying on the happenings of the just ended elections in Milanzi Constituency as he was the campaign manager for the 1st Respondent, for Milanzi constituency.

Therefore, he was the one who developed programs, strategies and supervised the implementation of the same in the entire constituency. They segmented the constituency in three parts and established three command centers. Each command center had four wards under it. The fourth command center was the Secretariat where the candidate and her campaign team were usually based. He assigned coordinators for each of the three command centers and gave them specific terms of reference namely to organize political or campaign meetings, to mobilize for the candidate and manage election results at the end of the campaign period.

Furthermore, they established a Parallel Voter Tabulation (PVT) in each ward. He also managed the candidate in all aspects as he monitored her diary, programmed her campaign activities, assigned speakers for the campaign meetings and invited other speakers to assist them in the campaign. The campaign team was comprised of the 1st Respondent, himself, the Chairman, election agent Jackson Banda, Finance Manager, Mr. Alex Chibwe, the husband to the 1st Respondent.

The witness stated that they had two methods of campaigning. The obvious campaign meetings called rallies and door- to- door campaign meetings. During the campaign meetings, three main activities were undertaken, the first one was that before they started the campaign meeting, a courtesy call was paid to the traditional leadership which courtesy call was attended by the candidate and the traditional leadership in any home of any village headman who was closest to the campaign meeting. The two chiefs they paid courtesy calls on where Chieftainess Kawaza and Chief Kathumba.

The second activity was distribution of campaign material that included t-shirts, wrappers and caps. He was in charge of that activity. The third activity were the speeches to address the people. Three people were assigned to speak at any meeting attended by the candidate. The main speaker was always Mr. Misheck Nyoni who introduced the 2nd speaker who was the area councilor and the last speaker was the parliamentary candidate who was given to address two issues; her introduction, and secondly her request for a vote. The meeting would be closed with a word of prayer. All that needed to happen within thirty minutes. That was a picture of their day-to-day activities.

He told the Court that their campaign had a challenge of transport as they only had a Toyota Hilux assigned for use by the candidate as well as utility vehicle for the secretariat. Two Canters were dedicated to take care of the activities in the other zones.

He further told the Court that together with Mr. Nyoni and Mr. Banda they managed election results from the Totaling Center and they oversaw the results as they were sent to them from the whole constituency.

He stated that they also received one letter during the campaign and attended one meeting which was convened by the DCMC on a complaint from an independent candidate, the 2nd Petitioner.

He told the Court that their campaigns were clean and free from any manner of malpractice, particularly bribery as highlighted by the Petitioners. That in all their campaign meetings, they had a number of people whom they knew to be members from other camps for other candidates who were filming and taking pictures of their meetings. He would therefore be glad to see any picture or video which showed the acts of bribery from their camp.

On the allegation that they registered Mozambicans on the voter register, he told the Court that they started the campaigns in May 2021, during which period there was no issuance of any voters' cards and the 1st Respondent was nowhere near the issuance of voters' cards. He found the allegation to be unfair on their camp.

He testified that on the poll day they had a serious argument with his candidate who wanted to have a feel of what was going on around the constituency. He strongly instructed her to be home on that particular day and so he only picked

her around 10:00 hours and they voted from Chimbundire School. He took her back home immediately after as he had to drive the Constituency Chairman to go and vote.

Secondly, on that day, one of their Canters was down as the pump got damaged and the only other transport, they had was one Canter which they used to deliver breakfast and lunch for their polling agents across the constituency.

Thirdly, he told the Court that they had no programme to transport anyone to go and vote.

He told the Court that at no time did they ever move with the District Commissioner for campaign or any other program. The only time he saw his candidate with the DC was when they found him on 10th August at the Council Motel where the DCMC had invited them for a meeting.

Lastly that his candidate had no control or knowledge on the movements and work of the DC. He was never a part of their team.

He further told the Court that as the person who was in charge of distribution of campaign material, they never at any time had rice, cooking oil for distribution to entice anyone to vote. He further had no knowledge of the allegation regarding fertilizer.

It was his testimony that he saw the works that were happening on the Dole/Katawa Road but they paid no attention to those works because the rumor that was strongly going round the constituency was that it was an initiative of the former MP who strongly used it as part of his campaign message. He instructed his campaign team to totally distance themselves from those works.

He further testified that they never received any such reports as alleged in paragraph 14 of 1st Petitioner's petition as the management of any polling station was in the hands of the 2nd Respondent. He added that any complaints referred to in paragraph 14 had to be registered with the presiding officer or had to inform the candidate who would be expected to register the complaint with the relevant authority on management of the election.

The witness also stated that if there was any complaint during the campaign, the same was to be registered by the DCMC who were mandated to handle such and find an amicable solution. If the aggrieved party did not agree with the resolution of the DCMC they could register an appeal with the National Conflict Management Committee in writing whose mandate was to find an amicable solution and bring parties together.

In relation to the allegations in paragraph 15, he stated that the same were not in tandem with the election results because they clearly showed that people voted for the candidate of their choice. Their candidate got over 6000 votes and

the second got over 4000 votes. This showed that people voted for who they wanted otherwise no other candidate would have obtained over ten (10) votes if people were forced to vote otherwise. He referred to the number 10 because at least each candidate had a family in Milanzi and his or her campaigners.

When referred to paragraph 16 of the 1st Petitioner's petition, he told the Court that there was no complaint raised against their camp that was registered with the DCMC over any such illegalities. That in this particular parliamentary election, they had two candidates who participated in previous elections not once, twice but maybe three times. That to him this meant they were experienced. His candidate was contesting for the first time and that meant that the other candidates who participated in elections before understood very well what needed to be done in an event of any election malpractice they saw or came to learn of. He added that any election malpractice perpetrated by their camp should have been registered with relevant authorities especially that all their activities were strictly followed and monitored by other candidates.

When the witness was referred to the 2nd Petitioner's petition, paragraph 4, he told the Court that it was not true that the elections were not free and fair. In relation to paragraph 6, he stated that they never engaged themselves in any acts of violence and he never received any complaint or call out from the police that any member of their team had engaged themselves in any violent activities.

He added that he never saw any poster of the 2nd Petitioner in the constituency during campaign.

On the allegation that they assaulted Paul Njovu and forced him to wear the 1st Respondent's regalia, he told the Court they never assaulted anyone during the campaign or forced anyone to wear their party regalia.

When referred to paragraph 10, he told the Court that nothing of that sort happened on polling day as the candidate was home the whole day apart from the time, he took her to vote at Chimbundire School and she never carried any money or mealie meal. Further, they never distributed money, mealie or oil apart from the three things he mentioned; chitenges, t-shirts and caps.

Regarding the allegations in paragraph 13 of the 2nd Petitioner's petition, he stated that he never heard of any threats which came from the Chieftainess or his candidate at any time. He also never saw the DC campaign with his candidate during that period. Neither did he hear the 1st Respondent issue insults to any other candidate during the campaign period.

During cross examination by Mr. Musoka, he told the Court that he was at the Totaling Center when results were being announced on poll day. Regarding Anita Miti's testimony that there were open ballot boxes, he told the Court there was an issue with four (4) ballot boxes that had come from Dole which took time to be cleared and be put together with other ballot boxes that were cleared.

The Returning Officer brought to their attention one issue that the presiding officer from Dole polling station brought four (4) boxes of which two (2) were completely sealed and two were opened. One of the two which were opened had the 2nd Respondent's material like aprons and trays. She explained to all the agents present that the presiding officer from Dole polling station made a mistake of packing ballot papers in two ballot boxes because he did not have anywhere to pack other election materials that they had. At that point, they demanded to see the presiding officer from Dole ward who unfortunately was not present at the time.

They agreed as stakeholders to leave the ballot boxes as they were until the responsible presiding officer returned. After that, they left the four (4) ballot boxes at the center of the hall and continued with other activities. He particularly took interest and called his team members who were managing their PVT and asked for the figures they got from Dole polling station. He was told the figures and he kept the record and asked the Returning Officer if they had verified the results from Dole polling station. At that point, after they finished checking, they resolved with his team members to remain calm and wait for the return of the respective officer. When that officer came, the Returning Officer informed them with all stakeholders who were present and asked the Presiding Officer to explain what happened. He indicated that he had nowhere to pack the 2nd Respondent's materials and decided to pack them in the two opened ballot boxes. He admitted that what he did was wrong and

requested for forgiveness as he was not feeling well when he started working in the poll day and continued to feel the same through-out the night. Hence, when he reached the Totaling Center, he excused himself and went home to rest before he finally handed over the boxes.

As stakeholders, they asked whether he had submitted his papers and whether he had them verified. At that point, they allowed him to continue with the process with the Returning Officer to verify the forms. When they had sight of the results from that station, he confirmed that the results on the form and those on their PVT had no disparities and so they agreed with their team that there was no issue as the mistake was seemingly negligible to them.

Before they finalized with the Returning Officer, the 2nd Petitioner walked into the hall and found the boxes that were down. She queried the Returning Officer who explained to her why they were still not cleared. The Returning Officer called all agents for them to find a way forward on the boxes. The 2nd Petitioner did not compromise and indicated that she would not be part of any decision to be made and walked out of the hall. At that point they had only remained with about two polling stations to be cleared before the announcement to declare the winner could be made.

The stakeholders that were present were members of PF, the police, members from Independent Candidate Tylad Lungu, Rosemary Banda and members

from two other NGOs. All the stakeholders agreed to proceed in the fashion they did.

In cross examination by Mr. Phiri, he told the Court he was not on leave between May and August during campaign period. He attended one meeting that the 1st Respondent addressed at Lunga and that the DC was not present at that meeting. He told the Court that he was present when the 1st Respondent had a meeting at Chieftainess Kawaza's palace but did not attend the meeting. That the 1st Respondent attended about four meetings. He stated that he was not present at the meeting where Allan Mvula sang a song about an old bone at which the DC and the 1st Respondent were present.

He confirmed that the actions of Allan Mvula, the 1st Respondent and the DC led to a meeting convened because of the complaint by the 2nd Petitioner where she complained that she had been disparaged. The resolution of that meeting was that name calling of the 2nd Petitioner should come to an end. He told the Court that he did not know the DC very well and he could not affirm that he was jointly accused of disparaging the 2nd Petitioner.

When he was referred to the 2nd Petitioner's bundle of documents, he told the Court that the complaint was against the three parties, Allan Mvula, the DC and the 1st Respondent and that the DC apologized.

Regarding the issue of registration of voters, he confirmed that the 1st Respondent only became a candidate in May, 2021, but Mr. Makukula was already DC but he could not confirm that Mr. Makukula was DC at the time of registration of voters.

He also stated that he did not dispute the results because they tallied with their PVT but he had not brought that PVT before Court. He denied that what they did was verification but confirmation and handing over of results to Returning Officer by presiding officers.

He told the Court he would not know whether all stake holders were present when confirming the results. He agreed that the 1st Petitioner was not present and that he did not know whether the incident that occurred was not noted in writing. He further stated that he would not know that if the incident was to be noted and that if it had to be noted, then it would be the Returning Officer to note it.

When cross examined by Mr. Muyatwa, he told the Court that there were four (4) ballot boxes from Dole and two of them were opened. He confirmed that all stake holders present were informed.

He also stated that he was not present when the 2nd Petitioner testified because he had walked out when she started giving her testimony. He stated that he was present at Kafumbwe the whole time and no ballot boxes were opened.

The witness confirmed that the 2nd Respondent had not engaged them as a team to open the sealed ballot boxes and that he never consented to the opening of any ballot boxes and that he was not told that there were other documents.

He further confirmed that there was no other party material they had distributed apart from caps, t-shirts and t-shirts as they did not distribute bags of grain branded 'VOTE PF'. The witness told the Court that he would not know whether his testimony and that of the 1st Respondent were contradictory in this regard.

RW5 confirmed that his campaign team comprised of several individuals who worked under the instruction of the 1st Respondent. She approved what was done by the five members of her campaign team on her behalf. He agreed that she also had other people who helped her with the campaign apart from her election agent.

He further testified that he spoke of four (4) command centers and one of those centers was at the 1st Respondent's home. He denied that the graders that were grading the Dole-Katawa Road were parked at her residence.

He confirmed that there was a physical copy of the diary and campaign plan that he kept for the 1st Respondent. However, he did not bring them before the Court. He admitted that without those records the Court would never know

who spoke at those meetings and if the program existed. He stated that no one stopped him from bringing those documents to Court.

Cross examined by Mr. Bwalya, RW5 told the Court that he had an argument with the Respondent on voting day and that he was the one who took the 1st Respondent to go and vote at Chimbundire. He was with the 1st Respondent when he picked her to go and vote but not after. That she stayed at home but he was not physically with her.

He further told the Court that he was the campaign manager and therefore had an interest in how this issue was resolved.

He testified that on 29th July, he was on his way to Katete from Lusaka and confirmed that he was not in Kamphambe ward on that date. He stated that he knew where the 1st Respondent was on that date. He was however, not aware that Paul Njovu was assaulted on that date by alleged PF cadres in the company of the 1st Respondent and he did not know what happened to Paul Njovu.

He further confirmed being present at the palace when his candidate was meeting the Chieftainess but not present in the meeting. He told the Court that he was aware of the allegations of threats concerning land grabbing by the Chieftainess and that the 1st Respondent was present in some of those

meetings. Having not been present in the meetings, he would not be aware of what was talked about.

In re-examination by Mr. Mwelwa, RW5 told the Court that on 22nd July, 2021, he left for Lusaka with the candidate in search of campaign material and on 29th July, the 1st Respondent was with him in the same vehicle coming from Lusaka.

That marked the close of the 1st Respondent's case.

4. THE 2ND RESPONDENT'S CASE

The 2nd Respondent opened its case and **MWILA MAZUNDA** testified as **RW6**, aged 39 years old, a Social Economic Planner at Katete Town Council and engaged as Returning Officer for Milanzi Constituency for this purpose.

Her evidence was that she was engaged by the 2nd Respondent in the process which started with voter registration. After voter registration, there was voter verification then later nominations which were followed by the campaign period and the general elections on 12th August, 2021. After that they held verification of Ballot Paper Account. This whole process went on well.

Referred to paragraph 3 of the 2nd Respondent's answer, she told the Court that the paragraph contained the seven candidates that contested in the

Milanzi constituency. The paragraph also showed the person that was declared the winner and the person who got the least votes.

When referred to paragraph 3 of the 1st Petitioner's petition on the allegations that Mozambicans were allowed to vote, she told the Court that she could only speak for the 2nd Respondent where she was engaged as the allegation referred to the Patriotic Front government.

Her testimony was that the mandate of the 2nd Respondent was only to register voters. The people eligible to register voters and the people who were eligible were Zambian nationals who should have produced green NRC's. It was not therefore their mandate to issue NRC's.

She told the Court that the election process entailed that the poll started at 06:00 hours in the morning and ended at 18:00 hours in the evening. The practice and procedure was that if there were still people in the queue at 18:00 hours when the polling station was officially closed, those would be allowed to vote until the last person voted. What that meant was that if there were two hundred (200) people in the queue, they would have to go on until after 20:00 hours. The only persons allowed to vote were the ones with a voters' card and a green NRC. She could not therefore confirm that foreigners were allowed to vote even in the night.

In relation to the allegation in paragraph 6 that there was a delay in closing the voting, she stated that what had been referred to as having taken two days was the delay in totaling at the Totaling Center. That at each polling station, once they finished counting and recorded in the document and announced, the presiding officer would take the results to the Totaling Center where verification of results that were recorded and announced from their polling stations would be done. Once checked and verified, they would collect them from all the polling stations and announced them to the stake holders present at the Totaling Center.

RW6 stated that Milanzi constituency had sixty-four (64) polling stations and the process of taking the results to the Totaling Center to be verified was what took two days.

When referred to paragraph 2 of the 2nd Petitioner's petition, she stated that the incident happened at Kafumbwe Totaling Center. They received ballot boxes from Dole 1 polling station. The presiding officer brought in two (2) sealed ballot boxes and two (2) were not sealed. This did not mean that they were tampered with at the Totaling Center. They arrived at the Totaling Center the same way they left the polling station. The correct procedure was that each ballot box had to be sealed at the polling station in the presence of the stake holders and what was to be in each box was ballot papers for each election. The used and unused ballot papers, rejected, spoilt and counter foiled were

supposed to be in one ballot box and sealed. What the Presiding Officer did was that he sealed all ballot papers for the four elections in one box and used the other two boxes to carry material like aprons and lamps that they were using.

The verification of the Ballot Paper Account that she mentioned was carried out after the elections that was where all the sealed boxes were to be unsealed in the presence of stake holders. Since the ballot boxes were not sealed, they engaged them as to why the boxes were not sealed. This happened on 14th August, 2021. They took time because as much as the Presiding Officer arrived on 13th August, he had left the ballot boxes at the Totaling Center and went away because he was unwell. Upon his return on 14th August, they engaged stake holders on Dole 1 polling station.

When referred to Gen 20 form of Kagoro 2, at paragraph 19, she told the Court that she remembered that the 2nd Petitioner went to the Totaling Center and she was with the District Electoral Officer (DEO) and requested a copy of the Gen 20. She was called through and she made a copy of the same which she presented to the Petitioner. Upon presenting it to her, the Petitioner brought out a copy that she had which had figures to her name reading 345. The 2nd Petitioner queried why the form she had had a lower figure than what she had. She closely looked at it and referred her to the vote in words which even on her

copy read 'thirty-four' and she told her the document seemed to have been altered because the figure she had, tallied with her number in words.

The witness stated that the form was such that the candidate with the highest votes was listed first till the one with the lowest votes. If the Petitioner's votes were indeed 345, her name should have been on top of the list and written in descending order.

She further told the Court that the 2nd Respondent did not carry out any voter registration in 2021, as registration was from 15th November, 2020 to 20th December, 2020. In March, 2021, they had verification of the voter register up to April 7th. During this time, no new registrations were carried out, they only had replacement of cards for those who had lost them or were damaged and in cases where information differed from what was in the register and the NRC. Only those who had a green NRC and a voters' card were attended to during the voter verification.

When referred to the voter's register which had been requested for by the 2nd Petitioner, she stated they used the voters register for each polling station which she identified as being for Chisindikio Roman Catholic Church I, Lunga School I, Lunga school II. There being no objection these were admitted in evidence and 'R3', 'R4' and 'R5' respectively.

During cross examination by Mr. Mwelwa, she told the Court it was not the 2nd Respondent's duty to issue NRCs and that was the duty of Ministry of Home Affairs.

Responding to a question on how they verified the results brought to the Totaling Center, she told the Court that there were four (4) documents prepared at the polling station by the presiding officer when they finished the counting of votes.

The first one was a statement of rejected ballots which indicated the total number of rejected votes and in what category they were rejected. The reasons included that the ballot paper was not marked at all in the ballot box. The second was where it was marked for more than one candidate or uncertainty as to which candidate was selected.

The second was Gen20 which was produced by the presiding officer at the Totaling Center. They looked at the correctness of the figures and the totals. It had total votes cast which included number of rejected ballots. The rejected ballots on Gen 20 had to be the same on the rejected ballot account. The total number of votes cast on the Gen 20 also had to conform to the number of ballot papers used as indicated on the Ballot Paper Account Form. This document indicated issued ballot papers, used ballot papers, the spoilt ballot papers and the unused ballot papers for that election. When all the four documents were

put together and the figures were in agreement, then it could be said the results were verified from the polling station.

She confirmed that they did verification for Dole 1 polling station. The four ballot boxes in contention came from Dole 1. As Returning Officer she verified the results and confirmed they were correct.

It was her testimony that there was a separate verification done after results announcement where they opened the ballot boxes in the presence of stake holders and physically counted the ballot papers to confirm what was on the document submitted. She stated that it was not allowed to open the ballot boxes at the Totaling Center before verification and announcement. She stated that they did not open the ballot boxes for Dole 1 at the Totaling Center.

She further told the Court that there was a stage in the electoral process called verification of Ballot Paper Account Form that was done fourteen (14) days after day of elections. Stake holders were called to let them know when that process would be carried out. These processes were done. The stake holders were invited and the 2nd Petitioner was also invited and she showed up and they did not find any discrepancies for Dole 1.

She further told the Court that the 2nd Petitioner was not present when verification of the four ballot boxes was done. That she went to the Totaling Center but did not stay through-out the whole verification process. She stated

that the mistake was in using two ballot boxes instead of four. She confirmed however, that despite this mistake, there was no malpractice as per her verification report.

In further cross examination, she told the Court that the voters' registration was not conducted from March to April, 2021 and anyone who told the Court that voter verification was done from March to April 2021 would not be telling the truth.

When referred to page 29 of the 2nd Petitioner's bundle of documents, she told the Court that the document was issued by the Presiding officer at Kagoro school polling station who was Mr. Steven Nyalazi. The document was therefore issued by the 2nd Respondent and, the results were correct according to the 2nd Respondent.

It was also her evidence that she remembered the 2nd Petitioner went to the Totaling Center with a carbon copy of the same document which had similar information with the document at page 29 but there was a difference in the votes in figures on her name.

On the documents she had, there was 345 and the words were 'thirty-four' and she contested that the figures were different. She confirmed that the document was forged or false.

She told the Court that the document at page 28 was not the one she was showed by the 2nd Petitioner but the information was the way it was but not the actual document but the figures were the correct ones. She therefore stated that the 2nd Petitioner was the only one who could confirm where she got the 34 and the 345. In the absence of her explanation the difference in the figures, it would be concluded that she was the one who added the figures.

She also stated that the 2nd Petitioner received a form similar to the one on page 29 and was not signed by the stake holders and was not before Court. It would therefore be concluded that she was the one who forged it.

She denied that she told the 2nd Petitioner that she was going to get the form she had and write her another one. That the 2nd Petitioner went through the DEO and requested for the document at page 29. The witness was asked to make a copy of the same, which she did and presented it to her outside the council chamber.

She also stated that the copy she made for her was the Gen 20a which was at page 29 and when she showed her the documents that she had, the figures were different from the ones she gave her. She showed the 2nd Petitioner the votes in words which read 'thirty-four' and she asked her why she should consider the votes in words and not figures. At that point, she asked the 2nd Petitioner to return to the DEO's office because she thought it could be handled better from there.

The 2nd Petitioner refused and requested for other results. That was when she gave her the Record of Proceedings at the Totaling Center. The witness denied that she offered to write her another form. She therefore concluded that that was why the 2nd Petitioner was not cooperative when she was invited for verification at the Totaling Center.

Cross examined by Mr. Phiri, RW6 confirmed that her only involvement in the 2021 elections was that she was a Returning Officer based at the Totaling Center at Kafumbwe Secondary School. She stated that she was involved in voter registration as Assistant Registration Officer Supervisor for Milanzi constituency but that she was not the Registration Officer that the voters faced during registration.

She confirmed that apart from 15th November to 20th December, 2020 there was no registration earlier in 2020. She did not recall that voter registration started in August 2020 because the Assistant Registration officer fields were only trained in October 2020. She also stated that voter registration was preceded by issuance of NRC's which she was not involved in.

When referred to page 7 of the Petitioner's bundle of documents an ID for Liyaya Liyaya she stated that it was not in Zambian language and page 8 was the flip side written República de Mozambique in Portuguese. At page 31 was Liyaya Willisone Liyaya with a voter's card which was procured at Lunga. When referred to page 12 of 'R5' the voter register for Lunga was the name Liyaya

Phiri name with the same voters' card number on the voter's card. She told the Court that the voters register was what was used to identify persons that the person who voted was the one in the voters register.

She further confirmed the names on the voters' cards as Phiri Yohane at page 23 of the bundles and at page 20 second row, the 6th individual was Phiri Yohane. She confirmed that the Phiri Yohane who appeared in the Voters' Register was the same person at page 23 of the Petitioners bundle of documents and the voter's card number was the same as the one on page 20 for Lunga 2 polling station. The witness confirmed that both Yohane Phiri at page 12 and Lumphani Amercos Lumphani at page 20 would have had no problems when voting if they came with the required documents at the time of voting. That for the two individuals to have found their names in the register, it went without saying that they should have had the two requisite documents for voting.

She also stated that each polling station had four boxes for presidential, parliamentary, councilor and council chairperson. After counting they were put back in the ballot boxes and the boxes resealed. The mistake was that they were put back in the respective ballot boxes and sealed as such. For the presiding officer to have put the ballot papers for all the four elections in only two ballot boxes and sealed them was a mistake. She stated that she was not present when he put them in those ballot boxes. It could therefore not be

correct that the way they left the polling station was how they arrived at the Totaling Center because she was not at the polling station.

Referred to page 23 of the 2nd Petitioner's bundle of documents, she stated that the boxes came with spare seals which meant that the presiding officer who delivered the boxes had unused seals in his possession. It would also be correct that he had the tools to open and reseal a ballot box. The witness also stated that there was a verification report which had not been brought because it was submitted to the 2nd Respondent's headquarters.

Asked if the only way they would have known that there was nothing wrong with the election was if they had verification report, she told the Court that was not the only way, it was amongst the ways.

When cross examined by Mr. Muyatwa, she confirmed that at the close of counting there was a separate sealed envelope which contained rejected ballots and once transported to the Totaling Center they were not supposed to be opened.

Counsel referred the witness to page 23 of the 2nd Petitioner's bundle of documents and the witness confirmed that it was an opened ballot box and that there was an envelope written rejected ballots for Dole polling station. The witness also stated that the boxes were not opened at the Totaling Center. As

a Returning Officer she did not inform any stake holders that there were sealed ballot boxes that needed to be opened.

When referred to page 18, paragraph 7 of the 2nd Petitioner's bundles of documents, she told the Court that what was alleged in paragraph 7 was a serious irregularity in an election.

The witness also told the Court that she was aware that there was mobile NRC verification between August and November and there was voter registration from November to December. She was not aware that 188,661 people were issued with NRCs between August and November 2020, in Eastern Province. That the legal requirements for voting were that one had to be Zambian and had to have NRC and a voters' card. If therefore, a non-Zambian was issued with an NRC and proceeded to obtain voters card, the NRC could be deregistered.

Referred to page 5 of the 2nd Petitioner's bundles of documents, she confirmed that there was a voters' card, Zambian NRC and Mozambican ID, and that the name was Phiri Kalonga. When referred to R5 at page 11, row 1, column 4, it looked like the same person together with the details.

At page 1 of the Petitioners bundles of documents the name of the person was Phiri Tyson and at R5 page 19, 3rd row, 2nd column, the details were the same.

Similarly, at page 2 was Maurice Banda and when the details were compared, they were the same as those in the register R5 at page 1, row 1 column 6.

The witness was further referred to persons at pages 3 to 13 of the 2nd Petitioner's bundles of documents whose details were the same as those in the voters' registers R3, R4 and R5.

The witness further confirmed that R3, R4 and R5 were not the actual marked registers used on poll day and that the same were only sent the previous day as the original documents were transported to ECZ headquarters.

She stated that premised on what she earlier told the Court, if foreigners obtained NRC and voters cards, they would be de-registered because they were obtained fraudulently.

Referred to page 28, she stated that she told the Court that the 2nd Petitioner might have forged the document but that she did not report the matter to the police.

In further cross examination, she told the Court that she did not report the issue of forgery to the police but she reported to the DEO. She confirmed that the report she made to the DEO was verbal.

When cross examined by Mr. Bwalya, she confirmed that it was the Commissions duty to ensure that the elections were independent, efficient and transparent and that disputes were resolved within reasonable time.

She stated that she was aware of the Electoral Code of Conduct that was enforced by the ECZ and that the 2nd Respondent sent invitations to all parliamentary candidates and informed them of the dos and don'ts. She added that giving of food, empty grain bags, cooking oil and other things constituted electoral malpractice. She stated that she was familiar with DMMU and that DMMU mealie meal was a state resource given only in disaster- stricken areas. When asked if there was a disaster that had been declared in Milanzi, she stated that there were different definitions of disaster so she could not confirm that there was no disaster in Milanzi Constituency. She further told the Court that she was not aware of DMMU mealie meal being given out by the 1st Respondent.

She also stated that she was aware that Chieftainess Kawaza's chieftdom constituted ten out of twelve wards in Milanzi and that was a significant portion of the constituency. However, she was not aware whether traditional leaders involved themselves in politics. She added that it was the duty of the 2nd Respondent to ensure that traditional leaders did not extend undue influence on other subjects by threatening to grab land and enforce the Electoral Code

of Conduct. She stated that she was not aware that Chieftainess Kawaza campaigned for the 1st Respondent.

She further testified that she knew the DC who was a civil servant and she confirmed that civil servants were not supposed to be partisan. That she was made aware of the complaint that the DC campaigned for the 1st Respondent and his actions led to that complaint.

She further told the Court that she was not aware that under the Electoral Code of Conduct, disputes were supposed to be resolved within a short period of time. She also confirmed that if a person's character was disparaged, it could have an impact on the whole constituency.

Referred to pages 20 and 21 of the 2nd Petitioner's bundles of documents, she told the Court that there was no reason that was indicated as to why the DCMC never heard the complaint in July, 2021 but on 10th August, 2021 just two days before the elections. She confirmed that resolving the complaint in August had no effect because there was no time to remedy the injury.

There was no re-examination.

That marked the close of the 2nd Respondent's case.

5. SUBMISSIONS

The parties complied with the directions of the Court and filed written submissions which I have carefully considered when arriving at this decision.

Learned counsel for the 1st Petitioner, Mr. G. Phiri submitted that Section 97 (2) of the Electoral Process Act authorized the Court to annul an election of a Member of Parliament only if the allegations made by the Petitioner were proved to the satisfaction of the Court.

Counsel submitted that in electoral petitions, the burden of proof was on the one alleging irregularities and that this burden had to be discharged by showing how the said irregularities affected the integrity of the elections.

Counsel also drew the attention of the Court to a plethora of cases on standard of proof from other jurisdictions. He contended that in the current Electoral Process Act, there was no explicit provision regarding the standard of proof and that in Section 97 (2) of the Act, the expression used with regard to standard of proof was "satisfaction of the High Court".

It was also submitted that this Court should find no difficulty in nullifying the election of the 1st Respondent as Member of Parliament for Milanzi Constituency as the Petitioners had discharged the burden of proof on the following issues:

- (i) The District Commissioner (DC) of Katete, Mr. Joseph Duma Makukula campaigned for the 1st Respondent while using government

transport registration number GRZ 229CM in contravention of Regulation 3 (b) and 15 (1) (k) of the Code of Conduct, Schedule to the Electoral Process Act. Evidence was led that, in fact, the 1st Respondent shared a campaign podium with the subject government official. Counsel argued that this evidence was not rebutted as there were bare denials by both the 1st Respondent and her campaign Manager, Sam Zulu, a witness with an interest to serve.

- (ii) The said DC while knowing that Mozambique nationals were not entitled to register as voters, persuaded them to register as voters in contravention of section 83 (3) and (4) of the Act. Several witnesses, who were all Mozambican nationals, testified to having obtained Zambian National Registration Cards (NRCs) in 2020. Some even produced these NRCs.
- (iii) Further that the subject DC further facilitated registration of the Mozambican nationals on the Zambian Voters Roll. Mozambican nationals produced into evidence their Zambian Voters Cards and the relevant Voters Registers were tendered into evidence confirming that the Mozambicans voted in the elections all in contravention of section 83 (1) (c) and section 83 (4) of the Act.
- (iv) At a campaign meeting held at Lunga, where the 1st Respondent was present and where she also spoke, the said DC threatened the Mozambicans that they would be stopped from accessing any services

from Zambia if they did not vote for the 1st Respondent. He submitted that this evidence was not rebutted neither were the witnesses called by the Petitioners shaken in cross-examination.

- (v) On Poll Day, the Mozambicans were ferried into Zambia and feted with a meal after voting through the endeavors of the DC. The said actions were primed at coercing the Mozambican nationals to vote for the 1st Respondent.
- (vi) The 1st Respondent distributed mealie meal, meat, cabbage and money to the electorate and the Headmen in the constituency while urging them to vote for her, all in contravention of Section 81 of the Act. Some of these bags of mealie meal were labelled "DMMU" being initials of "Disaster Management and Mitigation Unit". Mr. Phiri submitted that this evidence was not rebutted by the 1st Respondent and her witnesses.
- (vii) That at meetings held at Kagoro at the palace, some of which were attended by the 1st Respondent, Chieftainess Kawaza threatened Headmen that they would be dispossessed of their farming fields if they did not persuade their subjects to vote for the 1st Respondent. He argued that the 1st Respondent put an Induna sent by Chieftainess Kawaza to rebut the testimony of several Headmen but did not successfully do so neither was his testimony corroborated in any way

by any witness independent of the Chieftainess and the 1st Respondent.

- (viii) In relation to the Dole/Katawa Road, Mr. Phiri submitted that a government project, was being graded during the campaign period by a company whose principal was the Provincial Chairperson of the Patriotic Front. Testimony was led to the effect that the project was aimed at shoring up support for the 1st Respondent.
- (ix) That the Milanzi Patriotic Front Constituency Chairperson, Mr. Misheck Nyoni, threatened UPND supporters that they would be left out of fertilizer distribution if they did not vote for the 1st Respondent. He submitted that PW5 and PW6, testified on this score that this threat scared the people who stopped supporting the 1st Petitioner.
- (x) That the 1st Respondent together with the DC and one Allan Mvula were a subject of a hearing at the 2nd Respondent's District Conflict Resolution Meeting. The said meeting was convened to resolve the issuance of derogatory statements issued by the DC and Allan Mvula at a meeting where the 1st Respondent was present. The 2nd Petitioner was disparaged as an old person unfit to be elected in contravention of Regulation 15 (1) (a) and (c) of the Code of Conduct.

Mr. Phiri further split his arguments into two subheadings as follows:

(i) ELECTION AGENTS

Under this heading, counsel referred the Court to the case of Nkandu Luo (Prof) & Another v. Doreen Sefuke Mwamba and another⁽¹⁾, where the Court stated regarding elections agents that:

“...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.”

Counsel further referred to the definition of “election agent” according to Section 2 of the Electoral Process Act and also to Regulation 55 (1) of the Electoral Process (General) Regulations 2016 which provides that an election agent shall be named in the nomination paper.

It was submitted that the restrictive and narrowing of the scope of who an agent afore-cited conduced into an absurd outcome especially in a situation where a candidate deployed other persons other than the election agent named on the nomination papers. Mr. Phiri therefore submitted that even individuals whose names did not appear on the said nomination paper could be construed as such by virtue of their conduct.

To augment, his argument, he referred to the Halsbury’s Laws of England, Volume 15, 4TH Edition page 620 paragraph 619 which widened the scope of who an agent was as it provided that:

“A canvasser is a person who solicits and persuades individual voters, although not necessarily one by one separately, to vote for

a candidate. General canvassing is strong evidence of agency, and evidence which requires a very strong case to rebut it, if it can be rebutted.”

On the basis of the aforesaid, he submitted that the Court should take Mr. Joseph Duma Makukula to have been an agent of the 1st Respondent and construe his actions accordingly in this light.

(ii) FOREIGN VOTERS

On this head, it was argued that it was incontrovertible on the record that Mozambican nationals were issued with Zambian National Registration Cards and were subsequently registered by the 2nd Respondent on the Voters Register and issued with Zambian voter's cards. He added that the evidence that was not rebutted was clear that the said foreign nationals did in fact vote. He submitted that all this illegal scheme was masterminded and orchestrated by the DC for Katete to shore up numbers for Patriotic Front candidates including the 1st Respondent.

He submitted that the 2nd Respondent was charged under Section 4 (2) of the Electoral Commission of Zambia Act No. 25 of 2016 with the onerous task of ensuring that elections were free and fair.

It was submitted that the 2nd Respondent abdicated its role in ensuring that only Zambian nationals registered to vote. In the areas of Zambia bordering Mozambique, it was indisputable that the 2nd Respondent registered

Mozambican nationals. Given the infiltration of the Mozambicans on the Zambian voter's register, it could not be argued that the elections were conducted substantially in accordance with the law as to elections.

He submitted that the invalidity of the elections was due to non-conformity to electoral laws given that foreign nations registered and then voted in the elections.

Counsel referred to the case of Morgan and others v. Simpson and Others⁽²⁾ where the Court of Appeal held that if elections are so poorly conducted that they could not be said to have been conducted in substantial compliance with the electoral laws, then they were void whether or not the non-compliance affected the results.

In this regard, counsel contended that what presented itself in the Milanzi elections was downright fraud whose only consequence was nullification of the result. He submitted that it was trite law that fraud vitiated everything.

In conclusion, Mr. Phiri submitted that on the totality of the evidence of the Petitioners almost all of which was not successfully rebutted, the election of the 1st Respondent as Member of Parliament for Milanzi Constituency ought to be nullified forthwith.

On behalf of the 2nd Petitioner, learned counsel Mr. N. Muyatwa begun his submissions by referring the Court to Section 97 (2) (a) of the Electoral Process

Act which provides for nullification of an election and the case of Muhali George Imbuwa v. Enock Kaywala Mundia ⁽³⁾ where the position of the law in Section 97(2) (a) of the Electoral Process Act was explained.

Counsel split his arguments into subheadings based on the allegations made by the 2nd Petitioner in her petition.

(i) UNDUE INFLUENCE OF TRADITIONAL LEADERSHIP ON THE ELECTORATE

On this allegation, counsel referred the Court to Regulation 3(1) (i) of the Electoral Process (Code of Conduct) Regulations, 2016 and Regulation 14 of the Electoral Process (Code of Conduct). He submitted that based on Section 2 of the Act on the definition of traditional leaders, Chieftainess Kawaza fell under this definition of traditional leadership.

Counsel submitted that the threats by Chieftainess Kawaza and undue influence were orchestrated by and/or with the knowledge, consent and approval of the 1st Respondent. This was so because, PW15, PW16, PW19, and PW20 testified that the 1st Respondent attended some of the meetings with the Headmen at the palace where Chieftainess Kawaza issued these threats. He added that this was also because according to PW11's testimony, the Headmen were in fact being taken to Chieftainess Kawaza's palace for this meeting using the 1st Respondent Canter which would pick them up when they left their bicycles at the 2nd Petitioner's home.

Furthermore, it was submitted that PW15, PW16, PW19, and PW20, testified that the 1st Respondent following the meetings with Chieftainess Kawaza at the Palace visited the Headmen in their villages where some of them were given mealie meal marked DMMU and others were given money, bicycles, rice, meat, cooking oil and other food stuff.

He argued that some of this mealie meal was produced as exhibits marked **P5, P6, P7 and P8**. During cross-examination of these witnesses these key points remained consistent and the 1st Respondent failed to distance herself from these claims of distributing unwarranted gifts in the villages around the constituency.

Mr. Muyatwa submitted that in rebuttal, the evidence by RW1 and RW5 was largely biased and suspect as RW1 was the 1st Respondent and RW5 was her Campaign Manager. As such their testimony raised credibility issues and required to be corroborated by independent third-party evidence, which was completely absent from their witnesses.

It was argued further that RW1 lied on oath when in her evidence in chief she informed the Court that the only material that she distributed during her campaigns was chitenge material, caps and t-shirt and only used the 50 kg sacks branded '*Vote PF 2021 Edgar Chagwa Lungu*' to pack their campaign material. This was because under cross-examination she told the Court that she also distributed the 50 kg sacks branded '*Vote PF 2021 Edgar Chagwa*

Lungu' and that the sacks were not part of regalia that the 2nd Respondent was allowed to distribute during campaigns. Counsel submitted that RW5's testimony was an attempt to correct the 1st Respondent's admission of giving out the empty 50kg grain bags. That his evidence was however, suspect and there was no independent witness brought in to change the position given by the 1st Respondent during cross-examination. Counsel further noted that RW5 sat in Court during the Petitioners' testimony and so he had the advantage of hearing their evidence and thereafter formulated his testimony to counter the evidence that was unfavourable to the 1st Respondent. He submitted that RW5's evidence was therefore of very little evidentiary value.

Mr. Muyatwa also submitted that RW4's evidence was not independent and impartial as he attempted to show some wrong doing by the 2nd Petitioner relating to the borehole sank at Kagoro in Dole Ward and the land she asked for prior to campaigns.

Counsel submitted that the 2nd Petitioner had proved with convincing clarity the allegation that the 1st Respondent through Chieftainess Kawaza, a traditional leader, issued threats to her village Headmen to the effect they should tell their people in their respective villages around Milanzi constituency to vote for the 1st Respondent otherwise their land would be taken away from them.

Furthermore, in relying on Section 97 (2) (a) (ii) of the Electoral Process Act No. 35 of 2016, counsel submitted that the misconduct or illegal practice need not be committed by the candidate herself but it was sufficient if the said misconduct was committed with the candidate's knowledge, consent or approval.

Counsel further placed reliance on Section 83 (1) (c) (iii) of the Electoral Process Act which placed culpability on a person who directly or indirectly, by oneself or through any other person threatened to do anything to the disadvantage of any person in order to induce or compel any person to vote for any registered political party or candidate.

To augment counsel also relied on the case of Herbert Shabula v. Greyford Monde ⁽⁴⁾ and submitted that the threats uttered by Chieftainess Kawaza against the Headmen and their subjects must be attributed to the 1st Respondent as she had knowledge of the threats and consented and approved of them when she did not disapprove or dissociate herself from the said threats.

Counsel further referred the Court to the cases of Sunday Chitunga Maluba v. Rodgers Mwewa & another ⁽⁵⁾ and Mubika Mubika v Poniso Njeulu ⁽⁶⁾ and submitted that the question whether or not misconduct was widespread was not determined by or premised on the number of votes the candidates got in an election or in a particular ward or polling station. In other words, it was immaterial the number of votes a candidate got or the difference in votes

between the parties when viewing whether or not misconduct or illegal practices had a widespread effect.

It was counsel's submission that the threats issued by the 1st Respondent through Chieftainess Kawaza were widespread as the Headmen under Chieftainess Kawaza in the ten (10) out of twelve (12) wards of Milanzi Constituency which included five (5) of the biggest wards in the constituency communicated the said threats to their subjects and the families in their various villages and as a result a greater number of registered voters in the twelve (12) wards in Milanzi Constituency were prevented or might have been prevented from electing their preferred candidate.

(ii) ALLEGATION ON USE OF GOVERNMENT VEHICLE AND CHARACTER ASSASSINATION

With regard to this allegation, it was submitted that it had been proved to a fairly high degree of convincing clarity due to the nature of the evidence, both oral and documentary, before this Honourable Court. It was submitted that the 2nd Petitioner had demonstrated by way of independent and cogent evidence that the offence of defamation and character assassination was committed by the 1st Respondent, the District Commissioner, Joseph Duma Makukula, and Mr. Allan Mvula. That the disparaging words were uttered at various political meetings throughout the Milanzi Constituency and the 1st Respondent was

present at such meetings when such remarks were made and did not disassociate herself from such utterance or indeed object to them.

Thus, the said inflammatory, defamatory and discriminatory statements must be attributed to the 1st Respondent on the authority of *Herbert Shabula v. Greyford Monde* cited earlier, as the 1st Respondent had actual knowledge of the insults and remarks.

It was further submitted that the misconduct alleged above was widespread as the inflammatory, defamatory and discriminatory statements were uttered at various political meetings throughout the Milanzi Constituency to the extent that when the 2nd Respondent had a political meeting, people thought she was an imposter as what they knew was that Rosemary Banda was an old woman, demonstrating just how widespread the vilification was.

It was counsel's contention that without question these disparaging campaigns throughout the constituency must have or may have affected a majority of the electorate in Milanzi, as this message was being spread during the whole campaign period and in different wards and villages. He added that as a result of the foregoing, a greater number of registered voters in the twelve wards in Milanzi Constituency were prevented or might have been prevented from electing their preferred candidate and thus, the 1st Respondent's election should be declared void pursuant to Section 97 of the Act.

(iii) MOZAMBICANS VOTING

Mr. Muyatwa also submitted that one of the key functions of the 2nd Respondent in the conduct of elections was the registration of voters. This characteristically took place almost a year before elections. He submitted that it was a matter of common knowledge and notoriety that that in 2020, the Ministry of Home Affairs through the Department of National Registration Passport and Citizenship embarked on a Mobile Issuance National Registration Card and shortly thereafter, the Electoral Commission of Zambia begun the voter registration exercise which commenced on the 9th November, 2020 until 12th December, 2020. This was acknowledged by RW6, the 2nd Respondents Returning Officer for Milanzi Constituency, Mwila Mazunda.

It was submitted that the 2nd Petitioner had proved with cogent evidence that there were Mozambican National who obtained Zambian NRC's, voters' cards and voted in the Milanzi Constituency Parliamentary Election.

Thus, there was a serious non-compliance with the Constitution of Zambia and the Electoral Process Act in the conduct of election by the fact the non - Zambians were registered by the 2nd Respondent and issued with voters' cards and they did in fact vote as stated by the Mozambican witnesses that were before Court. He therefore submitted that premised on the foregoing, the election was not conducted substantially in accordance with the law and this had affected the results.

Furthermore, counsel submitted that the negative impact arising out of the foregoing flaw did not affect candidates equally because the 1st Respondent had knowledge and consented and/or approved of the same as PW15 testified that the 1st Respondent gave him mealie meal in order to cook for the Mozambicans after they voted and the man alleged as the mastermind of registration of Mozambican nationals, the DC campaigned together with the 1st Respondent as tested by the witnesses that came before Court. This therefore favoured and advantaged the 1st Respondent.

(iv) TAMPERED BALLOT BOXES

It was submitted regarding this allegation that there was evidence from PW11 that ballot boxes were opened at Kafumbwe Totaling Centre and the 2nd Respondent did not offer any explanation why the ballot boxes were opened save that the presiding officer who had opened them fell sick in the night and went home leaving the boxes open and unattended to.

He argued that RW5 and RW6 told the Court that the two ballot boxes came open from Dole polling station and the reason they were opened was because the presiding officer at Dole polling station packed all the ballot papers and other election material in two ballot boxes and used the other two to carry aprons and lamps.

Mr. Muyatwa submitted that the evidence of RW5 and RW6 was not only in contradiction with what was stated in the 2nd Respondent's Answer under paragraph 7 but also a blue lie as RW6 was unable to show the Court any aprons or lamps the pictures at page 23 of the 2nd Petitioners bundle of documents. He added that in fact, RW6 told the Court that the envelope containing rejected ballot had to be sealed in the ballot boxes but when referred to page 23 again, she told the Court that there was an envelope in the open ballot box written rejected ballot boxes. Counsel placed reliance on the case of Christopher Lubasi Mundia v. Sentor Motors Limited (7), where it was held that:

"Where the pleadings are at variance with the evidence adduced in court, the case fails since the case is completely recast, without actual amendment of the claim."

It was counsel's contention that the 2nd Respondent's defence in this regard failed as what was pleaded in paragraph 7 of its Answer was at variance with the evidence adduced by RW5 and RW6. He added that the foregoing was an important matter in the conduct of elections and the spirit of promoting transparency and building confidence in the electoral system.

Counsel submitted that once the sealed ballot boxes were delivered to the Returning Officer by the various presiding officers the only time they would be opened was within fourteen days after declaration of the result pursuant to Regulation 53 of the Electoral Process (General) Regulation, 2016.

It was therefore submitted that based on the foregoing, this was a proper case in which this Honourable Court could declare the elections herein void on the authority of Section 97 (2) (b).

(v) **BRIBERY AND CORRUPT PRACTICES BY THE 1ST RESPONDENT**

Counsel started by defining the term bribery. He submitted that the term 'Bribery' was not defined under the Act despite being provided for in section 81 of the Act. However, according to the learned authors of Black's Law Dictionary (8th Edition) 'bribery' had been defined on page 573 as the:

"Corrupt payment, receipt, or solicitation of a private favour for official action."

Counsel submitted that a number of the malpractices of the 1st Respondent fell squarely within this definition as she gave various unwarranted gifts to Headmen and the electorate in Milanzi constituency in order to obtain a private favour (i.e. a vote from those being bribed) in order to become an Honourable Member of Parliament for Milanzi constituency.

Learned counsel submitted that it was imperative to note that not every "gift" was excluded from distribution to the electorate during campaigns. That the evidence at trial disclosed a number of unwarranted gifts that were distributed by the 1st Respondent both personally, and through people who were acting under her control or with her knowledge, consent or approval. This all fell under Section 97(2) (a) of the Act and was a practice that was widespread

throughout Milanzi constituency as proved by the testimony of both Petitioners' witnesses, as well as the documentary and real evidence (e.g. DMMU mealie meal marked **P5, P6, P7 and P8**) adduced at trial.

Counsel submitted that the 1st Respondent admitted to distributing empty 50 Kg grain bags branded "Vote for PF and Edgar Chagwa Lungu" to the electorate, which was a serious inducement for the agriculture-centred electorate of Milanzi constituency and that was why the 2nd Respondent did not permit these grain bags' distribution during the campaign period.

He submitted further that the Court ought to note that the attempt by the 1st Respondent's party campaign manager, Sam Zulu, to correct the 1st Respondent's admission of giving out these empty 50 kg grain bags was contradicted by the 1st Respondent herself and the images in **P1, P2 and P3** produced by one Tylad Lungu (PW 13).

He added that the witness Sam Zulu provided suspect and partisan evidence that required further corroboration from independent witnesses to eliminate the danger of exaggeration and falsehood. As there were no independent witnesses called to corroborate his evidence, it was submitted that the testimony of RW5 in all aspects was clearly false and outclassed by the cogent and credible evidence from the 2nd Petitioner which included her aforementioned witnesses.

Furthermore, several of the Zambian village Headmen witnesses (e.g. PW15, PW16, PW18, PW19 and PW20) testified to the effect that the 1st Respondent went to their villages situated in different wards in Milanzi and gave out money to them as Headmen when she visited. The 1st Respondent also gave money to Headmen's subjects, the electorate urging them to vote for her.

Counsel submitted that through the evidence of the 2nd Petitioner's witnesses during cross-examination it became apparent that the 1st Respondent had purchased a number of the Zambian Headmen Bicycles. PW19 in particular expressly stated during cross-examination that all the Headmen were given bicycles by the 1st Respondent. This evidence was corroborated by another Headman who also admitted to being given a bicycle by the 1st Respondent and stated that she had bought bicycles for all of the Headmen under Chieftainess Kawaza. The further cross-examination of these witnesses by the Respondent's Counsel failed to discredit or change this testimony.

He argued that despite this issue not being pleaded, it was permissible for this Court to consider the issue of the bicycles as it came out during cross-examination by the 1st Respondent's own Counsel. Thus, this issue was worthy of due consideration by this Honourable Court as it also constituted a corrupt practice by the 1st Respondent that was targeted at the traditional leaders.

Further still, it was submitted that there were Headmen on record such as *inter alia* PW 15, PW16 and PW19 who testified that the 1st Respondent distributed

DMMU mealie meal in their villages so that they could cook for the Mozambicans that were coming to Zambia. He stated that some of this mealie meal was kept by the headmen and produced before this Honourable Court as **P5, P6, P7 and P8.**

It was argued that more relevant, the 1st Respondent was directly linked to the DMMU Mealie meal when it was established that she was not a government official or agent and therefore not entitled or obligated to distribute DMMU Mealie meal to the electorates. He submitted that it was equally a matter of public record which was supported by the evidence on record that there was no disaster in Milanzi constituency during the election campaign period of May to August 2021. He implored the Court to take judicial notice of this fact.

Counsel contended that this bribery by the 1st Respondent was not a *once-off* incident, or a matter that occurred in one ward to the exclusion of others. As a matter of fact, the bribery was shown to have occurred in various wards around Milanzi constituency which included but were not limited to Kafumbwe, Kazala, Kapangulula, Chindwale, Kapoche, Katiula, Dole, Kasambandola and others. He submitted that the electoral malpractice by the 1st Respondent and the individuals acting under her control, or with her knowledge or consent was widespread throughout the constituency of Milanzi and affected the electorate in the selection of their choice as Member of Parliament.

Counsel argued that due to the statutory time limit of election petitions, it was not possible to call all the witnesses in a constituency and it was therefore only necessary to call those witnesses who used to oversee the affairs of other voters such as the traditional leaders, the police or defence forces and other civil servants and community leaders to prove that the electoral malpractices were widespread.

Counsel prayed that in terms of Section 97 (2) (a) of the Act and the authorities cited above that on this ground/allegation, the election of the 1st Respondent as Member of Parliament for Milanzi Constituency should be declared void with costs to the 2nd Petitioner.

Learned counsel for the 1st Respondent, Mr. B. Mwelwa commenced his submissions by referring the Court to the cases of Kamanga v. Attorney General and Another⁽⁸⁾ and Mazoka and Others v. Mwanawasa and Others⁽⁹⁾ on the standard of proof in election petitions.

On these authorities, Mr. Mwelwa submitted that the Petitioners herein had failed to establish a reasonable standard of proof required as the evidence put forward by the Petitioners lacked cogency as it was inconsistent, untruthful and grudge based. In essence, the Petitioners claims were not only frivolous and vexatious but the same were also aimed at prejudicing the 1st Respondent

and depriving the people of Milanzi of their validly elected candidate of their choice to represent them in Parliament.

Mr. Mwelwa split his arguments into sub headings based on the allegations made by the Petitioners in the petition as follows:

(i) **ALLEGATIONS OF VIOLENCE**

Counsel submitted that from the evidence of PW14 it was clear PW17 was not assaulted by the 1st Respondent's agents or PF supporters as alleged by the 2nd Petitioner. He argued that if indeed PW17 was assaulted by PF supporters in the presence of the 1st Respondent, that information would have been detailed in the police report recorded in the OB on the 30th July, 2021. Further, as indicated by PW14 that the issue relating to PF cadres having assaulted PW17 might have been recorded in the statement, the said statement would have been brought before the Court to clarify the issue of who actually beat up PW17 owing to the fact that there was no evidence of anyone else who witnessed the beating assault making the incident an isolated one needing political violence.

In support of this submission, counsel referred the Court to the case of **Green Nikutisha and Another v. The People** ⁽¹⁰⁾ wherein the Court stated: -

“The need for calling of other witnesses arises when doubt is cast upon the evidence of a witness to the extent that further evidence is required to corroborate that witness and thus remove the doubt....”

It was therefore submitted on the basis of the above authority, that the failure to avail before the Court evidence that would have cleared the doubt in respect to the assailants of PW17, indicated the lack of truthfulness in the evidence of PW17 and that this Honourable Court should not take into consideration the said evidence as it was only aimed at falsely implicating the 1st Respondent.

It was argued that the 1st Respondent in her evidence categorically denied assaulting PW17 and RW5 led evidence that the 1st Respondent was in Lusaka during the time the alleged assault was said to have occurred. Further, that they never received any complaint, report or call out from the police of any of their member being involved in violence during the campaigns.

Counsel prayed that the claim alleging violence by the 1st Respondent and her supporters by the Petitioners be dismissed for lacking merit and merely being frivolous and vexatious.

(ii) ALLEGATIONS OF THREATS AND UNDUE INFLUENCE

Learned counsel submitted in relation this allegation that the evidence demonstrated that PW1 did not perceive any of the alleged threats except what she was told by PW5 and PW6. He submitted that the evidence of PW5 and PW6 could not be taken to be gospel truth owing to the fact that they were UPND members. Their evidence therefore needed corroboration preferably from

the other members of Zakonkha Co-operative who were also threatened together with PW5 in respect to their money being refunded by DACO.

He further argued that corroborative evidence was required to support the evidence of PW6 preferably a call log from the respective network provider showing that Mr. Nyoni indeed called and threatened him.

Mr. Mwelwa submitted that there was a high possibility that PW7 and PW8 may not have been candid in their evidence owing to the fact that they were UPND members and the only witnesses who led evidence of the District Commissioner making threats. He stated that PW7 testified that RW1 was not present when the District Commissioner made the threats at Katiula School while PW8 said RW1 was present when the District Commissioner made the threats at Chimsitu Village. Hence, the evidence of PW7 and PW8 just like PW5 and PW6 in the circumstances fell in a category of witnesses who may have had a motive to give untruthful evidence owing to the fact that they were aggrieved UPND members and as such their evidence needed to be corroborated by an independent witness. In support of this submission he drew the attention of the Honourable Court to the observation made in the Supreme Court case of Boniface Chanda Chola & 2 Others v. The People ⁽¹¹⁾ in respect to some witnesses with possible interest to serve and the consideration taken towards such witnesses where the Court stated: -

“The crucial consideration is not whether the witness did in fact have interest of the purpose of their own to serve, but whether they were witnesses who, because of the category in which they fell or because of the particular of the case, may have had a motive to give false evidence”

Furthermore, with respect to the evidence of PW11 Rosemary Banda, the 2nd Petitioner and PW13 regarding threats by Chieftainess Kawaza, he submitted that they did not perceive the alleged threats. The allegation was primarily founded and dependent on the evidence of PW15, PW16, PW19, PW20 and PW24 who testified as Headmen who received the threats from Chieftainess Kawaza.

Counsel submitted that from the evidence of the Headmen, it was clear the evidence was intended to place Chieftainess Kawaza as a traditional leader at the apex of the threats and undue influence for and on behalf of the 1st Respondent contrary to the provisions of Regulation 14 of the Electoral Process (Code of Conduct) Regulations of 2016 which provides as follows: -

“A person or a member of the law enforcement agency, civil society, a church, faith-based organization, traditional leader, political party or media shall not by means of threats, violence, coerce or intimidate another person during campaigns, public debates or elections.”

He submitted that notwithstanding the above provision, the evidence of PW15, PW16, PW19, PW20 and PW24 was never of a convincing standard as they did not avail before the Court Village Registers as proof to confirm of their Headmanship in their purported respective villages. He submitted that RW4 a

Senior Induna testified that proof of existence of a village in Kawaza Chieftainship was a Village Register and that Mbeza Village which PW16 claimed to be Headman ceased to exist in 1978. Additionally, the five Headmen gave inconsistent evidence in respect to the times the 1st Respondent attended the alleged meetings between all the Headmen and Chieftainess Kawaza and also gave conflicting evidence in respect to how the Headmen were taken to the palace for the said meetings and these were significant inconsistencies. He added that the evidence of bicycles was adduced by PW19 but the same was not supported by PW11 either in her testimony or pleadings and this raised an issue of credibility on the part of the witness.

Counsel further submitted that PW11 did not inform the Court that she in fact sunk a borehole at Kagoro sometime between June and July, 2021 and actually invited the Headmen and their subjects to the launch where she informed them that she had brought them water and they should vote for her. This evidence was given by RW4 the Senior Induna who actually attended the launch and this evidence was not shaken in cross examination. It was in this regard argued that the evidence of the 2nd Petitioner lacked cogency in that she suppressed material facts to her benefit and the evidence of her witnesses consisted of gross irreconcilable contradictions which accordingly justified the rejection of the said evidence as the inconsistencies were material, significant and critical.

It was therefore contended that the witnesses were in fact exposed as being untruthful. The inconsistencies in their evidence clearly confirmed doubt which in essence went to water down their evidence, and this might lead to the conclusion of untruthfulness of their evidence. In aid of this submission counsel referred to the case of Steven Masumba v. Elliot Kamondo ⁽¹²⁾.

He submitted that the evidence by the Petitioners above clearly could not be said to have carried weight to establish the allegation of threats and undue influence and the same should be dismissed.

(iii) ALLEGATIONS OF BRIBERY, AND CORRUPTION

In relation to this allegation, Mr. Mwelwa submitted that there was no evidence before the Court to show or demonstrate that the 1st Respondent was in charge of the grading. The only evidence that was led by PW9 and PW10 was that the 1st Respondent was connected to the road works because the alleged owner of the company that was undertaking the road works was a member of the PF which party the 1st Respondent was also a member. That it was their evidence that they did not know if the road works were government programs and further there was no evidence such as a Patents and Companies Registration Agency (PACRA) Print Out before the Court that established as a conclusive fact that Andrich Lubusha was the proprietor of Andrich the company.

It was counsel's argument that notwithstanding the evidence of PW9 and 10, the road works were government projects and the same could not be put on halt because of elections. Reliance was placed on the case of Lewanika and Others v. Chiluba ⁽¹³⁾.

It was submitted that the 1st Respondent was not in government, and as such she was not in any way involved in the road projects.

Furthermore, in relation to the evidence of PW2, whose evidence was that he received the mealie meal and other food stuffs from the District Commissioner and not from the 1st Respondent, counsel submitted that PW2 testified that he was PF member who turned UPND, there was no other evidence that supported his evidence and clearly, he was a person with an interest as UPND member just like PW9 and PW10. He referred the Court to the Tanzanian case of Karokora v. Electoral Commission and Kagonera ⁽¹⁴⁾ which despite its persuasive value, the principle therein was of cardinal importance in election petitions with respect to evidence given by party members.

Counsel further argued that PW12 testified that he received a letter inviting him to a meeting at Lunga where the people were given money and received a K100. There was however, no evidence to show as proof that indeed he was invited to the said meeting and that he in fact attended and received the alleged K100.

It was submitted that PW13 led evidence premised on the pictures which were marked P1, P2 and P3 and he conceded that the 1st Respondent was not distributing DMMU mealie meal and no one in the pictures was receiving mealie meal. Counsel submitted that RW1 in fact demonstrated to the Court that what was distributed in the pictures were PF regalia packed in 50kg white sacks.

He also submitted that PW15, PW16, PW18, PW19 and PW20 testified as Headmen but none of them availed before the Court Village Registers as conclusive proof of their Headmanship. It was argued that PW19 testified that he received a bicycle from the 1st Respondent and that all the Headmen in Milanzi Constituency received bicycles from the 1st Respondent. This evidence was not pleaded by PW11 despite PW19 having testified that he had told this information of Headman receiving bicycles to PW11 and that was the reason the 2nd Petitioner brought the petition before the Court. PW19's evidence was therefore untruthful.

It was further submitted that PW20's evidence was also not supported by any other evidence from the alleged polling station where he claimed to have received money on the queue. Counsel stated that in fact, PW13 testified that he had agents in all the 64-polling station and he did not receive any report of people receiving money and mealie meal on the queues and also PW15 confirmed that no money was given on queues during voting and anyone who

would attest to that would be lying. RW5 also testified that the 1st Respondent was home after voting and that she did not distribute money or mealie meal to voters on queues on polling day. In addition, no youth testified before the Court to have received money as alleged by PW20.

Learned counsel submitted that from the above evidence, it was clear that all the witnesses in their evidence confessed to have been bribed by the 1st Respondent but they did not bring any corroborative evidence to conclusively establish as unequivocal proof of the alleged bribery. In aid of this submission he brought to the attention of the Court the learned authors of the Halsbury's Laws of England, 4th Edition Volume 15 at page 780 where in respect to evidence of bribery stated that:

“Clear and unequivocal proof is required before a case of bribery will be held to have been established. Therefore, suspicion is not sufficient and the confession of the person alleged to have been bribed is not conclusive.”

Counsel finally submitted that the witnesses called to establish the allegation of bribery and corruption were not credible and their evidence was not cogent and on that premise the allegation fails and the same should be dismissed.

(iv) ALLEGATIONS OF CHARACTER ASSASSINATION

It was submitted that the evidence of PW11 with respect to disparaging remarks was that she only became aware of the remarks when she attended meetings and people told her that she was not the person because the

Rosemary Banda they were expecting was old. In addition, the complaints she made to the District Conflict Management Committee on the 17th July, 2021 and 20th July, 2021 which appeared on page 17 and 18 of the 2nd Petitioners bundle of documents referred to Allan Mvula and Mr. Joseph Makukula respectively as the perpetrators of the alleged disparaging remarks and nowhere in the letters was the 1st Respondent mentioned to have uttered any disparaging words against PW11.

It was submitted that equally the evidence of PW7 did not show that he 1st Respondent made any disparaging remarks. In fact, his evidence was that Allan Mvula sang a song at the meeting about throwing an old bone away and no name was mentioned in reference to the old bone in the song. That PW7 confirmed that it would not be correct for anyone to give evidence before the Court that someone was being referred to as the old bone in the song.

Counsel submitted that PW12's evidence was that the District Commissioner at the meeting at Lunga told people to vote for a young lady and not Rosemary Banda who had aged. The 1st Respondent was in attendance but there was no evidence to adduced as to whether the 1st Respondent introduced Joseph Makukula as her agent or whether she acknowledged the alleged remarks.

Counsel argued that the 1st Respondent only had one election agent namely Jackson Banda as was shown on page 4 of the 1st Respondent's bundle of

documents and she did not therefore consent to the actions or conduct of Allan Mvula or Joseph Makukula.

It was counsel's further submission that RW2 led evidence that any party not happy with the decision of the District Conflict Management Committee could lodge an appeal with the National Conflict Management Committee which had the power to disqualify a candidate.

Counsel contended that the reason why PW11 did not appeal the decision of the DCMC that the resolution was delivered late was neither here nor there and the same clearly showed that she was satisfied with the decision of the DCMC. Therefore, she could not come to Court and claim that disparaging remarks were made against her when the same were duly resolved. .

It was submitted that notwithstanding the foregoing, it was their submission that the evidence relating to character assassination lacked cogency and it did not relate or attribute to the 1st Respondent and as such the allegation was baseless and should as well be dismissed.

(v) THE ALLEGATION OF REGISTRATION AND FERRYING OF FOREIGN NATIONALS

It was submitted on this allegation that none of the evidence of registration of voters implicated the 1st Respondent and 2nd Respondents. Firstly, the 1st Respondent and 2nd Respondents were not responsible for the issuance of

National Registration Cards. Secondly, the 1st Respondent was not responsible for the issuance of voter's cards and the 2nd Respondent was mandated to issue a person with a voter's card who produced or was in possession of an NRC and validation was not in their mandate. Thirdly, the evidence in respect to the allegations of registration and ferrying of Mozambican nationals by the Petitioners' witnesses all related to the DC.

Counsel submitted that in addition, the said evidence did not in any manner confirm whether or not the said DC was acting for and on behalf of the 1st Respondent as an appointed agent nor did it show that 1st Respondent consented to the actions of the said DC. Hence, the 1st Respondent could not be answerable to any unwarranted acts of Joseph Makukula. He referred to the case of *Lewanika and Others v. Chiluba* in this regard.

Counsel further argued that, that notwithstanding, the evidence of registration of foreign nationals from PW2 and PW23 was also questionable and lacked credibility. Counsel submitted that PW2 was clearly a witness with an interest to serve owing to the fact that he was a staunch UPND member. He also stated that it was the evidence of all the Mozambican witnesses that they obtained their NRCs in 2020 and PW23 in fact testified on oath that he knew all the Mozambicans that were appearing in the 2nd Petitioner's bundle of documents as they came from the same village as him and that some came from the neighboring village.

Counsel submitted that it was PW23's further testimony that in fact, he actually obtained NRCs with them from Zambia on the same day. However, a careful perusal of the 2nd Petitioners evidence on pages 3, 6, 9, 10, 11 and 12 of the 2nd Petitioner's bundle of documents revealed that the alleged Mozambicans on the aforesaid pages in fact obtained their Zambian National Registration Cards in 2015, 2009, 2001 and 2006 respectively.

Further, the dates on their Mozambican identity cards revealed that they all obtained them sometime in May, 2019 way after their Zambian identity Cards were issued. That the only reasonable conclusion was that they were all in fact Zambians who obtained Mozambican nationality and not the other way round.

It was therefore submitted that the alleged Mozambicans were eligible voters in the August, 2021 general elections as they were Zambians living in Mozambique. He added that this reasonable conclusion was in fact in tandem with the evidence of PW12 Headman Daison of Daison Village in Mozambique who in fact testified that there were more than twenty (20) Zambian families in Daison Village and his wife was also a Zambian who came to vote in the 12th August 2021 General elections.

It was their further submission that the 1st Petitioner in her bundle of documents had only exhibited the identity cards of the alleged Mozambicans but tactfully and/or intentionally omitted to exhibit the Zambian National Registration Cards which all the said Mozambicans claimed to have obtained

but had left behind. Counsel argued that there was therefore a possibility that the said NRCs were obtained before 2020.

On the foregoing, it was submitted that the evidence adduced to prove the allegation of registration and ferrying of voters as illegal practice by the Petitioners was not credible, fell short of the required cogency and in essence the allegation was devoid of merit and should in the circumstances be dismissed.

(vi) THE ALLEGATION OF THE ANOMALIES IN GEN 20 FORMS AND OPENED BALLOT BOXES

It was counsel's submission in this regard that in respect to the opened ballot boxes, an explanation was given to all the stakeholders and their representatives that were present as to why two ballot boxes contained all the four elections. That it was agreed that they proceed with verification and announcement of results. Further, the election results recorded at the polling station were the same as the ones verified at the Totaling Center and this was confirmed by RW5 and PW11 and that this never challenged at the Totaling Center.

He further submitted that RW6 confirmed that it was a mistake to put the four elections in the two boxes and further confirmed that it was also not allowed for ballot boxes to be open and the ballot boxes that were opened merely contained ECZ materials.

It was counsel's argument that it could not be considered an illegal practice which could lead or warrant the nullification of an election if ballot papers of all four elections at a polling station were counted, recorded and put in one or two ballot boxes.

Mr. Mwelwa submitted that the Petitioners allegation herein lacked merit and fails.

(vii) HAS THE PETITIONERS EVIDENCE ATTAINED A HIGHER DEGREE OF CLARITY?

In the final analysis, counsel contended that the evidence tendered into Court as shown by the analysis above not only lacked cogency to satisfy the provisions of the Electoral Process Act, but was also frivolous and vexatious.

In conclusion, it was submitted that nullification of a Member of Parliament was only granted in circumstances where a petitioner proved his/her allegation to higher degree of convincing clarity. He prayed that this Honourable Court holds that the 1st Respondent was validly and legally elected in conformity with the law. Therefore, with regard made to section 97 (3) of the Electoral Process Act No. 35 of 2016, that this petition be dismissed.

On behalf of the 2nd Respondent, learned counsel Mr. Musoka begun his submissions by referring the Court to a plethora of authorities on the burden

and standard of proof in election petitions. I will not replicate the same as it is evident that counsel well understands the burden of proof in election petitions.

In his submissions, Mr. Musoka also split his arguments into five subheadings based on the allegations made by the Petitioners against the 2nd Respondent.

(i) ALLEGED MOZAMBICAN VOTERS

Mr. Musoka submitted that it was 2 RW1's testimony that all those who voted in the Milanzi Parliamentary Elections were Zambians who had a 'Green Zambian National Registration Card and valid voters' cards. 2 RW1 further told the Court that registration of voters by the 2nd Respondent was done sometime in November, 2020 and not between March and July, 2021 as alleged by the Petitioners and that this could be deduced from all the voters' cards tendered as evidence before this Court by the Petitioners.

Counsel implored the Court to take judicial notice of the Election Timetable compiled by the 2nd Respondent pursuant to Section 28 of the Electoral Process Act, 2016 in respect of 12th August, 2021 elections on the authority of **Shamwana v. The People** ⁽¹⁵⁾.

Counsel submitted that the registration of voters was a preserve of the Electoral Commission of Zambia whilst the issuance of National Registration Cards was a preserve of the Department of Registration of Passport and Citizenship which fell under the Ministry of Home Affairs. That this was admitted by the

Petitioners and all the witnesses that were called to support the assertion that the 2nd Respondent facilitated for the issuance of National Registration Cards.

Learned Counsel for the 2nd Respondent further referred the Court to Section 8 of the Electoral Process Act, 2016 on the qualification for registration as a voter which provides that a person qualified for registration if that person was a citizen of Zambia; had attained the age of eighteen years; and was in possession of a national registration card.

He further referred to the definition of a National Registration card in Section 2 of the Electoral Process Act which was defined as:

“A national registration card issued under and in terms of the National Registration Act.”

He also referred the Court to Section 8(1) of the National Registration Act, Chapter 126 of the Laws of Zambia which provides as follows:

“Upon the registration of a person under this Act, the registrar shall issue to such person a national registration card in the prescribed form.”

It was further submitted that Section 7 of the National Registration Act empowered the Registrar to require any person giving information at registration stage to provide documentary or other evidence of the information being given.

Counsel submitted that in light of the foregoing, the registrar had to ascertain whether one was a Zambian or not before they were issued with a National Registration Card. He submitted that the issuance of a green National Registration Card to any individual was conclusive evidence that such a person was a Zambian and that it was not the mandate of the 2nd Respondent to question any person's nationality when registering voters as long as that person produced an original green National Registration Card bearing the correct necessary details.

Mr. Musoka submitted that it was not in dispute that all those that voted in Milanzi Constituency had green National Registration Cards issued as far as 2009. That no evidence was tendered by the Petitioners to support the assertion that the 2nd Respondent facilitated for the issuance of green National registration cards to Mozambicans. Counsel submitted that besides the foregoing, one of the Petitioners' witnesses admitted to being Zambian and the other stated that he married a Zambian woman who was living with him in Mozambique. He argued that another witness told the Court that there were approximately about twenty (20) Zambian families in his village in Mozambique.

Mr. Musoka further implored this Court to take judicial notice of the safeguards provided to the candidates and /or any interested party in Sections 17(1) (2) which related to objections concerning details as to the provisional

register of voters. He argued that Section 18 (1) allowed for the inspection of a copy of the Register of Voters during office hours at the Commissions' head office.

Counsel also submitted that pursuant to Section 64(1), a person may at any time before a voter was handed a ballot paper, object to that voter being entitled to vote at the polling station concerned. He argued that it was admitted by the Petitioners and some of their witnesses in cross examination that no objections were raised at any polling station in respect of a person being entitled to vote.

Counsel argued in the alternative that if the Court found that it was true that Mozambicans voted in breach of the law, it was their contention that the Petitioners did not provide proof that the 1st Respondent benefited from the said votes as none of their witnesses could tell the Court who the Mozambicans voted for. Mr. Musoka contended that in fact, the 2nd Petitioner garnered more votes than the 1st Respondent in some of the polling stations said to have been infiltrated by the Mozambicans. Counsel argued that the Petitioners alleged that four (4) wards out of twelve (12) were mostly affected by the said Mozambicans which were; Kapoche, Kafumbwe, Yowoyani and Milanzi but they could not tender any evidence on the number of Mozambicans that voted.

(ii) VOTING AT NIGHT

On this allegation, Counsel submitted that there was no evidence tendered to support this assertion by the Petitioners and all of the alleged Mozambicans who testified before the Court stated that they voted during the day between 12:00 hours and 15:00 hours. He submitted that it was 2RW1's testimony that all polling stations closed on time except for those that opened slightly late due to administrative glitches and those that still had people on the voting queues as presiding officers announced closure of the polling stations. That 2RW1 told the Court that it was the counting and consolidation of results that went into the second day.

To augment, counsel relied on Section 50(6) of the Electoral Process Act, 2016 which provides that:

"Voting at a polling station shall continue until every voter who had reported at a polling station to vote at the time prescribed for voting hours has voted."

(iii) OPENED OR TEMPERED WITH BALLOT BOXES

Regarding this allegation, Counsel submitted that the 2nd Respondent did not breach the provisions of Section 75 of the Electoral Process Act as no ballot papers were lost, destroyed or unlawfully removed before the votes cast at the polling station were counted. He submitted that all the results for the 64 polling stations in Milanzi Constituency were counted and announced by the various Presiding Officers and the Gen 20a forms were distributed to some, if not, all polling agents at the polling stations. He submitted that this could be deducted

from the Record of Proceedings at page 2 to 5 of the 2nd Respondent's Bundle of documents.

Counsel further submitted that Sections 69 and 70 of the Electoral Process Act, 2016 provided for objections concerning the sorting of ballot papers and objections concerning the counting and announcement of provisional votes at polling stations respectively. That the aforesaid sections expressly stated that the objections had to be in writing to the Presiding Officer before the commencement of the counting and announcement of votes respectively. Counsel argued that it was the 2nd Petitioner's testimony that she objected to the results for Milanzi Constituency being announced but admitted in cross examination that the said objection was not made in writing to the 2nd Respondent.

The 2nd Respondent contended that the timing of the objection and the form in which it was tendered were wrong and hence the 2nd Respondent could not be faulted for announcing the results for Milanzi Constituency despite the said objection.

Counsel further referred the Court to section 97(4) of the Electoral Process Act which provides that:

"An election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court or a tribunal that the election was so conducted as to be

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

Counsel submitted that that there was no evidence that the results of Dole School 01 may have been affected by the act or omission by the 2nd Respondent officials. He argued that the Petitioners never tendered oral or documentary evidence to show that the results from Dole School 01 polling station were tampered with and how they affected the parliamentary elections in Milanzi Constituency as required by Section 97(4) and *Mubika Mubika v. Poniso Njeulu*.

(iv) ALLEGED REMOVAL OF THE PETITIONERS POLLING AGENTS FROM SOME POLLING STATIONS.

In relation to this allegation, Counsel referred the Court to Section 64(3) of the Electoral Process Act which provides that:

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

It was the 2nd Respondent’s argument that this was an afterthought by the Petitioners and the agents did not object and/ or report the removal of their agents from some polling stations to the Presiding Officers and the Electoral Commission of Zambia.

The 2nd Respondent further placed reliance on Section 36 (2) of the Electoral Process Act which expressly stipulated that absence of an election or polling agent from a polling station shall not invalidate the electoral proceedings.

(v) ANOMALIES IN THE INSCRIPTION OF THE 2ND PETITIONERS
VOTES ON GEN 20a

Mr. Musoka submitted in relation to this allegation that it was 2RW1's evidence that the Gen 20a form for Kagoro School had no anomalies and that the Gen 20a form that the 2nd Petitioner confronted her with at the Civic Centre after 14th August, 2021 was the one with anomalies. That if indeed the 2nd Petitioner had Three Hundred Forty-Five (345) votes at Kagoro School 02 her name would have been recorded first on the Gen 20a as she would have won at that particular polling station.

Counsel submitted that there were no anomalies on the Gen 20a form for Kagoro School as could be deduced from a copy of the Gen 20a form at page 29 of the 2nd Petitioner's Bundle of Documents.

In relation to the 2nd Petitioner's argument that the said form and some of her forms were not signed and witnessed by some or most of the polling agents, Counsel placed reliance on Section 36(2) of the Electoral Process Act that absence of an election or polling agent from a prescribed place shall not invalidate the proceedings.

He therefore submitted that it was irrelevant whether or not the Petitioners or his agents or other political parties endorsed on the Gen 20a or other documents of the 2nd Respondent since the signatures of the Presiding Officers and other designated officials of the 2nd Respondent was paramount. That lack

of endorsement of the Gen 20a form by the 2nd Respondent or their agents did not invalidate the same.

In conclusion, Counsel submitted that the Milanzi Constituency Election results could not be nullified by reason of any of the allegations levelled against the 2nd Respondent by the Petitioners as the election was conducted substantially in accordance with the Electoral Process Act and the Constitution of Zambia.

6. THE LAW

This Court has the jurisdiction to hear and determine election petitions by virtue of Article 73 (1) and (2) of the Constitution of Zambia (Amendment) Act No. 2 of 2016. This Article provides that:

'73 (1) A person may file an election petition with the High Court to challenge the election of a Member of Parliament.

(2) An election petition shall be heard within ninety days of the filing of the petition.'

Furthermore, Section 96 (1) of the Electoral Process Act No. 35 of 2016 ('the Act') also empowers the High Court to hear matters pertaining to election petitions. The section states that:

"A question which may arise as to whether-

(a) a person has been validly appointed or nominated as a Member of Parliament;

(b) the seat of an elected or nominated Member of Parliament, mayor, council chairperson or councillor, has become vacant, other than a question arising from the election of a candidate as a Member of the Parliament; or

(c) a petition may be heard and determined by the High Court or tribunal upon application made by-

- (i) any person to whom the question relates; or
- (ii) the Attorney General;

may be determined by the High Court or a tribunal, as the case maybe.'

Section 97 (2) (a) provides for instances where an election of a candidate may be declared void. It provides that:

'(2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall be void if, on the trial of an election petition, it proved to the satisfaction of the High Court or a tribunal as the case may be that-

(a) a corrupt practice, illegal practice or other misconduct has been committed in connection with the election-

- (i) by a candidate; or
- (ii) with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and

The majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred.

(b) subject to the provisions of subsection (4) there has been noncompliance with the provisions of the Act relating to the conduct of elections, and it appears to the High Court or tribunal that the election was not conducted in accordance with the principles laid down in such provision and that such non-compliance affected the result of the election; or

(c) The candidate was at the time of the election a person not qualified or a person disqualified for election.

A reading of the above provisions of Section 97 (2) (a) of the Act reveals that the election of a candidate as *inter alia*, Member of Parliament can only be nullified if the person challenging the election of the candidate proves to the satisfaction of the court that:

- (i) The candidate in question personally committed a corrupt or illegal practice or other misconduct in relation to the election or;
- (ii) That the corrupt or illegal practice or misconduct was committed by another person with the candidate's knowledge, consent or approval or that of the candidate's election or polling agent.
- (iii) As a result of that corrupt or illegal practice or misconduct the majority of the voters in the constituency were or may have been prevented from voting for a candidate whom they preferred.

The Constitutional Court in the case of Austin Liato v. Sitwala Sitwala ⁽¹⁶⁾ therefore stated that:

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

On the other hand, the key elements of Section 97 (2) (b) are that:

- (i) There must be non-compliance with the provisions of the Act relating to the conduct of an election and it must appear to the court or tribunal that the electoral principles as laid by the law have not been adhered to; and,
- (ii) The non-compliance must affect the result of the election.

What the foregoing means is that since the Electoral Commission of Zambia is mandated by the Constitution of Zambia under Article 229 (2) (b) and the Act to conduct elections, it must fulfil this function by ensuring that the requirements of the Act are respected and observed in the electoral process.

The Constitutional Court in the case of Giles Chomba YambaYamba v. Kapembwa Simbao and two others ⁽¹⁷⁾ stated that Section 97(2) (b) therefore concerns non-compliance to the provisions of the Act by the ECZ the body charged with the conduct of elections under Article 229 (2) (b) of the Constitution and not the candidates to an election or their agents.

Section 97(3) provides for the defences which may be invoked by the candidate and it reads as follows:

97. (3) Despite the provisions of subsection (2), where, upon the trial of an election petition, the High Court or a tribunal finds that a corrupt practice or illegal practice has been committed by, or with the knowledge and consent or approval of, any agent of the candidate whose election is the subject of such election petition, and the High Court or a tribunal further finds that such candidate has proved that—

- (a) a corrupt practice or illegal practice was not committed by the candidate personally or by that candidate's election agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent;
- (b) Such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and
- (c) In all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent; the High Court or a tribunal shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void.

The Constitutional Court in the case of *Giles Chomba YambaYamba* stated that subsection (3) was contingent upon the petitioner meeting the threshold in subsection (2) (a) and thus it didn't create a stand-alone ground upon which an election could be annulled.

Furthermore, Section 97(4) of the Act provides that:

"An election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court or a tribunal that the election was so conducted as to be substantially in accordance with the provisions of this Act, and that such act or omission did not affect the result of that election."

According to section 97(4), an election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court that the election was conducted in substantial conformity with the provisions of the Act.

On the burden of proof, in every judicial proceeding the question of the burden of proof and the standard of proof is and should always be determined at the outset.

In relation to the burden of proof, it is trite law that he who alleges must prove. In the case of Khalid Mohamed v. The Attorney General ⁽¹⁸⁾ Ngulube DCJ (as he then was) held that:

'An unqualified proposition that a plaintiff should succeed automatically whenever a defence has failed is unacceptable to me. A plaintiff must prove his case and if he fails to do so the mere failure of the opponents defence does not entitle him to judgment. I would not accept a proposition that even if a plaintiffs case has collapsed of its inanity or for some reason or the other, judgment should nevertheless be given to him on the ground that defence set up by the opponent has also collapsed.'

The Supreme Court in the case of Bresford James Gondwe v. Catherine Namugala ⁽¹⁹⁾ also stated 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 that he who alleges must prove."

To what standard must such initial burden be discharged? Section 97 (2) (a) which sets out the grounds on which an election petition can be voided provides that the election petition should be proved to the satisfaction of the court.

Therefore, the applicable standard of proof in election petitions has been held to be higher than the balance of probability but less than the standard of proof

in criminal cases which is beyond all reasonable doubt. Thus, in the case of *Akashambatwa Mbikusita Lewanika and three others v. Fredrich Jacob Titus Chiluba* the Supreme Court held that:

'Parliamentary election petitions are required to be proven to a standard higher than on a mere balance of probability.'

This was echoed in the case of *Anderson Kambela Mazoka & Two others v. Levy Patrick Mwanawasa* when the Supreme Court held *inter alia* that:

'As regards burden of proof the evidence adduced must establish the issues raised to a fairly high degree of convincing clarity.'

More recently, the Constitutional Court has reiterated in a plethora of cases including the case of Robert Chiseke v. Naluwa Mwene ⁽²⁰⁾ the threshold for nullifying an election of a Member of Parliament where a corrupt practice, illegal practice or other misconduct has been alleged in an election petition. It stated in the said case that:

"In addition to the above requirements under Section 97 (2) (a) of the Act, a petitioner ought to prove to a fairly high degree of convincing clarity all the allegations made against the candidate or his election or polling agent.

What is clear from the foregoing exposition of the law is that it is not sufficient just to prove the corrupt or illegal act or misconduct. There is a more stringent requirement. The Petitioner must also prove to a fairly high degree of convincing clarity that as a result of the corrupt or illegal practice or

misconduct the majority of the voter's in the constituency, were or may have been prevented from voting for their preferred candidate.

In relation to allegations against the Electoral Commission of Zambia, it must be proved that the non-compliance affected the result.

These are two separate petitions that were commenced under the Electoral Process Act and the 1st Petitioner and 2nd Petitioners have alleged against the 1st Respondent a number of allegations ranging from bribery, undue influence, violence and character assassination. Against the 2nd Respondent, it is alleged that the elections were not free and fair as they were conducted amidst breaches of the Act, thus there was non-compliance with the law.

The burden of proof therefore rests on each Petitioner to prove the allegations set out in each of their petitions. They have to prove to a fairly high degree of convincing clarity and that as a consequence of the acts of the 1st Respondent and or her agents, the majority of the voters in the constituency, were or may have been prevented from electing the candidate in that constituency whom they preferred and that the non-compliance with the law affected the results.

7. FINDINGS

Before I proceed to make findings on the evidence adduced in relation to the allegations made by the 1st Petitioner, I wish to state from the outset that at the end of the 1st and 2nd Petitioners and 1st and 2nd Respondents respective

cases, it became apparent that the credibility of the witnesses had to be considered in order to assess the weight to attach to their evidence. This is inevitable because in an election petition witnesses for both parties would be partisan with an interest to serve. I am persuaded by the reasoning of Kaoma J. in the case of Christopher Kalenga v. Annie Munshya and 2 others ⁽²¹⁾ where the court stated that:

“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 behaved in a saintly manner, while those of other candidates were all servants of the devil....in an election contest of this nature, witnesses most of them motivated by the desire to score victory against their opponents will deliberately resort to peddling falsehoods. What was a hill is magnified into a mountain.’

In this regard, I have adopted the pattern followed by Musonda J. in the case of Mulondwe Muzungu and Elliot Kamondo ⁽²²⁾ in categorizing the witnesses which I also find persuasive. I have accordingly put the witnesses in the following categories:

1. Witnesses who were supporters of the Petitioners or the 1st Respondent. These may have their own interest to serve as they are partisan;
2. Witnesses who were performing a function in the course of duty and were non-partisan and;
3. Witnesses who were supporters of the candidate but gave evidence which was not supportive of the candidate. If they are truthful their evidence could be more cogent.

And just to add on the issue pertaining to witnesses. During the course of the trial, when RW5 was called to the witness stand, the Court was informed that he had remained in the Court room during the testimony of the 1st and 2nd Petitioner's witnesses. The Court was therefore asked to consider what weight to attach to his evidence.

By way of background, the efficacy of excluding witnesses from the Courtroom until they are called is a long established and well recognized measure designed at discouraging fabrication, inaccuracy and collusion so as to increase the likelihood that the testimony of the witness will be candid.

Under our rules, this measure is provided for under Order V of the **High Court Rules Chapter 27 of the Laws of Zambia**. It provides that:

"On the application of either party or on its own motion, the Court may order witnesses on both sides to be kept out of court but this rule does not extend to the parties themselves or to their professional representatives although intended to be called as witnesses.

However, this power to exclude a witness from the Court is a discretionary one. In the case of Moore v. Lambeth County Court Registrar ⁽²³⁾, the Court of Appeal rejected a submission that in the county court natural justice was violated by the witnesses being allowed to remain in court. In giving judgment, Edmund Davies J. stated that:

"If the court rules that witnesses should be out of court and a witness nevertheless remains inside while the trial judge may well

express his grave displeasure over such disobedience, he has no right to refuse to hear the evidence of such a witness.”

In our own jurisdiction, Sakala J. (as he then was) in the case of Happy Mbewe v. The People ⁽²⁴⁾ adopted the same approach in the *Moore v. Lambeth* case but added that:

“Where a situation arises in which a witness to be examined heard the evidence of the other witnesses, his evidence is still admissible but the court in considering in evidence at the end of the trial will have to determine as to what weight to attach to that evidence.”

From the record, it is clear that no application was made by either party to exclude the witnesses and the Court did not make any order to that effect. Therefore there was no disobedience of any Order. Therefore, RW5’s evidence will not be discounted but an assessment of the probative value or weight to be attached to the evidence will be based on the category of witnesses he falls in.

Getting back to issue, after examining the facts, I have found that the following facts are not in dispute:

- (i) The 1st and 2nd Petitioners, the 1st Respondent and four other candidates contested the Parliamentary seat for the Milanzi Constituency in the last elections that were held on the 12th August, 2021.
- (ii) The results declared showed that the 1st Respondent was in first position with 6,846 votes while the 1st Petitioner was in fourth position

with 2, 782 votes and the 2nd Petitioner in fifth position with 2, 433 votes.

(iii) The Returning Officer declared the 1st Respondent as winner.

I find those as facts.

What is in dispute are the allegations that have been put forward by the two Petitioners in their respective petitions.

As earlier alluded to, two petitions were consolidated and the Court heard a total of thirty (30) witnesses. The 1st Petitioner called ten (10) witnesses, while the 2nd Petitioner called fourteen (14) witnesses. The 1st Respondent called five (5) witnesses and the 2nd Respondent called one (1) witness.

I shall begin with the allegations as set out in 1st Petitioner's petition. The grounds in the 1st Petitioner's petition can be summarized into the following headings:

- (i) Registration of Mozambicans as Voters and Ferrying of the Mozambicans to vote, voting at night and delay to close and commence counting.
- (ii) Threats and Undue Influence relating to withdrawal of fertilizer and Social Cash Transfer.
- (iii) Bribery and Corruption.
- (iv) Removal of 1st Petitioners Polling Agents.
- (v) Use of Government Vehicle by the District Commissioner.

(1) REGISTRATION OF MOZAMBICANS AS VOTERS AND FERRYING OF MOZAMBICANS TO VOTE, VOTING AT NIGHT AND DELAY TO CLOSE AND COMMENCE COUNTING

The allegation on this ground is that the 2nd Respondent facilitated the issuance of National Registration Cards and voters cards to Mozambicans in cohort with the Patriotic Front Government and that the 1st Respondent with the active participation of the DC ferried Mozambican nationals in order for them to vote in the 12th August, 2021 elections. It is also alleged that the 2nd Respondent allowed the Mozambicans to vote at night and that there was a delay to close and commence counting of votes in order to give allowance to the foreign nationals to vote. This stretched the process of voting and counting to two days.

The allegations contained herein are covered under Section 83 (3) and (4) of the Act.

This section provides as follows:

(3) A person, knowing that another person is not entitled to be registered as a voter, shall not—

(a) Persuade that other person that, that other person is entitled to be registered as a voter; or

(b) Represent to anyone else that the person is entitled to be registered as a voter.

(4) A person, knowing that another person is not entitled to vote shall not—

(a) Assist, compel or persuade that other person to vote; or

(b) Represent to anyone else that the other person is entitled to vote.

(5) A person who contravenes any of the provisions of Sub-Sections (1) to (4) commits an offence.

Section 83 (3) therefore prohibits the registration of any person not entitled to be registered as a voter and Section 83(4) prohibits assisting, compelling or persuading a person who is not entitled to vote, to vote or represent to anyone else that the other person is entitled to vote.

In order to succeed on this ground, the 1st Petitioner must show:

- (i) That Mozambicans came to Zambia and obtained National Registration Cards and were registered as voters in Zambia.
- (ii) That the 2nd Respondent working with the PF Government was responsible for the registration of the Mozambicans as voters and that the 2nd Respondent allowed them to vote to the advantage of the 1st Respondent.
- (iii) The 1st Respondent and her election or polling agent and with her knowledge and with the active participation of the DC ferried the Mozambican nationals to come and vote.
- (iv) The 2nd Respondent allowed the Mozambicans to vote at night and as a result, there was a delay to close and commence counting of ballots.

In relation to (i) what evidence has been adduced by the 1st Petitioner?

The 1st Petitioner in her evidence stated that Milanzi constituency is a border constituency because part of it borders Mozambique and Zambia. That Mozambicans came to vote illegally because they were registered by the 2nd Respondent. She also stated that she had proof that the Mozambicans were issued with NRCs and voters' cards illegally during the voter registration. She stated that she had seen the Mozambican voters' cards which indicated that the names had been disguised but the photos were similar with the actual persons.

The 1st Petitioner also told the Court in cross examination that a person was entitled to register as a voter if she was in possession of an NRC; that although she alleged that the 2nd Respondent facilitated the issuance of NRCs, the 2nd Respondent did not issue NRCs but voter's cards.

PW2 Elebat Phiri also led evidence to prove this allegation and he stated that in 2020 he was visited by the DC for Katete Mr. Duma Makukula together with the Councilor for Kafumbwe ward, Milanzi Constituency, by the name of Mr. Akilen Banda. They informed him that since he was PF, they wanted his help to register voters from Mozambique. He was surprised and asked the DC if that was possible. He was told it was. He was therefore asked to look for four ladies who would be cooking for the Mozambicans.

The Mozambicans started coming for registration and the DC was the one who used to provide chickens and mealie meal to be cooked for them. He stated that about six hundred (600) Mozambicans would get their NRCs per day from 06:00 hours to 18:00 hours.

After that program came to an end, he realized that this was a lie and decided to defect from PF to UPND. When the voter registration period started, the people he had assisted used to come on their own to get the voters cards and they didn't require his assistance. He stated that he knew that they were Mozambicans as he saw them with his own eyes and that they used to go to his house to drink water.

PW3 Lumphani Amerco Lumphani also led evidence in support of this allegation. He told the Court he was a Mozambican national and whilst at home, their Headman Iback Phiri announced in the village that since they obtained medical, educational and agricultural services in Zambia, there was information that they should go and get registration cards in Zambia. When they arrived in Zambia, they waited at PW2's house and ate from there. Eventually they got the NRCs and went back to their homes. After some days they were informed by the Headman that they should go back and get voters cards which they did. The same were issued at Lunga School in Chimsithu village.

PW4 Liyaya Phiri also led testimony in this regard and told the Court that he lived in Mozambique. Whilst there, their Headman told them to get NRCs in Zambia. When they got the NRCs, they were told to come and get voters' cards. When they got the voters' cards, he attended a meeting at Lunga football pitch where they were told by the 1st Respondent, Akilen the Councilor and the DC Katete that they should vote for them and that if they didn't not vote for the 1st Respondent, they would close their schools, clinics and hammer mills. When the meeting was over, they were given wrappers, t-shirts and they went back to their homes.

In rebuttal, the 1st Respondent told the Court that she did not facilitate for the Mozambicans to come and vote because she was not from the Electoral Commission of Zambia.

Her evidence was that her campaign team consisted of herself as the candidate, her campaign manager, Mr. Sam Zulu, her election agent, Mr. Jackson Banda, Milanzi Constituency Chairperson, Mr. Misheck Nyoni under the Patriotic Front and her husband Mr. Alex Chibwe.

RW5 Mr. Sam Zulu, the 1st Respondent's campaign manager also addressed this allegation by stating that they started the campaigns in May 2021, during which period there was no issuance of any voters' cards and the 1st Respondent was nowhere near the issuance of voters' cards. He found the allegation to be unfair on their camp.

RW5 further told the Court that on polling day, one of their Canters was down as the pump got damaged and the only other transport they had was one Canter which they used to deliver breakfast and lunch for their polling agents across the constituency. Therefore, they had no programme to transport anyone to go and vote.

It was RW5's testimony that at no time did they ever move with the DC for campaigns or any other program. The only time he saw his candidate with the DC was when they found him on 10th August, 2021 at the Council Motel where the DCMC had invited them for a meeting.

RW6 the Returning officer for Milanzi Constituency on behalf of the 2nd Respondent testified that she could only speak for the 2nd Respondent where she was engaged as the allegation on the issuance of NRCs referred to the Patriotic Front Government.

She however told the Court that the mandate of the 2nd Respondent was only to register people eligible to register as voters and the people who were eligible were Zambian nationals who should have produced a green NRC. It was not therefore their mandate to issue NRCs and that this duty was for the Ministry of Home Affairs.

On the allegation that there was voting in the night, she stated that if there were people in the queue at 18:00 hours when the polling station was officially

closed, those would be allowed to vote up to the last person. She couldn't confirm that there were Mozambicans who were allowed to vote as the 2nd Respondent only allowed those with green NRCs and voters cards to vote.

In relation to the allegation that it took two days to count the ballots, she stated that what took two days was the totaling at the totaling center.

I have considered the evidence in support of this allegation and the evidence in rebuttal.

To begin with, the 1st Petitioner's evidence does not reveal that she witnessed the issuance of NRCs by the 2nd Respondent working together with the PF Government. I therefore find that her evidence is not reliable and I have placed no reliance on it.

The other witness who supported the allegation by the 1st Petitioner is PW2. He stated that he knew that those he had assisted to get NRCs were Mozambicans because he saw them and they used to go to his house to drink water. In cross examination he stated that those he helped to get NRCs were at pages 1, 7, 9, 19, 27, 15, 13 and 11 of the 1st Petitioner's bundle of documents. The names that indicated on what he stated were Mozambican voters' cards are:

1-Paulo Sizala Tadzeracuti, 7- Liyaya Willisone Liyaya, 9- Lumphani Amercos Lumphani, 11-Milton Elias Sande, 13-Jenifa Amercos Lumphani, and 15- Nelia

Malua Wezulo. On the Zambian voters' cards, the name on 19- is Phiri Neliya and 27-Mwale Raphael.

Apart from Liyaya Willisone Liyaya and Lumphani Amercos Lumphani, (I shall revert to these two later) the others did not testify in Court on their national status as Mozambicans. In the absence of evidence from the alleged Mozambicans, I find that PW2 was not a competent person to testify on the contents of those documents because he didn't even indicate if he had ever seen the documents that were produced in the bundle of documents. His evidence that the persons at pages 1, 19, 27, 15, 13 and 11 were Mozambicans is therefore unreliable especially that he confirmed in his cross examination that he is a member of the UPND. In terms of categorization, he is a partisan witness whose evidence has to be treated with caution and therefore it has to be corroborated. I am guided by the case of *Steven Masumba v. Elliot Kamondo* where the Constitutional stated that:

"Evidence of a partisan witness should be treated with caution and requires corroboration from an independent source in order to eliminate the dangers of exaggeration and falsehood."

In view of the foregoing, was his evidence corroborated? There was evidence from PW3 Lumphani Amercos Lumphani and PW4 Liyaya Phiri. PW2 stated that he helped them get the NRCs.

I will start with Lumphani Amercos Lumphani. As I have mentioned, he stated that he was a Mozambican who came and obtained his NRC and voters card in

2020. He referred the Court to the document at page 9 which he stated was his Mozambican voter's card and the document at page 23 as his Zambian voter's card.

I have carefully examined these documents. The document at page 9 which PW3 stated was his Mozambican voter's card bears the names Lumphani Amercos Lumphani with a date of birth of 22/07/1983 while the document at page 23 and 24 which is the Zambian voter's cards bears the names Yohane Phiri with date of birth 14/09/91.

It is very clear and there is no dispute that the names and the date of birth appearing on these cards are different. PW3's explanation for this discrepancy is that when they came to Zambia to get their NRCs, they were told not to use Mozambican names but Zambian names. They were also told to change the date of birth because if they gave the actual date of birth, they would not be allowed as they would be considered to be old.

There is no doubt that the discrepancy in the name and age can mean that the documents are for two different people because the particulars in terms of the name and age are totally different. The question that begs an answer is this: Is this explanation satisfactory?

I can safely state from the outset that I have difficulties in accepting the explanation given because one can only know that the documents are for the

same person if an explanation is proffered as the names are completely different.

Furthermore, if the reason for reducing the year of birth from 1981 and 1991 was intended to ensure that he does not appear to be old, changing the year from 1983 to 1991 does not make logical sense. I say this because a person is eligible to obtain an NRC in Zambia at the age of sixteen (16) years old. Therefore, even if I were to accept his evidence that he was asked to reduce the age, getting an NRC at age of twenty-nine (29) years is still old and would not have resolved the fact that he is an old person.

I therefore do not find that explanation convincing that he is a Mozambican and just changed his particulars in terms of name and age. This difficulty is exacerbated by the fact that he didn't produce his NRC. This would have shown whether what he told the Court that he came to Zambia in 2020 to get his NRC was true or not. I find his explanation that he left his NRC at home to be inconceivable because if he wanted this Court to believe his evidence that he obtained his NRC and later his voter's card in 2020 and then also voted, he should have produced the NRC which is the primary document one needs to present to the 2nd Respondent before a voter's card is issued.

The failure by PW3 to produce this NRC in my view was deliberate and was intended to conceal the actual date when it was issued. I am fortified in holding this view because he gave contradictory evidence during cross examination by

Mr. Muyatwa when he asked him to confirm that the Zambian NRC was issued to him in 2020. He denied this assertion. Counsel repeated the question but PW3 maintained his answer and stated that it was the voter's card which he obtained in the year 2020. It was only after the question was asked the third time that PW3 stated that he obtained his NRC in Zambia last year.

In continued cross examination by Mr. Mwelwa, PW3 changed again and stated that he couldn't remember when he obtained the NRC. If the incident only happened last year in 2020, I do not think one could be that forgetful so as not to remember what year it was issued.

In addition, during cross examination, he also admitted that he couldn't certainly state that he was from Mozambique; that he was shown some papers which had their images and his friend who was outside is the one who asked him to come. He also admitted that he had no evidence that he was a Mozambican because of the way he had left home.

In my view, if it was true that PW3 was a Mozambican, he would not have given these answers which revealed that he was expressing doubt in his own testimony because the answers clearly contradicted what he had earlier told the Court that he had a Mozambican card to show that he was from Mozambique. Then again in cross examination he changed and stated that he had no evidence to show that he was Mozambican. In re-examination he stated that he was Mozambican.

These inconsistencies in his evidence to me have revealed that his evidence was fabricated that is why he only came to Court because his friend asked him to come.

So while RW6, the Retuning officer when she was cross examined stated that the name of Yohane Phiri appeared on R5 the Zambian Voters Register at page 20 second column, I find that that evidence on its own is not sufficient to confirm that he is a Mozambican who came and voted in Zambia. This is because he didn't produce his NRC to confirm that he actually came and obtained his NRC in 2020 after being requested by the Headman from Mozambique to come and register as a voter in Zambia.

For these reasons, I find that the evidence of PW3 is not convincing and lacks clarity. In this regard, I find that the 1st Petitioner has not proved with convincing clarity that PW3 is a Mozambican who came and obtained his NRC in Zambia in 2020 in view of the apparent contradiction in his testimony, lack of plausible explanation regarding the discrepancies in the name and age on the purported Mozambican card and voter's card and the failure to produce his NRC.

Turning to PW4, he stated that his real names are Liyaya Phiri. He referred the Court to the document at page 7 which he stated was his Mozambican voter's card bearing the names Liyaya Willisone Liyaya and the documents at page 31 and 32 to be his Zambian voter's card bearing the names Liyaya Phiri.

Just like PW3, the names and the date of birth on these two cards are different. His explanation in the discrepancies was that in Mozambique the names for your grandfather and father are also included on the card. In this regard, Liyaya was his grandfather's name while Willisonc was his father's name. However, his real names are Liyaya Phiri. Is this explanation satisfactory?

To begin with, PW4 gave a totally different explanation to the one given by PW3 regarding the discrepancy in names. Now, if PW4's purported Mozambican voter's card was issued by the same Mozambican authority with the card issued to PW3, why didn't PW3 also give the same explanation that his grandfather and father's name were indicated on the card?

From his evidence, PW3 never made reference to such. He was very categorical and stated that his real names are Lumphani Amercos Lumphani. His explanation in the discrepancy in names was that he was told not to use Mozambican names but to use Zambian names.

On the other hand, PW4 was the one who made reference to what happens in Mozambique but he also didn't make reference to the explanation that PW3 gave that they were required to change the names and use Zambian names.

Furthermore, PW4 also didn't produce the NRC which he stated was issued in 2020. As I have already mentioned, this was a vital piece of evidence to show when the NRC was issued to him because the allegation is that Mozambicans

came and obtained NRC's in 2020. As it is, I am not entirely convinced that PW4 came to Zambia in 2020 to obtain his NRC as he claims he did.

Moreover, PW4 was very clear in his evidence when he gave his particulars in the witness box that he was born in 1998. The year 1998 is the one which also appears on the Zambian voter's card and in cross examination he confirmed that that was the correct information.

If at all it is true that the Mozambican card at page 7 was his, he should have also told the Court that he was born in 1999 which is the year of birth that appears on that card. He didn't do that. Furthermore, he stated that he was asked to reduce the age so that he does not appear to be old. So his age was reduced and the age on the voter's card is 1998. I find it to be illogical that his year of birth could have been reduced by one year if the intention was to ensure that he does not appear to be old. I say this because it would still have been late for someone who was born in 1998 to have obtained an NRC in the year 2020. So reducing by one year would not have made any difference.

For this reason, I have come to the conclusion that PW4 was not being truthful. He was actually born in 1998 and not 1999 and so I find.

Just to add, when PW4 was called to testify by his lawyer, the name that was called out was Liyaya Willisone Liyaya. These are the names which are on the card which PW4 stated was his Mozambican voter's card. However, when PW4

was put in the witness box, he stated that his real names are Liyaya Phiri and he made no reference to the name which was on the said Mozambican card which going by his evidence is his card. At this point, his lawyer had to ask him again to confirm his name as he had called him as Liyaya Willisone Liyaya.

The fact that he made no reference to this name when giving his particulars makes me doubt that the Mozambican card he produced is actually his card. This is because PW4 also stated in cross examination that his father was Zambian as he was born in Zambia. In this regard, he admitted that he was a Zambian who stayed in Mozambique and that was why he had been asked as a Zambian living in Mozambique to come and vote in Zambia.

Although in re-examination he changed that he was a Mozambican, I find that answer to be an afterthought as he realized that his testimony was inconsistent. I say this because I observed from his demeanour which was not impressive that when it was put to him in cross examination that he was Zambian because his father was born in Zambia, he was hesitant to answer the question. In fact he even rolled his eyes which to me was a sign that he was exasperated and he had to think hard of what to say because his lies had been exposed through cross examination. In short he was caught in a lie.

Given these inconsistencies between PW3 and PW4 on the discrepancies in the names which is on a material aspect and also his answer in cross examination that he was a Zambian, I find that PW4 is a Zambian living in Mozambique and

therefore he was not being truthful when he initially told the Court that he was a Mozambican who had obtained a Zambian NRC in 2020.

Consequently, I find that the evidence of PW3 and PW4 does not corroborate the evidence of PW2 that these two witnesses were Mozambicans because it is insufficient and unconvincing.

What other evidence was adduced by the 1st Petitioner to show that Mozambicans voted in Zambia? The 1st Respondent produced other documents in the 1st Petitioner's bundle of documents. As the record will show, these people whose documents were produced at pages 1, 3, 5, 11, 13 and 15 were not called as witnesses. In addition, their NRCs were also not produced to ascertain whether they obtained the NRCs in 2020 as alleged by the 1st Petitioner.

This Court cannot make an inference based on what has been produced that they are Mozambicans who obtained voters' cards in Zambia without any explanation on the circumstances under which they were allegedly issued with Zambian voters' cards especially that PW3 and PW4 turned out to be untruthful witnesses.

As I have stated, while PW3 and PW4 may have voted in the last election as they appear on the Zambian Voter's Register which was produced in Court, I

have made a finding based on what I have highlighted above that their evidence was unconvincing that they are Mozambicans.

For the reasons that I have taken time to highlight, I find that the 1st Petitioner has not proved with convincing clarity before this Court that PW3 and PW4 and the persons whose documents appear at pages 1, 3, 5, 11, 13 and 15 are Mozambicans who came to Zambia and obtained NRCs and voters' cards and voted in Zambia.

Even assuming I found that PW3 and PW4 were Mozambicans who were registered as Zambian voters in 2020, can it be said that the 2nd Respondent working with the PF Government was responsible for the issuance of voters' cards to Mozambicans and that the 2nd Respondent allowed them to vote?

As I have mentioned, the evidence by PW2 was that he was asked by the DC to assist in the issuance of NRCs to Mozambicans. It is trite that the registration of voters in Zambia is a preserve of the Electoral Commission of Zambia while the issuance of NRCs is a preserve of the Department of Registration Passport and Citizenship under the Ministry of Home Affairs.

Section 8 of the Act is very clear that for a person to be issued with a voter's card, that person must be a Zambian citizen in possession of an NRC. So the process starts with being in possession of an NRC. The NRC indicates amongst other details the date of issue. PW2 stated that he was the one who assisted

the Mozambicans to get the NRCs under the instruction of the DC. There was no evidence that was adduced to show that the 2nd Respondent working with the PF Government was involved in the issuance of the NRCs as there was no clarity in the evidence of PW2 where the NRCs were obtained from. PW1 in her testimony also admitted that the 2nd Respondent did not have the mandate to issue NRCs to Zambians and that this was done by the Ministry of Home affairs.

Furthermore, PW2 in his evidence stated that he only assisted the alleged Mozambicans to obtain their NRCs and after that, he did not assist them get the voters' cards. The 2nd Respondent's evidence is that voters' cards are only issued to persons in possession of a green NRC. Counsel for the 2nd Respondent also submitted that once a person has been issued with an NRC, it is not their mandate to question that persons nationality when registering voters as that responsibility lies with the registrar under Section 7 of the National Registration Act who has the power to request the applicant to furnish documentation or other evidence of truth of information being provided by the applicant.

In this case, there is no evidence on record to show that after the NRCs were allegedly issued to Mozambicans, the 2nd Respondent issued voters cards to them with knowledge that they had illegally obtained NRCs. PW3 and PW4 only stated that when they came to Zambia, they obtained their voters' cards and

no details were given to show that the 2nd Respondent officers knew that they were from Mozambique.

Furthermore, there was no evidence that was adduced that the alleged instructions issued to PW2 by the DC to assist Mozambicans obtain NRCs were issued as an agent of the 1st Respondent or that they were issued with the knowledge, consent or approval of the 1st Respondent. None of the witnesses stated that they saw the 1st Respondent actively involved in the issuance of NRCs.

I say this in line with the definition of an agent, who is defined in section 2 of the Act as:

“A person appointed as an agent of a candidate for the purpose of an election who is specified in the candidate’s nomination papers.”

Furthermore, Regulation 55 (1) also provides that:

“A candidate shall name an election agent in the nomination paper and subject to the other provisions of this regulation, the person named shall be the election agent of the candidate for the purpose of that election.”

According to the nomination paper produced by the 1st Respondent, her election agent was Jackson Banda. No evidence was adduced linking Jackson Banda to the issuance of NRCs.

In addition to the foregoing, there was no evidence that was adduced that after PW3 and PW4 were allegedly issued with NRCs the 1st Respondent or her agent

or with her knowledge, consent or approval was involved in the voter registration exercise to ensure that the alleged Mozambicans were issued with voters' cards.

Besides, even assuming I found that PW3 and PW4 were Mozambicans who were registered as voters in Zambia, there was no evidence adduced to show that the vehicle used to ferry the alleged Mozambican nationals belonged to the 1st Respondent or her election or polling agent or that those who ferried the alleged Mozambicans did so with the knowledge, consent or approval of the 1st Respondent. PW3 and PW4 stated that a Canter went and picked them up. However, they didn't mention that they saw the 1st Respondent or her agents or the DC when they arrived in Zambia to vote.

Moreover, even when considering the fourth question that the 2nd Respondent allowed the Mozambicans to vote at night and as a result there was a delay to close and commence counting of ballots, no evidence was adduced to show that the alleged Mozambicans who were ferried were allowed to vote at night and that this was what caused the delay to commence the close and commence the counting of ballots.

PW3 and PW4 who were called to speak on this allegation as Mozambicans stated that they were picked up at 12:00 hours to come and vote and they went back around 15:00 hours. PW4 stated that he didn't know if there were any alleged Mozambicans who voted at night.

RW6 whose evidence was not challenged and which I have accepted stated that what took long to count was the totaling at the totaling center and not that it took two days to count the ballots.

I should hasten to point out that when it comes to non-compliance by the 2nd Respondent with the Act in the conduct of elections as provided for under Section 97 (2) (b) of the Act, the Constitutional Court in the *Giles Yamba Yamba* case stated that cogent evidence must be proffered to show that the results were affected. That is the new threshold.

What this means is that it was incumbent upon the 1st Petitioner to have shown with cogent evidence that the participation of the alleged Mozambicans in the elections affected the voting pattern in favour of the 1st Respondent in the Constituency. However no evidence was led to show that this threshold had been met because time was expended on proving only one ingredient being the commission of the prohibited act or non-compliance with the law and forgetting that the threshold has changed from the previous legal regime.

In view of the foregoing, I find that the 1st Petitioner has not proved this allegation to its high standard of convincing clarity that:

- (i) The 2nd Respondent in cohort with the Patriotic Front registered Mozambican nationals and that they allowed them to vote.

- (ii) The 1st Respondent or her agent and with the active participation of the DC ferried Mozambican nationals on trucks for them to vote in the elections on 12th August, 2021.
- (iii) That the 2nd Respondent allowed the alleged Mozambicans to vote at night and that this caused a delay to close and commence counting of votes.

The net result is that the allegation under this head is dismissed.

(2) THREATS AND UNDUE INFLUENCE RELATING WITHDRAWAL OF FERTILIZER AND PAYMENT OF SOCIAL CASH TRANSFER

This allegation is covered under Section 83 (1) (c) which provides that:

(1) A person shall not directly or indirectly, by oneself or through 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;

In terms of definition of undue influence the learned authors of Halsbury Laws of England at paragraph 15 on page 429, stated that:

“A threat must be serious and intended to influence the voter but it must appear that the threat should be judged by its effect on the person threatened and not by the intention of the person using the threat.”

These allegations relating to threat and undue influence are contained in paragraphs 11 and 12 of the 1st Petitioner's petition.

In support of these allegations, the 1st Petitioner's evidence was that in Katiula ward, the voters were threatened by the 1st Respondent and her agents Mr. Nyoni that if they did not vote for the 1st Respondent, they would not receive Social Cash Transfer. That the threats were issued in the whole constituency but mainly in Kazala ward, Dole ward and Kamphambe ward. When asked how she knew about this, she stated they went there for a meeting and the electorate complained and asked her if Mr. Hakainde Hichilema and the UPND would continue paying Social Cash Transfer.

Further, that in Katiula and across the constituency, the 1st Respondent lied to the people that they had to pay for fertilizer under the Farmer Input Supply Programme (FISP) and that they would get their fertilizer before the election date. According to the 1st Petitioner, people went ahead and paid through the DC and then to the DACO (District Agriculture Coordinating Officer).

PW5 also led evidence in this regard and told the Court that the leaders of Zakonkha Co-operative who were Phiri Kamfuta, Nathan Mbewe, Mbewe Arson and Justine Phiri called him with the leaders for UPND. They told them that

they had gone to (DACO)'s office where they banked the money for farming. He explained that the DACO wanted to refund money for the eight (8) UPND leaders. When they told them this, they did not accept as FISP did not deal with politics.

He further stated that there was a political rally at Zakonkha Cooperative, the Constituency Chairperson Misheck Nyoni explained that everyone attending that rally, if they were following people from UPND, they would not get any fertilizer. The 1st Respondent was present at the rally and repeated the same words.

Although he stated that the threat had no effect on him, it had an effect on the people who used to follow him.

PW6 also testified that when the campaign started, he received a phone call from the Constituency Chairman for PF in Milanzi, Misheck Nyoni who told him that he had heard that he had joined UPND and he agreed. He then told him that the DC told them that whoever supported UPND would not get fertilizer.

Evidence was also led from PW7 who told the Court that on the last Saturday of July, the DC went and held a meeting at Katiula School in Katiula ward and he found a lot of people. When the meeting started he warned them that they needed to be careful with elections for that year 2021. He also told them to vote

for the 1st Respondent because if they did not vote for her, the farmers would not be given fertilizer.

He testified that the DC further informed the crowd that he was handling the Social Cash Transfer and if they did not vote for the 1st Respondent, they would not receive that money. For that reason, when it was time to vote, people were scared that they would not get fertilizer and social welfare money so they did not vote according to their choice. He also stated that at the second meeting which was attended by the 1st Respondent, she didn't issue any threats.

PW8 also told the Court that on 7th July, 2021, the DC and the 1st Respondent held a meeting at Chimsithu village in Kafumbwe ward and at that meeting they were informed that they should vote for the 1st Respondent or they would not receive fertilizer and Social Cash Transfer.

In rebuttal, the 1st Respondent on the other hand stated that in her campaign messages, she never threatened anyone and her message was based on what she was going to do for the people of Milanzi Constituency once elected as Member of Parliament.

She denied threatening anyone regarding Social Cash Transfer and fertilizer as she was not in any government position to talk about Social Cash Transfer and the fertilizer

RW5 also addressed this allegation and stated that he had no knowledge of the allegations regarding fertilizer.

The 1st Petitioner's evidence is that the threats relating to Social Cash Transfer were issued in the whole constituency but mainly in Kazala ward, Dole ward and Kamphambe ward by the 1st Respondent and Mr. Nyoni.

However, it is clear from the evidence that she didn't witness the 1st Respondent, Misheck Nyoni or the DC utter the alleged threats as she was just told by the electorate. In this regard, I place no reliance on her evidence.

PW6's evidence was also that he just received a phone call from the Constituency Chairperson for PF in Milanzi Constituency who informed him that the DC had told him that those who supported the UPND would not receive fertilizer. This witness was just told what the DC allegedly said and he didn't get the information personally from the DC who allegedly uttered those words.

That was the only evidence that was adduced from this witness. In the case of Subramanian v. The Public Prosecutor ⁽²⁵⁾ it was stated that:

"Evidence of a statement made to a witness by another person may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and admissible when it is purposed to establish by evidence, not the truth of the statement but the fact that it was made."

PW6 was called as a witness to address the allegation that threats were issued by the DC. The purpose was therefore to establish the truthfulness of what is contained in the statement and not that the statement was made. This means that PW6's evidence does not fall within the hearsay exceptions. I am fortified by what the Constitutional Court stated in the case of *Robert Chiseke v. Naluwa Mwene* which I have alluded to which also made reference to the *Subramanian* case that:

"It is clear from the record that the testimony given by the appellant in the court below was tendered for its content value and not for the purposes of establishing that the witness testimony were made. We therefore see no reason for faulting the trial judge's finding and accordingly dismiss the ground of appeal."

Since PW6 only told this Court about what he was told, I find that his evidence is purely hearsay as it was tendered in for its content value. In this regard, I have placed no reliance on that evidence to prove the allegation herein.

There was also evidence from PW7. He stated that at a meeting in Katiula the DC held a meeting sometime in July at which he stated that if they didn't vote for the 1st Respondent, they would not be given fertilizer and Social Cash Transfer. The other people who spoke were Daniel and Allan Mvula. That the 1st Respondent attended the second meeting but she didn't issue any threats that if they don't vote for her they would not be receive Social Cash Transfer and fertilizer.

To begin with, PW7 who stated that threats were issued by the DC, Daniel and Allan is a member of the UPND party. In terms of category, he is a partisan witness whose evidence that threats were issued has to be corroborated from an independent source. This is particularly important especially that the 1st Respondent has denied this allegation and contends that she was not in a Government position to have talked about issues relating to Social Cash Transfer and fertilizer.

I am fortified by what the Constitutional Court stated in the case of *Steven Masumba v. Elliot Kamondo* which I have already referred to on how evidence of partisan witnesses should be treated. The Constitutional Court further stated in the case of *Richwell Siamunene v. Sialubalo Gift* ⁽²⁶⁾ regarding partisan witnesses that:

“It is incumbent on the petitioner to place before court independent evidence to corroborate and strengthen the testimony of partisan witnesses. This is not only because of the reduced weight attached to their evidence but also because of the higher standard of proof required.”

The evidence of PW7 was not corroborated to strengthen his evidence that the DC, Daniel and Allan issued the threats at a meeting in Katiula even though he stated that there were other people who attended the meeting. I am guided by the above authorities that because of the reduced weight attached to his evidence and the higher standard of proof, there was need for his evidence to

be corroborated in order to eliminate the possibility of exaggeration and falsehoods.

In the absence of any evidence to support the evidence of PW7, I find that he hasn't proved that the threats were issued by the DC, Daniel or Allan that if they didn't vote for the 1st Respondent, Social Cash Transfer and fertilizer would be withdrawn.

Taking it further, even if I found that such threats were issued, it is very clear from this evidence that the 1st Respondent was not in attendance. Therefore, for the 1st Respondent to be answerable for the alleged actions by the DC, Daniel and Allan, it should have been proved that they were her election or polling agents. If not that, whatever is alleged to have been said or done was done with the knowledge, consent or approval of the 1st Respondent.

I have mentioned already that according to the nomination paper that was produced, the 1st Respondent's agent was Jackson Banda. There is no evidence that the DC, Daniel and Allan were agents of the 1st Respondent as defined by law.

Furthermore, there is no evidence that the 1st Respondent had any knowledge or consented or approved to what was allegedly said at that meeting. I note that PW7 when asked in cross examination stated that the DC used to work with the 1st Respondent. Even if I were to accept that evidence, in my view that

would not prove that the alleged threats were issued with her knowledge or consent because no such evidence was adduced and there was no supporting evidence to strengthen his evidence.

In relation to Daniel and Allan, they belonged to the same political party as the 1st Respondent. The Constitutional Court in the case of *Nkandu Luo v. Doreen Sefuke Mwamba* which relied on the case of *Lewanika v. Chiluba* held that:

“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.”

The above case authority clearly encapsulates the import of Section 97(2) (a) of the Act. I therefore find that the 1st Respondent cannot be held answerable for alleged acts of Daniel or Allan just because they belonged to the same political party.

Regarding the second meeting that PW7 attended, his evidence is that the 1st Respondent did not issue any threats as she just asked the crowd to vote for her because she was female and a young person.

In the absence of any evidence that the 1st Respondent issued threats personally and also through the DC, Daniel and Allan as PW7’s evidence was not corroborated that those who would not vote for her would not receive Social Cash Transfer and fertilizer, I find that this allegation has not been proved by this witness to the required standard.

That leaves the evidence of PW5 and PW8. To begin with, these witnesses admitted in their evidence that they were members of the UPND. As I have already alluded to, their evidence requires corroboration.

Although the witnesses made reference to the same alleged threat of withdrawing Social Cash Transfer and fertilizer, it is evidently clear that the alleged threats were uttered at different fora. PW8 referred to a meeting in Chimsithu village in Kafumbwe ward whereas PW5 stated that he attended a Zakonka Cooperative meeting in Kamphambe ward. Having found that they are all partisan witnesses whose evidence needs to be corroborated, I am of the view that they cannot corroborate each other and there is need for other independent evidence.

In considering their evidence, I will start with the evidence of PW5. His evidence was that he attended a meeting at Zakonka cooperative in Kamphambe ward at which the PF members like Mr. Misheck Nyoni and the 1st Respondent informed them that those who were from the UPND would not receive fertilizer. However, the DC, Mr. Makukula was not there.

The 1st Respondent denied the allegation. RW5 also stated that he had no knowledge of the allegations about the fertilizer. I have therefore carefully considered the evidence on record to determine who was telling the truth. The petition in paragraph 9 refers to the DC as the person who issued the threats to the farmers' cooperative officials that they would be excluded from the

distribution of fertilizer. However, from the evidence of PW5 in cross examination, he admitted that the DC was not at the meeting where the threats were allegedly issued but that the threats were issued by the 1st Respondent.

If it was the 1st Respondent who uttered those words to the farmers' cooperative officials, it should have been indicated clearly in the petition. As it is, it seems to me perfectly plain that there is a variance between what is contained in the petition and the evidence that was adduced by this witness. Paragraph 9 is the only paragraph that addresses the issue that threats were issued to farmers' cooperatives. The Supreme Court in the case of Michael Mabenga v. Sikota Wina and 2 others ⁽²⁷⁾ stated that:

“An election petition is like any other civil claim and is governed by pleadings and that in such cases, it is the petition and answer and that parties are bound by their pleadings.”

If the 1st Petitioner was armed with the information at an earlier stage before the petition was filed, this allegation in the petition should have been properly pleaded that the 1st Respondent working with her agents issued the alleged threats. From the pleadings, it appears that the DC was the only who allegedly uttered the words. If this was done, it would have added some credence to the evidence of PW5 that at a Zakonka meeting, Mr. Nyoni and the 1st Respondent allegedly issued threats. Since it was not done, I find that his evidence was fabricated.

Moreover, as I have mentioned, the evidence of PW5 requires corroboration from an independent witness to confirm or strengthen his evidence that in fact the 1st Respondent uttered those threats which have been attributed to her at Zakonka cooperative meeting in Kamphambe ward in order to eliminate the dangers of falsehood and exaggeration. In the absence of any independent evidence to support what PW5 told the Court, I find that the allegation has not been proved by this witness to convincing clarity and I therefore place no reliance on it.

PW8 also stated that she attended a meeting at Chimsithu village in Kafumbwe ward where the DC held a meeting where he issued threats that those who would not vote for the 1st Respondent, would not receive Social Cash Transfer and fertilizer.

I have taken time to analyze the evidence of this witness. What I have discerned from her evidence is that she was inconsistent on a material aspect regarding the person who issued the threats. I say this because when she was being led in examination in chief, she stated that at a meeting which was attended by the DC and the 1st Respondent, the DC told them that they should vote for the 1st Respondent and that if they didn't vote for her, they would not receive Social Cash Transfer and fertilizer.

When she was cross examined by counsel for the 2nd Petitioner, Mr. Muyatwa whether the 1st Respondent told them that if they didn't vote for her they would

not receive Social Cash Transfer, she told the Court that it was the DC who said those words.

In cross examination by Mr. Mwelwa, she agreed with counsel that the DC told them that if they don't vote for the 1st Respondent then they would not be given Social Cash Transfer and fertilizer. Then again she changed and stated that the 1st Respondent spoke about the fertilizer and the DC about Social Cash Transfer and she confirmed that she had told the Court three statements.

In re-examination, she changed again and stated that she had only given two statements which were that the 1st Respondent spoke about fertilizer and the DC about Social Cash Transfer.

Even though the witness in re-examination stated that she only gave two statements, I find that evidence to be an afterthought as it was pointed out to her in cross examination that she had given three statements. I find that there are inconsistencies in her evidence on a material aspect as to who issued what threats. On the authority of Ndongo v. Moses Mulyango, Roostico Banda⁽²⁸⁾ the Supreme Court guided that inconsistencies cannot be the basis of discarding or disbelieving her evidence. This principle was also followed by the Constitutional Court in the case of Abuid Kawanga v. Elijah Muchima⁽²⁹⁾ when it stated that:

“We see no reason to interfere with the trial judge’s finding beyond our own finding that the Respondent himself gave contradictory

evidence and assigning his remaining testimony less weight. The said contradictions could not have formed the basis of the lower court to disbelieve or totally discard the testimony of the Respondent or his witnesses given the principle in the *Ndongo v. Moses Mulyango* and another wherein the Supreme Court declined to do away with evidence of a Respondent even after finding contradictions in his evidence as it was able to find other evidence from the appellant's own evidence to support the fact in issue."

In short, if there are contradictions and inconsistencies in the evidence, the weight to be attached to that evidence is reduced. However, the evidence cannot be rejected if there is other corroborative evidence to support the fact in issue.

Now, it is very clear from the record that PW8 is the only one who spoke to support the allegation that threats were issued at Chimsithu village by the 1st Respondent and the DC. I have mentioned that PW8 is a partisan witness whose evidence requires corroboration because the weight attached to her evidence is reduced. It has been further reduced because of the inconsistencies in her evidence which has brought her credibility in issue.

However, no independent evidence was adduced by the 1st Petitioner to support the evidence of PW8 as to what is alleged to have transpired at the meeting at Chimsithu village. If indeed it was true that the 1st Respondent was at the meeting with the DC as claimed by PW8, this should have been confirmed by independent evidence.

As it is, there was no evidence adduced to support her testimony and it is not clear in my mind because the possibility of exaggeration and falsehood have

... particularly important aspect
... that she was very hurt when their candidate lost the election.
... what I observed from her demeanour, she appeared to be a very enthusiastic
... supporter of the losing candidate.

So even where the 1st Respondent denied threatening anyone regarding Social
Cash Transfer and fertilizer and RW5 also barely denied the allegations, it was
incumbent upon the 1st Petitioner to prove this allegation with convincing
clarity.

I find that the allegation that threats were issued by the 1st Respondent has
not been proved by this witness. I therefore decline to accept her evidence.

If I take it further and assume that the threats were issued, when I consider
the other ingredients, there was no evidence that was adduced to show that
these threats were widespread across the constituency and that the majority
of the voters were prevented from electing their preferred candidate. I say this
because while the 1st Petitioner stated that the threats were issued in the whole
Constituency, the three witnesses who spoke on this allegation were from
three wards being Katiula, Kamphambe and Kafumbwe wards. There are twelve
wards in Milanzi Constituency. Threats allegedly issued in three out of twelve
wards cannot be said to have prevented the majority of the voters to vote for
their preferred candidate.

Moreover, PW5 stated that the threat did not have any effect on him but on his followers. Yet none of his followers were called as witnesses and it is not known how many they were. As I have stated, the threat should be judged from the effect that it has on the person threatened and not the intention of the person using the threat.

Similarly, PW8 stated that she did not feel good when she received the threat when she was cross examined by Mr. Bwalya. That notwithstanding, I note that PW8 in examination in chief, stated that a lot of people attended the meeting. However, no other witness was called to testify on this aspect. It is important for me to state that in the case of Mbololwa Sibulwa v. Kaliye Mandandi ⁽³⁰⁾ the Constitutional Court guided when considering whether the character assassination was widespread that it could be said to have had an impact on the result. It was stated:

“All that 1RW8 stated in his evidence is that there were a lot of people from different villages who attended the meeting that the Respondent held at Mwanzi village in Sinjembela ward. He did not give any figure. The term ‘there were a lot of people from different villages at the meeting’ is relative and could mean different things to different people.”

Given the foregoing guidance, it is clear that evidence should have been led on the actual number of people who could have been affected by the alleged threats so that the Court can make a determination whether the alleged misconduct was widespread and thus the majority of voters were or may have been prevented to vote for a candidate they preferred.

What the foregoing means is that if I found that threats were issued, since there was no evidence that the majority of the voters were prevented from voting for a candidate they preferred, even on this ground the allegation would not have been proved.

Having said that, all in all, I find that the 1st Petitioner has failed to prove to the required standard of fairly high degree of convincing clarity that the 1st Respondent or her agents with her knowledge, consent or approval issued threats that Social Cash Transfer and fertilizer would be withdrawn and that the majority of the voters were or may have been prevented to vote for a candidate of their choice. This allegation under paragraph 9 and 11 fails and it is dismissed.

3. BRIBERY AND CORRUPTION

The allegation that falls under this head is contained under paragraph 10 of the petition where it is alleged that the 1st Respondent or her agents but with her knowledge was involved in the distribution of foodstuffs to voters and these included: mealie meal, rice and cooking oil in order to induce the voters to vote for her or refrain from voting for the 1st Petitioner.

When it comes to the law, bribery at elections under the Black's Law Dictionary is defined as:

“The offence committed by one who gives or promises or offers money or any valuable inducement to an elector in order to corruptly induce the latter to vote in a particular way or to abstain from voting or as a reward to the voter for having voted in a particular way or abstained from voting.”

Under **Section 81(1) (a)** bribery consists of a person who either directly or indirectly by oneself or with any other person corruptly:

- a) **Give, lend, procure, offer, promise or agree to give, lend procure or offer any money to a voter or to any other person on behalf of a voter in order to induce that voter to vote or refrain from voting or corruptly to do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.”**

The Constitutional Court in the case of *Abuid Kawanga* stated that Section 81(1) (c) proscribes election corruption, bribery and treating. This section reads as follows:

“A person shall not, either directly or indirectly, by oneself or with any other person corruptly—

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

According to the learned authors of Halsbury Laws of England Elections and Referendums Volume 15(3) a person who is guilty of treating at an election is guilty of a corrupt practice. They state that:

“It applies to the treating of an inferior by a superior otherwise than in return for services rendered with a view to securing the goodwill of the particular person treated and to influencing the vote.”

The authors further stated that:

“The time at which the act is done is also a relevant consideration for the treating must have reference to some election and must be for the purpose of influencing the vote of the person treated.”

If bribery is committed on polling day, Section 89(1) (e) provides that:

“A person shall not-

(e) On any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred meters from the entrance to such polling station

(i) Canvass for votes;

(ii) Solicit the vote of any person;

(iii) Induce any person not to vote; or

(iv) Induce any person not to vote for a particular candidate;

Regulation 15(1) (h) (iii) of the Schedule to the Act also provides as follows:

“A person shall not-

“Offer any inducement, reward or bribe to any person in consideration of such person—

(Iii) Voting or not voting”

What is common from these provisions is that the person who receives is induced to vote or restrained from voting.

In terms of the evidence, PW1 stated that during the campaign and on voting day, the Constituency Chairman for Milanzi, Mr. Nyoni, the Youth Chairman

and the 1st Respondent bought and cooked food, gave out money, DMMU mealie meal meant for relief and other food stuffs like rice and cooking oil. This was done in the whole constituency as they were twelve (12) wards but they concentrated mainly in Kapoche, Kafumbwe, Milanzi and Yowoyani in Chisindiko area.

PW1 further testified that there was also an Non-Governmental Organisation (NGO) named GOZA distributing food, cooking oil, bags of sugar in the month of July in Katiula and other wards and to their surprise, on polling day, the same members of GOZA were polling agents.

PW3 and PW4's evidence was that after voting, they went to a house where food was prepared for them by the DC and they ate. PW3 also stated that he saw the DC during campaigns at Lunga as there was a meeting and a lot of people were in attendance including the Councilor and the 1st Respondent. They were given clothes and the 1st Respondent spoke and asked them to vote for her.

The 1st Respondent's evidence in rebuttal was that she only had one election agent by the name of Jackson Banda and at no time was she involved in the distribution of mealie meal. She was not in any government position, neither did she receive any DMMU mealie meal from the government.

RW5 also told the Court that as the person in charge of distribution of campaign material they never at any time had rice and cooking oil for distribution to entice anyone to vote.

RW5 further told the Court that their campaigns were clean and free from any manner of malpractice, particularly bribing as highlighted by the 1st Petitioner.

While the 1st Petitioner stated that the 1st Respondent, the DC, Misheck Nyoni and Masauso were involved in the distribution of DMMU mealie meal meant for relief, food stuffs and money to the electorate in Kafumbwe, Milanzi and Yowoyani in Chisindiko area, there was no evidence that was adduced from any witness that they received these items from the 1st Respondent, DC, Misheck and Masauso or her agents in order to induce them to vote for her.

The only witnesses who touched on the issue of food were PW3 and PW4 who stated that after voting they went to eat food which was prepared by the DC. This evidence was not elaborated so that this Court could establish whether the food was also given before and after the voting and done with a view of influencing the votes. The learned authors of Halsbury Laws of England which I have already referred to stated that:

“Treating after an election to be illegal must be done under such circumstances as to lead to the inference that it was done in pursuance of an antecedent agreement.”

No evidence was led to show that the food that was given after voting was one in pursuance of prior agreement that they should vote for the 1st Respondent. In addition, PW3 stated that the food was prepared by the DC. As I have stated, the DC was not the 1st Respondent's agent. There was no evidence to show that whatever the DC did was with the knowledge, consent or approval of the 1st Respondent as the witness stated that he didn't see the 1st Respondent on voting day.

In this regard, I find that the 1st Petitioner has failed to prove that there was treating of voters after they voted and that this was done by the 1st Respondent or her agent or that it was done with her knowledge, consent or approval. This aspect of the allegation is dismissed.

The 1st Petitioner further did not adduce any evidence regarding the involvement of GOZA in the distribution of cooking oil, food stuffs and empty grain bags during campaign. There's further no evidence on record that the said GOZA officials were polling agents on voting day for the 1st Respondent's political party.

It is trite that the standard of proof required in this instance is a fairly high degree of convincing clarity not only that the money, food, mealie meal was distributed to the voters but also that it was so widespread and that the majority of the voters were or may have been prevented to vote for the candidate of their choice.

I have carefully analyzed the evidence relating to the allegations by the 1st Petitioner and I find that the 1st Petitioner's evidence does not connect the 1st Respondent or her agents to the alleged corrupt practice complained of and I therefore dismiss it.

The last allegation on this head is that the PF Government begun to grade the Dole/Katawa Road in July 2021 in order to advantage the 1st Respondent while a borehole was sunk at Mbatata and Kafumbwe and the electorate were urged by the 1st Respondent to vote for her because of these developments thereby inducing the voters to vote for her and refrain from voting for the 1st Petitioner.

The witnesses who addressed this allegation were PW1, PW9 and PW10. PW1 told the Court that the 1st Respondent through the PF Provincial Chairman brought in a tractor and bulldozer to grade the road in Dole ward, where she comes from and had family members.

PW9 also stated that sometime in July, a truck that had carried a grader came and started grading the road. When he checked it, the name Andrich was written on the equipment. Thus, he called Christine Phiri who was contesting on UPND ticket as a Member of Parliament. He asked her if it was in order for people to be grading the road during campaign period and she told him that it was not in order. The road was graded until Mutelemuka School. He knew this because he passed through to see.

PW10 also told the Court that he was monitoring the campaigns for his party UPND when he saw that the Dole/Katawa road was being graded and the other road which starts from Muzime turn off to the Chief's palace. He found out based on what was written on the machinery that the Company that was grading was Andrich Construction. After he inquired from the operator of the machinery, he was told that the Company was for Andrich Lubusha the Provincial Chairman for PF in Eastern Province.

The 1st Respondent on the other hand told the Court that she was not in government to have been involved in the grading of the road.

RW5 in support of the 1st Respondent's case testified that they saw the works on the Dole/Katawa road and at no time did they pay attention to those works because the rumor that was strongly going around the constituency was that it was an initiative of the former MP who strongly used it as part of his campaign message. He instructed his campaign team to totally distance themselves from those works.

I have carefully analyzed the evidence in support of this allegation and the evidence in rebuttal.

Based on the evidence that has been adduced by both the Petitioner and the 1st Respondent, there is no dispute that the Dole/ Katawa Road was being graded during the campaign period.

What this Court needs to determine is whether it was the 1st Respondent who was responsible for the grading of the road.

In linking the 1st Respondent to the said project, the 1st Petitioner in cross examination stated that she was told by the men on site that the person who had hired the grader was the 1st Respondent. That she also took photographs of the grader on which was written Andrich. PW9 also stated that he saw that on the machinery that was being used, the name Andrich was on it. PW10 also stated that he found out that the Company which was responsible for the grading of the road was Andrich construction based on what was written on the machinery.

That he also asked the men at the site and they told him that the Company belonged to Andrich Lubusha. Based on this, the 1st Petitioner contends that since Andrich Lubusha was a PF member, then the 1st Respondent is the one who was responsible for the grading of the road.

While the 1st Petitioner contends that the Dole/Katawa road was being graded by the 1st Respondent, no cogent evidence has been adduced to show that the Company which was constructing the road was Andrich Construction which belongs to Andrich Lubusha. The men on site who were working on the road were not called as witnesses to confirm what the 1st Petitioner told the Court. I consider that part of her evidence as hearsay.

PW9 and PW10 who spoke on this allegation are members of the UPND whose evidence I must treat with caution as they are partisan witness. Hence there is need for corroborative evidence to confirm or support their evidence because of the reduced weight of their evidence.

However, from the evidence that has been adduced, no other evidence was adduced apart from their oral testimony. I am surprised that the 1st Petitioner did not adduce any pictorial evidence of the bulldozer which was on site even after telling the Court that she took photographs of it. If indeed this was done, then the Court would have ascertained whether or not it was true that Andrich Construction was the Company responsible for the grading of the road as stated by the witnesses that the name Andrich was on the machinery.

Furthermore, apart from the evidence by PW10 that he was told that the Andrich Company belonged to Andrich Lubusha, no cogent evidence was adduced to show that the said Andrich Construction belonged to Andrich Lubusha as PW9 stated that he didn't know the owner of Andrich Construction. So, since PW9 didn't know and PW10 was just told, there was need for other evidence to prove that the Andrich Lubusha was the proprietor of the said Company. No such evidence was adduced in terms of Company documents.

What is clear from the foregoing is that the 1st Petitioner has not adduced any evidence apart from mere assumptions that the grading of the road was done by the Andrich Construction whose proprietor was Andrich Lubusha. And that

because this Andrich Lubusha was a member of the PF, they seek this Court to make an inference that it was the 1st Respondent who was responsible for the grading of the Dole/Katawa.

This evidence is speculative. The Constitutional Court in the case of *Richwell Siamunene* which I have already cited stated when considering whether acts of violence were perpetrated by the candidate or with the candidate's knowledge or approval or consent that:

"There was insufficient evidence to support a finding that the documented acts of violence that occurred after the nomination day were linked to the Respondent. Mere proof that the UPND supporters were indeed involved in the said action acts could not warrant an inference being drawn that the Respondent had directly or indirectly incited the UPND supporters to act as they did. To so hold would amount to speculation and it is not the duty of the Court to make assumptions based on nothing more than party membership and candidacy in an election."

This case is instructive. What the 1st Petitioner seeks this Court to do is to make an assumption or inference without any cogent evidence based on the membership of the said Andrich Lubusha as a member of the PF. I decline to make such a bold inference because if I were to do so, it would entail embarking on a slippery slope on which there is no halting place.

Therefore, cogent oral and documentary evidence should have been adduced to prove that the 1st Respondent was directly or indirectly privy to the

conception, planning and execution of the road project and not leave everything to speculation.

I therefore find that the 1st Petitioner has failed to prove this allegation to the requisite standard of a fairly high degree of convincing clarity that it was the 1st Respondent who was responsible for the construction of the Dole/Katawa road. This allegation lacks merit and it is accordingly dismissed.

The second limb of the allegation is that a borehole was sunk at Mbatata and Kafumbwe and that the electorate were urged by the 1st Respondent to vote for her.

No evidence was adduced to prove this allegation. It is accordingly dismissed.

4. REMOVAL OF 1st PETITIONER'S POLLING AGENTS

The last but one allegation is contained in paragraph 14. The 1st Petitioner has alleged that the 1st Respondent or her agents but with her knowledge caused the 1st Petitioner's agents in Katiula polling station in Katiula ward, Kapala polling station in Kasambandola ward and Simon polling station in Dole ward to be removed. This was with the connivance and acquiescence of the 2nd Respondent and that the PF agents were not removed and this whole injustice was falsely premised on the alleged prevalence of the Covid-19 virus.

To support this allegation, the 1st Petitioner testified that their polling agents were removed from the polling stations on the pretext that they had to observe COVID guidelines. This was done so that the PF could remain alone.

No other witness led evidence to prove what allegedly happened at the polling stations.

The 1st Respondent denied this allegation and told the Court that she had no knowledge that polling agents were removed at Katiula polling station.

RW5 further testified that they never received any such reports as alleged in paragraph 14 of 1st Petitioners petition as the management of any polling station was in the hands of the 2nd Respondent. Any complaints referred to in paragraph 14 needed to be registered with the presiding officer but also to inform the candidate who would be expected to register the complaint with the relevant authority on management of election.

It cannot be overemphasized that the burden of proof in election petitions rests on the Petitioner. The Constitutional Court in the case of *Sunday Chitungu v. Rodgers Mwewa and Attorney General* stated thus:

“The burden of proof in election petitions in on the Petitioner to prove all the allegations in the petition. In the circumstances it was incumbent upon the Appellant to prove his case to the required standard by leading sufficient evidence to show that the 1st Respondent was actually present at the meetings in question and made the statements in issue.”

The 1st Petitioner did not lead any evidence through her polling agents in this regard to prove that they were being removed from the polling stations on the pretext that they had to observe COVID-19 guidelines. Furthermore, there was no evidence that was adduced on which polling stations were affected and that it was the 1st Respondent responsible for the alleged misconduct or that it was perpetrated by her election or polling agent or other persons with her knowledge, consent or approval.

I should point out at this stage that while the 1st Petitioner has raised the allegation against the 1st Respondent and that it connived with the 2nd Respondent, I have already stated that the Constitutional Court in the case of *Giles Chomba Yamba Yamba* guided that Section 97(2) (b) concerns non-compliance to the provisions of the Act by the Electoral Commission of Zambia the body charged with the conduct of elections under Article 229(2) (b) of the Constitution and not the candidates to an election or their agents.

In this regard, I am inclined to agree with the 1st Respondent's position that the management of any polling station was in the hands of the 2nd Respondent. If there was any non-compliance with the provisions of the Act, it was incumbent upon the 1st Petitioner to have registered a report with the 2nd Respondent as the relevant authority.

This is in line with Section 64(3) of the Act which provides that:

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

So while the 1st Petitioner told the Court that no report was made because they were not free to do so in the previous government, the view that I hold is that if this Court was to give any credence or attach weight to the 1st Petitioner's testimony, an objection made to the 2nd Respondent contemporaneously with the happening of the event was very important. Now, this was not done and no witnesses were called to testify on this allegation.

In addition, Section 36(2) of the Act provides that:

(2) The absence of an election or polling agent from a gazetted or prescribed place where an electoral proceeding is being conducted shall not invalidate those proceedings.

What can be discerned from the foregoing is that even if it was found that election agents were not present at the polling stations that would not have invalidated the proceedings.

Additionally, there was no evidence that the absence of polling agents from the polling stations affected the results as no evidence was led to prove this second ingredient.

Given the reasons that I have highlighted above, I find that the 1st Petitioner has failed to prove this allegation to its required standard that there was non-compliance with the law and that this affected the result. This allegation under paragraph 14 is also dismissed for want of merit.

5. USE OF GOVERNMENT VEHICLE BY THE DISTRICT COMMISSIONER

The 1st Petitioner in paragraph 8 alleged that the DC for campaigned for the 1st Respondent throughout the campaign period while using government vehicles. This allegation contravenes Regulation 3 (b) and 15(1) (k) of the Schedule to the Act.

Regulation 3(1) (b) provides as follows:

(1) The Commission shall, where reasonable and practicable to do so—

(b) Ensure that political parties do not use State resources to campaign for the benefit of any political party or candidate;

Regulation 15 (1) (k) of the Code of Conduct, Schedule to the Act provides as follows:

“A person shall not-

Use Government or parastatal transportation or facilities for campaign purposes, except that this paragraph shall not apply to the President and the Vice President in connection with their respective offices;”

The Regulations above proscribe the use of Government and parastatal transportation for campaign purposes for the benefit of any political party. The 2nd Respondent as an institution responsible for conducting elections is enjoined to where it is reasonable and practicable to do so ensure that political parties do not use State resources to campaign for the benefit of any political party or candidate.

The 1st Petitioner told the Court that the DC for Katete, behaved like a cadre. That he used to use a government vehicle GRZ 228, a Toyota Hilux metallic in colour and went to the extent of distributing party regalia in his office. Furthermore, that he used to move with the 1st Respondent during campaigns even when distributing food. That sometimes he used to use a truck for the Correctional Service to distribute relief food and he would be following behind with the car.

The 1st Petitioner did not call any other witness in support of this allegation.

The 1st Respondent on the other hand told the Court that at no time did she ever move or campaign with the DC Mr. Makukula. That there were three vehicles that they used on their campaign trail and these were two (2) Canters and a Toyota Hilux which she used to move with her campaign team.

She testified that she did not campaign with Mr. Makukula and neither did she instruct him to do so.

RW5 also addressed this allegation and told the Court that their campaign had a challenge of transport as they only had a Toyota Hilux assigned for use by the candidate as well as utility vehicle for the secretariat. They also had two Canters they dedicated to take care of the activities in the other zones.

As I have already alluded to, the onus is on the person challenging the election petition to lead sufficient evidence to prove their allegations. The 1st Petitioner

did not call any evidence to show that the DC was using vehicle registration number GRZ 228, a Toyota Hilux metallic in colour and truck for the Correctional Services to campaign with the knowledge, consent or approval of the 1st Respondent. The witnesses who spoke about the DC did not mention anything that the DC used to use Government vehicles and resources.

The 1st Respondent and RW5 stated that there were three vehicles that they used on their campaign trail and these were two (2) Canters and a Toyota Hilux which the 1st Respondent used to move with her campaign team. I note that this evidence which was adduced through RW5 who is also partisan witnesses was not corroborated and therefore, it carries very little weight.

That notwithstanding, the onus is on the 1st Petitioner to prove her case. However, she didn't adduce any evidence to show that the vehicles that were being used by the 1st Respondent in her campaigns were Government vehicles. There was no connection between the Toyota Hilux allegedly used by the DC and that used by the 1st Respondent and her team as being the same bearing the registration number GRZ 228.

I find that the 1st Petitioner further did not establish on this allegation that this alleged misconduct was so widespread across the constituency that it influenced the voters into voting for another candidate other than their preferred one. I am fortified in my finding by the case of Margaret Mwanakatwe

v. Charlotte Scott ⁽³¹⁾ wherein the Constitutional Court regarding the allegation of the use of a government vehicle stated thus:

“Our examination of the 1st Respondent’s evidence on record reveals that apart from alleging that the Appellant used a Government motor vehicle to get to ZNBC for the Race to Manda Hill programme, 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.”

For this reason I find that the 1st Petitioner has also failed to prove the first limb of the allegation under paragraph 9 of the petition to its requisite high standard of convincing clarity. It is therefore dismissed.

Having considered and dismissed all the allegations made by the 1st Petitioner against the 1st and 2nd Respondent, I shall now consider the allegations raised by the 2nd Petitioner in her petition.

An examination of the petition shows that a total of nine imputations of electoral offences and malpractices were cast against the 1st Respondent and two against the 2nd Respondent. These can be summarized as:

- (i) Violence against Supporters Found Wearing 2nd Petitioner’s Branded Regalia and Refusal to put up Posters.**
- (ii) Open Ballot Boxes and Anomalies on GEN 20 Form.**
- (iii) Threats and Undue Influence by Chieftainess Kawaza.**
- (iv) Issuance of Zambian National Registration Cards and Voters Cards to Mozambicans to Vote in the 12th August, 2021 Elections.**
- (v) Bribery and Corruption.**

- (vi) Character Assassination.
- (vii) Use of Government Vehicles.

I will in this regard proceed to consider the allegations raised in the petition in this manner.

(i) VIOLENCE AGAINST SUPPORTERS FOUND WEARING THE 2ND PETITIONER'S BRANDED REGALIA AND REFUSAL TO PUT UP POSTERS.

This allegation is contained in paragraphs 6 and 12 of the petition. The first limb of the allegation in paragraph 6 that the 1st Respondent impugned the right of the 2nd Petitioner enshrined in Section 29(2) of the Act by engaging in various forms of violence against supporters found wearing the Petitioner's politically branded regalia and forced to wear the 1st Respondent's regalia is similar to the allegation under paragraph 12 of the petition. This allegation is that the 1st Respondent through her agents assaulted Paul Njobvu an agent of the 2nd Petitioner and caused him to forcefully wear the political regalia of the 1st Respondent.

The 2nd Petitioner contends that the acts of violence by the 1st Respondent through her agents contravened Section 83 (1) (5) of the Act. This Section provides that:

(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;

(5) A person who contravenes any of the provisions of subsections (1) to (4) commits an offence.”

In support of this allegation, the 2nd Petitioner in her evidence stated that her polling agent in Kamphambe ward by the name of Paul Njobvu was assaulted as he was walking along the road by the 1st Respondent and her cadres. That he was stripped off his T-shirt and was forced to wear a PF T-shirt and that the 1st Respondent who was seated in the vehicle did not restrain her cadres from doing so.

Paul Njobvu, the person who is alleged to have been assaulted gave evidence as PW17. He stated that on 29th July, 2021 around 09:00 to 10:00 hours, he was assaulted by a group of seven men and stripped off his clothes and was made to wear the PF party regalia. He reported the matter to the police that he had been assaulted by seven men who were with the 1st Respondent. He was treated at St. Francis Mission Hospital and he produced in Court a medical report.

Another witness who addressed this allegation was PW14 Matomola Matomola, the DCIO based at Katete Police Station. He basically produced the OB where a criminal report of assault was reported by Paul Njovu.

In rebutting this evidence, the 1st Respondent denied the allegation of the assault. Equally, RW5, her campaign manager stated that they never assaulted anyone during the campaign or forced anyone to wear their party regalia.

I have carefully considered the allegation and the evidence adduced by the parties in support and against.

The question I have to determine is whether PW17 was assaulted on 29th July, 2021 and that this was done by the 1st Respondent or her agents or with her knowledge, consent or approval.

To prove that he was assaulted, PW17 stated that he reported the matter at Katete Boma Police and was also issued with a medical report; was treated at St. Francis Mission Hospital and was issued with a prescription.

He identified the prescription that he was given after the treatment but told the Court that the medical report was not the one in the 2nd Petitioner's bundle of documents because the Doctor told him that it would be taken to the police.

I have had a close look at the medical notes that are at page 15 of the 2nd Petitioner's bundle of documents. Based on what was written by AGGRIPA on behalf of Dr. Tim, the notes show that the patient was seen with a history of being beaten using fists on the abdomen and chest on 29/07/202 around 09:00 hours by seven (7) people. Right arm was twisted round his back.

On examination, there was no swelling, no cuts, there was good limb movement and no cuts and bruises. Furthermore, the notes indicate that the impression was: Inconsistent finding with history of the assault.

On page 16 is a prescription he was given which shows that Dyclofenac cream was to be applied to the affected area.

Based on the medical report, the person who examined PW17 indicated that his findings were inconsistent with history of assault. In other words, his findings did not show that he had been assaulted. This to me explains why PW17 has not pursued this matter since after examination at the hospital, the findings were inconsistent with the history he had presented of assault. It also explains why he didn't produce the Zambia Police medical report that was issued to him by the police as shown in the OB.

I find based on the foregoing that there is insufficient evidence to prove that PW17 was actually assaulted as he didn't even call any other witness.

Even if I made a finding that he had proved that he had been assaulted, is there evidence to show that he was assaulted by the 1st Respondent and her supporters?

Regarding proof, it is evident that the 2nd Petitioner didn't witness this alleged assault. PW17 on the other hand contends that he was assaulted by seven men.

In order to link the 1st Respondent to this allegation, PW17 testified that he saw the 1st Respondent in the vehicle which had pictures of her and that seven men jumped from that vehicle. He then reported the matter to the police that

he had been assaulted by seven men who were with the 1st Respondent. PW14 produced the OB which is P4 where the criminal report of assault was made by PW17. The entry bearing no. 63/32 of July, 2021 shows that Paul Njobvu made a report that he was assaulted by unknown men who could be identified if seen.

The question that begs an answer is this: If PW17 told the police that he was assaulted by seven men who were with the 1st Respondent, why didn't he mention it to the police that it was in fact the 1st Respondent and her supporters who beat him up?

PW14, the officer who produced the report explained that the details about the identity of the people who assaulted PW17 could not have been indicated in the OB but in a statement does not appear to me to be plausible. I am of the view that an entry in the OB is supposed to contain brief facts of the alleged criminal offence. For instance in a case of assault, if the alleged assailants are known, the injuries sustained by the complainant and any other relevant information are known at the time the report is made, that is supposed to be contained in the OB. A narration and details of when, how and who committed the offence are contained in the statement recorded by the investigating officer or any other officer assigned.

I am fortified in holding this view by the first entry report on P4 whereby it was indicated that a female by the name of Grace Zulu reported that she had been

assaulted by Matthews Banda and she sustained general body pains. This report showed the name of the person who assaulted the complainant.

Given the foregoing, if it is true that PW17 was assaulted by seven unknown men who came out from the 1st Respondent's vehicle, this should have been clearly indicated in the OB especially that the 1st Respondent at that time was a parliamentary candidate and was well known. As it is, this was not done.

Furthermore, if PW17 had seen the 1st Respondent on that material day, the 1st Respondent would have been the first person to have been summoned regarding the alleged offence. In addition, just like what RW5 stated in his evidence, the 1st Respondent had not been summoned to report to the police over this allegation.

RW5 being a partisan witness, I have to consider if his evidence was corroborated. Having analyzed the evidence in relation to this allegation, I have found that his evidence was corroborated by the evidence of PW14 who stated when he was cross examined, that no arrests had been made because information that the 1st Respondent was connected to the offence had not been provided to the police. I do not consider the explanation that was given by PW17 that the offence did not matter anymore as he was healed to be credible.

In my view, the only reasonable explanation for the failure by the police to have summoned the 1st Respondent over the allegations is that there was insufficient

evidence to connect the 1st Respondent and her supporters to the alleged offence of assault.

Given the foregoing, I find that:

- (i) There is no evidence to conclusively prove that PW17 was assaulted and that this act was perpetrated by the 1st Respondent through her agents or that it was done with her knowledge, consent or approval.
- (ii) There is insufficient evidence to show that PW17 was forcefully caused to wear the political regalia of the 1st Respondent in substitution of the 2nd Petitioner's regalia which he was wearing at the time of the assault.
- (iii) There was no evidence to prove that there was widespread political violence in the constituency perpetrated by the 1st Respondent and that as a result, the majority of the voters were prevented from voting for their preferred candidate.

Based on the reasons that I have given, I find that the 2nd Petitioner has failed to prove with convincing clarity that the 1st Respondent and her agents assaulted Paul Njobvu. This allegation under paragraph 12 fails and it is dismissed.

The second limb of the allegation under paragraph 6 is that the 2nd Petitioner's supporters were stopped from putting up posters of the 2nd Petitioner in public

places by the 1st Respondent agents. In this regard, the 2nd Petitioner contends that this violated her rights under Section 29(2) of the Act. No evidence was adduced to prove this allegation. It is thus dismissed as it lacks merit.

(ii) OPEN BALLOT BOXES AND ANOMALIES ON GEN 20 FORM

This allegation is contained under paragraph 8 of the petition. The 2nd Petitioner alleged that the 2nd Respondent through its agents breached the provisions of Section 75 (1) of the Act as ballot boxes at Kafumbwe totaling center had been tampered with and opened before the official totaling result could be verified.

This allegation has been brought against the 2nd Respondent. The Constitution under Article 229 (2) (b) and the Electoral Process Act expressly give the 2nd Respondent the function to conduct elections. The 2nd Respondent thus must fulfil this function by ensuring that the requirements of the Act are respected and observed in the electoral process. This is in order to promote transparency and build confidence in the electoral process.

To this effect the Constitutional Court stressed the importance of the 2nd Respondent adhering to the provisions of the law in carrying out its functions in the case of *Nkandu Luo v. Doreen Sefuke Mwamba* when it stated that:

“Considering that elections provide a means for the governed to express their will as to who to govern them, those managing the

electoral process must, as far as possible, work on and eliminate any flaw in the process.”

In terms of the election petition, this allegation is anchored on Section 97(2) (b) of the Act wherein the 2nd Petitioner contends that there was non-compliance with the provisions of the law in that ballot boxes were not supposed to be opened as that was a very serious irregularity and that was why she requested that result must not be declared. For the avoidance of doubt, this section provides that:

“The election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be, that—

(b) Subject to the provisions of subsection (4), there has been non-compliance with the provisions of this Act relating to the conduct of elections, and it appears to the High Court or tribunal that the election was not conducted in accordance with the principles laid down in such provision and that such non-compliance affected the result of the election.”

In carrying out its mandate, the Commission appoints amongst other electoral officers, presiding officers for each polling station pursuant to Section 37 of the Act and Returning Officers for each constituency, district or ward pursuant to Regulation 4 of the Electoral Process (General) Regulations.

According to Section 38 (1) of the Act, one of the most important duties of a presiding officer is to coordinate and supervise the voting at a polling station so as to ensure that the election at the polling station is free and fair.

Regulation 43 of the Electoral Process (General) Regulations, 2016, sets out the procedure to be followed after close of the poll. The said Regulation provides that:

"43. (1) Presiding officer shall, as soon as practicable after close of the poll, in the presence of candidates, accredited observers, monitors, election agents or polling agents present at the polling station;

(a) Close and seal the aperture of every ballot box used for the poll, and permit the candidates, accredited observers, monitors, election agents or polling agents present at the polling station to affix their seal to the ballot box.

(b) In respect of the poll, complete the ballot paper account in Form Gen18;

(c) Place in separate envelopes, which shall be sealed with official paper seals and with seals of candidates, accredited observers, monitors, election agents or polling agents, if any... all the relevant documents such as unused ballot papers, spoilt ballot papers, copy of the register of voters, counter folio, of used ballot papers, the ballot paper account, the official marks and special seals.

(2) A presiding officer shall, in accordance with such direction as may be issued by the Commission, dispatch envelope sealed and ballot boxes sealed in safe custody to the Returning Officer for the Constituency...

(3) The Returning Officer for the Constituency... in which a poll had been taken shall take into custody and issue a receipt for all the packets and ballot boxes delivered to the Returning Officer by a presiding officer in accordance with sub-regulation 2."

Section 71(4) of the Electoral Process Act provides that:

"When the presiding officer has complied with subsection (3), the presiding officer shall—

(a) seal in separate ballot boxes each of the items mentioned in subsection (I) and the written record of any objections; and

(b) Deliver the form, completed in terms of subsection (I), and the sealed ballot boxes to the returning officer.”

In support of this allegation the 2nd Petitioner's evidence was that after people voted and after all the polling agents had signed the GEN 20 forms and verified what had happened at the polling station, all the ballot boxes were supposed to be taken to the Totaling center which was Kafumbwe Boarding School. However, she was informed by her agent Anita Miti who was at the Totaling center that seven boxes were taken there on 13th August, 2021 around 10:00 hours but were not put with the other ballot boxes which were on top. When she arrived at the Totaling center on 14th August, 2021, she found four ballot boxes and two of them had been opened with their lids on top.

PW21 and PW22 also led evidence in support of this allegation. PW21 told the Court that he captured what happened at Kafumbwe Boarding School with his phone. However, he did not pay attention to what was discussed but the 2nd Petitioner said that it was an offence for the ballot boxes to be opened and therefore the results must not be declared.

PW22 also told the Court that she was an election monitor at Kafumbwe Totaling Centre for the 2nd Petitioner. That whilst there around 10:00 hours on 13th August, 2021, seven boxes were brought and they were placed at the bottom, not together with the others. On 14th August, around 15:00 hours the

boxes had not been removed. She then started off to inform the 2nd Petitioner about the same. The 2nd Petitioner arrived at the Totaling center and she spoke to those in authority.

In rebuttal, RW5 explained that when the presiding officer came, the Returning Officer informed them with all stakeholders who were present and asked him to explain what happened. He indicated that he had nowhere to pack other ECZ materials and decided to pack them in the two opened ballot boxes. He admitted that what he did was wrong and requested that they forgive him as he was not feeling well.

At that point, they allowed him to continue with the verification process with the Returning Officer. When they had sight of the results from that station, he confirmed that the results on the form and those on their PVT had no disparities. So they agreed with their team that there was no issue as the mistake was seemingly negligible to them.

Before they finalized with the Returning Officer, the 2nd Petitioner walked in and queried why the ballot boxes had not been cleared. At that point they had only remained with about two polling stations to be cleared before the announcement to declare the winner could be made. All the stakeholders agreed to proceed in the fashion they did.

RW6 the Returning officer in rebuttal also admitted that the incident happened at Kafumbwe Totaling Center. They received ballot boxes from Dole 1 polling station. The presiding officer brought in two sealed ballot boxes and two were not sealed. She explained that this did not mean they were tampered with at the Totaling center. They arrived at the Totaling center the same way they left the polling station.

She stated that the presiding officer sealed all ballot papers for the four elections in one box and used the other two boxes to carry material like aprons and lamps that they were using.

The verification of the ballot paper account was carried out on 14th August, 2021, after the elections that was where all the sealed boxes were to be unsealed in the presence of stake holders. Since the ballot boxes were not sealed, they had to engage stakeholders why the boxes were not sealed. She confirmed that they did verification for the four ballot boxes from Dole 1 polling station and as Returning Officer she confirmed the results were correct.

I have carefully considered the evidence given in support of the allegation and in rebuttal. The law is very clear as to what the presiding officer is supposed to do after the result of the count has been relayed to the Returning officer. As already alluded to, the presiding officer is supposed to seal in separate ballot boxes the the number of ballot papers supplied to the polling station; the result at the polling station; the number of rejected ballot papers; the number of spoilt

ballot papers; and the number of unused ballot papers. Thereafter, deliver to the returning officer sealed ballot boxes.

From the evidence that has been adduced, it is not in dispute as the 2nd Respondent has admitted that ballot papers for the four different categories of the polls were packed in two ballot boxes.

I have also considered the explanation proffered by the 2nd Respondent. I do not understand how a presiding officer who I take understood his duties could have mixed the ballot papers for different polls when the law is very clear on what he was supposed to have done. I do not consider the explanation given to be plausible more so that it was not pleaded in the Answer that was filed by the 2nd Respondent that the ballot papers for the four polls were sealed in one box and the other two boxes were used to carry materials like aprons and lamps that the presiding officer was using.

This change by the 2nd Respondent is an indication that the presiding officer might have had some other motives than what has been explained. Let me pause here and say this again. The 2nd Respondent has the mandate to conduct elections in this country. And borrowing from the words used by the Constitutional Court in the *Nkandu Luo v. Doreen Sefuke Mwamba* case, elections are a means for the governed to express their will on who to govern them. Therefore the 2nd Respondent must ensure that it works as far as

possible to eliminate any flaws which will lead the governed to lose confidence in the electoral process.

For this reason, I find that there was a breach of duty by the 2nd Respondent's officer as he did not comply with the provisions of Section 71(4) (a) (b) of the Act.

The next question I have to consider is whether the non-compliance or the breach of duty though undesirable is sufficient to nullify an election. In answering this question, I am steered by what is provided for in Section 97 (2) (b) that an election of a candidate shall be void if proved to the satisfaction of the Court that there was non-compliance with the provisions of the Act and that such non-compliance affected the result of the election.

And as I have already alluded to, Section 97(4) of the Act also provides that:

"An election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court or a tribunal that the election was so conducted as to be substantially in accordance with the provisions of this Act, and that such act or omission did not affect the result of that election."

What I discern from the foregoing is that the 2nd Petitioner therefore has to show to the satisfaction of the Court that the non-compliance or breach of Section 71(4) affected the outcome of the election in order to warrant a nullification on this ground.

In this regard, the Supreme Court stated regarding non-compliance in the case of Webster Chipili v. David Nyirenda⁽³²⁾ that where a party alleges non-conformity with the electoral law in an election petition, such party must not only prove that there was non-compliance with the law but that such non-compliance did affect the result of the election.

Furthermore, the Constitutional Court in the case of *Nkandu Luo v. Doreen Sefuke Mwamba* stated that:

“Thus, a person challenging the election of a candidate on the basis of section 97(2) (b) must demonstrate, with cogent evidence, that there was non-compliance with the provision of the Act relating to the conduct of an election and that the non-compliance affected the result of the election.”

In light of the foregoing, the burden is on the 2nd Petitioner to demonstrate, with cogent evidence, that there was non-compliance with the provision of the Act relating to the conduct of an election and that the non-compliance affected the result of the election.

This is important because in the case of Christabel Ng'imbu v. Prisca Kucheka and another⁽³³⁾ the Constitutional Court held that:

“The mixing of ballot papers for different categories of elections by the 2nd Respondent officers is not sufficient ground for nullifying the election...Further since this anomaly was rectified by agreement of all interested parties, it cannot on its own be held to be sufficient ground for nullifying the election in question.”

I have carefully analyzed the evidence adduced by the 2nd Petitioner in this regard. She has not adduced any cogent evidence to prove or demonstrate how the said irregularity or breach of duty by the 2nd Respondent's officer affected the election results in order to warrant an order of nullification. What I have noted is that the 2nd Petitioner only concentrated on proving that there was non-compliance because even in the submissions filed by counsel, the issue was not addressed.

Going by what RW6 the Returning officer told the Court and what I have seen on the pictures of the ballot boxes which are at page 23 of the 2nd Petitioner's bundle of documents, the incident happened at Dole 1 polling station. There is no evidence that was adduced by the 2nd Petitioner that this action by the presiding officer happened at a number of polling stations in Milanzi Constituency.

On the authorities of the cases I have referred to above, I find that the 2nd Petitioner has not proved to the satisfaction of the Court that the non-compliance complained of affected the election result. This allegation therefore has not met the threshold for nullifying an election and I accordingly dismiss it.

The second limb of the allegation is that there were anomalies in the GEN 20a form.

The 2nd Petitioner in her petition averred that on or about 12th August, she received a Gen 20a form from the electoral officers showing anomalies in the inscription of her number of votes, which anomalies the electoral officers tried to clarify. However, the said forms were further noted to have not been signed by the representatives of the 2nd Petitioner or any other political party involved.

Thus, she told the Court that the polling agents were not given the GEN 20 forms for Kagoro polling station. On this form, her results in figures were 345 but in words it indicated thirty-four (34). She followed the Returning Officer on 15th August and asked her if she could be given a visible copy of the GEN 20 for Kagoro 2. The Returning Officer wrote another form which was different from what she had given her as she had reduced the number in figures from 345 to 34.

RW6 when referred to the alleged anomalies on the Gen 20 form of Kagoro 2, told the Court that she remembered that the 2nd Petitioner had gone to the Totaling center and she was with the District Electoral Officer (DEO) and requested a copy of the Gen 20 form. She was called through and she made a copy of the same which she presented to the Petitioner.

Upon presenting it to her, the Petitioner brought out a carbon copy she had which had figures to her name reading 345. She queried why the form she had, had a lower figure than what she had. She referred her to the vote in words which even on her copy read 'thirty-four' and she told her the document

seemed to have been altered because the figure that RW6 had tallied with the number in words.

RW6 explained that the form was such that the candidate with the highest votes was listed first and the one with the lowest votes was last. In this regard, if the Petitioner's votes were indeed 345, her name should have been on top of the list and written in descending order. The witness told the Court there was a possibility that the document brought by the 2nd Petitioner was forged.

I have considered the explanation that was given by RW6 to be plausible and that is why her evidence in this regard was unshaken in cross examination. I say this because going by how results are entered on the Gen 20 form as explained by RW6, which is also evident from the GEN 20 at page 29 of the 2nd Petitioner's bundle of documents, the number of votes are recorded in descending order with the person with the highest votes on top of the list. It is inexplicable that if the 2nd Petitioner's results were altered from 345 to 34, her name would have been fourth on the list. I therefore do not accept her evidence in this regard. The situation would have been different if she appeared at the top of the list with 34 votes in figures and then the ones at the bottom with more votes than hers.

For this reason, I find that:

- (i) There was no anomaly on the number of votes the 2nd Petitioner obtained at Kagoro 2 polling station.
- (ii) The correct form is the one which appears at page 29 of the 2nd Petitioner's bundle of documents and not the one which appears at page 28.
- (iii) RW6 did not write another GEN 20 form for the 2nd Petitioner but made a copy of the GEN 20 at page 29.

Furthermore, even if the 2nd Petitioner had proved that there was an anomaly with the results at Kagoro 2, in order to succeed, she needed to show that the anomalies were so widespread in the constituency that they affected the outcome of the election results. The case of *Christabel Ng'imbu v. Prisca Kucheka and ECZ* is instructive on this point as it was stated that:

"We reiterate the position of the law as illustrated above that the onus was on the Appellant to prove not only that the alterations complained of were made but to also demonstrate how these alterations affected the results or outcome of the election in order for this to be a basis for nullifying the election. It is not sufficient to merely allege that the results could have been tempered with. More is needed to be done to show or prove that the impact on the election or election results or that the results were not the actual results."

What is abundantly clear from the above case authority is that it is not sufficient to merely show that there was an anomaly or an alteration or that the results could have been tempered with. More is needed to be done to show

or prove the impact on the election or election results or that the results were not the actual results. However, the 2nd Petitioner did not do that.

For the reasons I have given, I find that there is no merit in the first limb of this allegation. It is accordingly dismissed.

The second limb of the allegation is that the said Gen 20a forms were not signed by the representatives of the 2nd Petitioner or any other political party involved. The 2nd Petitioner did not adduce any evidence to show that the GEN 20 forms were not signed.

Even if there such evidence, the law is very clear on this issue. Regulation 49(2) of the Electoral Process (General) Regulations provides as follows:

“The presiding officer shall announce how the votes have been cast for each candidate in Form GEN20 set out in the Schedule, and how many have been rejected in the polling station and may require if present, election agents or monitors to counter sign the results, except that failure to counter sign the election results does not render the results invalid.”(Emphasis added)

Similarly, Regulation 5(2) of the Code of Conduct provides as follows:

“An election agent or polling agent shall counter sign the election results duly announced or declared by a presiding officer or returning officer, as the case may be, except that failure to countersign the election results by such election agent or polling agent shall not render the results invalid”. (Underlined for emphasis)

From Regulations 49(2) and 5(2) above, it is clear that an election or polling agent is required to counter sign the results duly announced but that failure

to counter sign the election results by the election or polling agent shall not render the results invalid.

The Constitutional Court in interpreting Regulation 5(2) in the case of **Giles Chomba Yamba Yamba** stated that:

“It is clear that if for some reason, an election or polling agent does not append their signature to GEN12 form, the provision states that there will be no effect in the results. We venture to say the ideal situation of course is that all people required to sign for the election results should sign to enhance transparency in the electoral process.”

As I have stated, the 2nd Petitioner did not adduce any cogent evidence before Court to substantiate her allegation that her polling or election agents failed to sign on the Gen 20a forms because of non-compliance by the 2nd Respondent’s officials and that consequently, the election results were affected.

I find that the 2nd Petitioner has therefore failed to prove this second limb of the allegation. It is dismissed.

The upshot of my findings is that the 2nd Petitioner has failed to prove the allegations in paragraph 19 of the petition to the required standard. The allegations are dismissed for want of merit.

(iii) THREATS AND UNDUE INFLUENCE BY CHIEFTAINESS KAWAZA

This allegation is contained in paragraph 13 of the petition. It is alleged that the 1st Respondent through the agent, Chieftainess Kawaza, contrary to Section 83(1)(c) of the Electoral Process Act issued threats to her subjects whilst targeting registered voters in terms of possible land grabbing in the instance that subjects did not vote for the 1st Respondent's political party.

In support of this allegation, the 2nd Petitioner told the Court that she was informed by the Headmen and Tylad Lungu that Chieftainess Kawaza threatened his Headmen that they should tell their subjects in the villages across the constituency that they should vote for the 1st Respondent. If they didn't vote for her, their land and fields would be withdrawn from them.

Other witnesses who addressed this allegation were PW15 Kepelino Banda who testified as Headman of Lunga village in Kafumbwe ward, PW16, Alfred Mbewe who testified as Headman Mbeza from Kazala ward, PW19, Pachikani Sakala who testified as Headman from Kapala village in Kasambandola ward and PW20, Alimony Phiri who testified as Headman from Muthoseni village in Kazala ward and also chairman for sixteen (16) Headmen. PW24, Cefoliano Mwale from Yowoyani, the Chairman for Chadaka Farms also led evidence on this allegation.

In the main, their evidence was that they were summoned by Chieftainess Kawaza to the palace and that she told them that they should tell their subjects to vote for the 1st Respondent. They were also threatened that if they didn't vote for her, their fields would be withdrawn.

In rebuttal, the 1st Respondent denied the allegation. She stated that in her tradition as a Chewa, she could not undertake a huge undertaking such as political campaigns in a Chieftom without paying courtesy calls on the traditional leadership in Milanzi constituency. It was also her evidence that Chieftainess Kawaza was not her election agent and did not threaten her subjects that she would grab their land if they did not vote for her.

RW4 told the Court that the 1st Respondent during campaign period used to go to the palace and he used to be present. She visited the palace several times just like any other person and when the 1st Respondent visited the palace, the Headmen were never present.

RW4 also testified that there was no time when the Chieftainess went out of the palace and issued threats to her subjects concerning politics. According to their tradition, the Chieftainess, Indunas and Headmen were not supposed to participate in politics because whoever was contesting in politics was considered her subject. He testified that there was never a time when the Indunas left the palace to involve themselves in politics and there was never a time when the Chieftainess left the palace without the Indunas.

RW5 stated that he never heard of any threats which came from the Chieftainess or his candidate at any time.

I have closely evaluated the 2nd Petitioner's evidence in support and also the 1st Respondent's evidence in rebuttal. It is not in dispute from the evidence that the 1st Respondent visited the palace during campaign period as she, RW4 and RW5 alluded to it. It is also not in dispute that the Headmen used to go to the palace.

The issues which are in dispute and which fall for determination are:

- (i) Whether the Chieftainess used to summon the Headmen to go to the palace for political reasons and issued threats to her subjects through the Headmen that they should vote for the 1st Respondent. That if they didn't vote for her, their fields will be grabbed from them.
- (ii) Whether the Chieftainess was the 1st Respondent's agent and whether the words attributed to the Chieftainess were done with the 1st Respondent's knowledge, consent or approval.

This allegation is covered under section 83 (1) (c) which provides that:

(1) A person shall not directly or indirectly, by oneself or through 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;

Regulation 3(1) (i) of the Electoral Process (Code of Conduct) Regulations, 2016 also provides that:

“The Commission shall, where reasonably and practicable to do so:

(i) Ensure that traditional leaders do not exert undue influence on their subjects to support a particular political party or candidate.”

It is clear from the above provisions that because of the position that traditional leaders hold in society, they are proscribed from exerting undue influence on their subjects so as to disadvantage any person during the campaign.

Having analyzed the evidence, what is evident is that the witnesses' respective versions on the issues which fall for determination are diametrically opposed.

I will proceed to consider these two issues together. While all the five witnesses testified that Chieftainess Kawaza issued the threats, evidence in rebuttal was adduced by RW4 the Senior Induna to the Chieftainess who told the Court that she never issued those threats as she never used to have any political meetings with the Headmen.

I should hasten to mention that in terms of categorization, traditional leaders are not supposed to be partisan and there is no evidence that was adduced to the effect that PW15, 16, 19 and 20 and RW4 were partisan witnesses'. That notwithstanding, the Constitutional Court in the case of Charles Kakoma v. Kundoti Mulonda ⁽³⁴⁾ stated that:

"The mere fact that a witness is not partisan does not mean that such a witness is credible. The issue of credibility is broad and includes demeanour and the perception on truthfulness of the witness and the consistency of one's testimony."

Guided by the above authority, I will evaluate the content of their evidence as a determination of the issues hinges on the credibility of the witnesses. As a trier of facts, it is imperative to put the credibility of the witnesses under scrutiny.

As I have already alluded to, the evidence in support was largely adduced through PW15, 16, 19, 20 and 24. The first four testified as Headmen in Chieftainess Kawaza's Chieftom whilst the last one as Chairman for Chadaka Farms.

According to PW15, he was Headman Chisungwi and that they were called to the palace by Chieftainess Kawaza who told them to vote for the 1st Respondent and that if they didn't vote for her, land would be grabbed from them. That he went to the palace sometimes with two or three hundred Headmen and this was on several occasions. That he attended all the meetings and the 1st

Respondent attended the meetings two times with all the Headmen and the Chieftainess.

In terms of the mode of transport they used to use to get to the palace, he stated that they used to use bicycles which they used to leave at the 2nd Petitioner's house and then got on the 1st Respondent's vehicle and that they used it four times and 1st Respondent used to be on the vehicle. In reexamination he stated that the 1st Respondent would just take the people to the palace and then go back.

While PW15 told the Court that he attended all the meetings at the Chieftainess palace, PW16 stated that he also attended all the meetings and that the 1st Respondent attended the meeting where all the Headmen were in attendance only once. That the person who said she attended twice lied. He also stated that they used to use the 1st Respondent's vehicle when going to the palace but that the 1st Respondent was never in the vehicle. In this regard, he stated that if someone told the Court that the 1st Respondent used to be in the vehicle, then that person lied.

PW19 on the other hand also stated that he attended all the meetings where threats were issued by the Chieftainess but that the 1st Respondent never attended any of the meetings at the palace. Then again, during cross examination by counsel for the 1st Respondent, he changed and stated that she attended once. In terms of mode of transport, he stated that all the Headmen

used to use bicycles when going to the palace which the 1st Respondent bought for them and that he didn't see any Headman go with a vehicle to the palace.

On the part of PW20, he stated that as Chairman for sixteen Headmen, he used to attend all the meetings that used to be called for by the Chieftainess and that he made more than ten trips to the palace. That the Chieftainess called three meetings for all the Headmen and the purpose was for them to plan how they were going to campaign. That the 1st Respondent attended all the three meetings for the Headmen. Then after that, she would call meetings for the top five being the chairperson and the vice, the secretary and the vice and also the treasurer. And that the 1st Respondent attended the meetings more than seven times. He also stated that they used to use the 1st Respondent's vehicle but he never saw her in the vehicle.

The last witness who also addressed this allegation was PW24 who stated that he attended meetings at the palace five to six times and that the 1st Respondent attended once. He also stated that when going to the palace, he used to use his bicycle and only used the 1st Respondent's vehicle once.

On this allegation, what the 2nd Petitioner contends is that Chieftainess Kawaza worked together with the 1st Respondent and that she issued threats through the Headmen whom she summoned that if her subjects didn't vote for the 1st Respondent, then their field would be grabbed.

So while all the five witnesses stated that the Chieftainess issued the threat, it is clear from the evidence that I have outlined that there were contradictions and inconsistencies in their evidence in relation to the number of meetings all the Headmen attended, the number of times the 1st Respondent attended the meetings at the palace, the mode of transport that was used by the Headmen when going to the palace and if 1st Respondent used to be in the vehicle they used to use when going to the palace.

Counsel for the 2nd Petitioner in their submissions acknowledged inconsistencies only on the number of times the 1st Respondent attended the meetings. However, they have classified this inconsistency as a minor one. In this regard, they have referred the Court to the Ghanaian case of Effisah v. Ansah⁽³⁵⁾ wherein the Court acknowledged that evidence led at any trial and which turns principally on issues of fact and involving a fair number of witnesses, would not be entirely free from inconsistencies, conflicts or contradictions.

The Court in that case went further and stated that that notwithstanding, when it comes to evaluating evidence, the presence of such inconsistencies, conflicts and contradictions should not justify a wholesome rejection of the evidence to which it might relate.

It therefore stated that in any given case, minor immaterial, insignificant or non-critical inconsistencies must not be dwelt upon to deny justice to a party

who has substantially discharged his burden of persuasion. Where inconsistencies or conflicts are clearly reconcilable and there is critical mass of evidence or corroborative evidence on crucial or vital matters, the Court would be right to gloss over these inconsistencies.

In this regard, counsel for the 2nd Petitioner submitted that the number of times that the 1st Respondent attended the meetings is insignificant and what is vital and material is the fact that all the witnesses consistently testified that Chieftainess Kawaza threatened them and that the 1st Respondent attended some of these meetings irrespective of the number of times.

On the other hand, counsel for the 1st Respondent submitted that the evidence of these witnesses consisted of gross irreconcilable contradictions which would justify a rejection of their evidence.

I will state from the outset that I do agree with the observations made by the Court in the Ghanaian case which counsel has referred me to in so far as it relates to how a trial Court should treat inconsistent or conflicting evidence when evaluating evidence. This is in line with the principle that was enunciated by the Supreme Court in the case of *Ndongo v. Moses Mulyango, Roostico Banda* where the Supreme Court guided that inconsistencies cannot be the basis of discarding or disbelieving evidence. The guidance of the Court is that the weight to be attached to such evidence must be determined in the light of other evidence.

I have already mentioned that this principal was followed by the Constitutional Court in the case of *Abuid Kawanga v. Elijah Muchima*. Just to encapsulate, the guidance is that if there are contradictions and inconsistencies in the evidence, the weight to be attached to that evidence is reduced. However, the evidence cannot be rejected if there is other corroborative evidence to support the fact in issue.

The crucial question therefore is whether this Court would be right to gloss over the inconsistencies?

Based on what I have stated, the 2nd Petitioner contends that the Chieftainess worked together with the 1st Respondent during the campaigns and that she issued the threats to her subjects and that this was done with the 1st Respondent's knowledge, approval and consent.

In order to prove this, the 2nd Petitioner's contends that the Chieftainess used to summon the Headmen to the palace and that the 1st Respondent used to attend the meetings where these alleged threats were issued by the Chieftainess in the presence of the Headmen.

As I have already alluded to, PW15 stated that all the Headmen were called to the palace several times and he attended all the meetings at the palace and that the 1st Respondent only attended twice. PW16, stated that there were a lot of meetings that were called by the Chieftainess, sometimes even twice in a

week and he attended all the meetings; the 1st Respondent only attended once. This contradicts what PW15 stated that she attended twice. PW19 stated that he attended all the meetings at the palace and at first he stated that the 1st Respondent didn't attend any meetings but he later changed in cross examination and stated that she attended once. This also contradicts what PW15 stated that she attended twice.

PW20 also stated that only three meetings were called for all the Headmen and he attended all the meetings and the 1st Respondent attended the meetings three times. This evidence contradicts that of PW15, PW16 and PW19 and 24 who stated that as Headmen, they were called to the meeting several times. PW16 even stated that sometimes even twice in a week. While PW24 stated that they used to be called almost all the time.

In an attempt to clarify the apparent inconsistencies in the evidence by the witnesses on the number of times that the 1st Respondent attended the meetings, PW20 stated in re-examination that the reason there were inconsistencies was because the Headmen attended different meetings depending on their positions.

This again was a contradiction because none of the other four witnesses stated that they attended the meetings in other capacities. They were categorical and stated they attended all the meetings.

In addition, it is contended by the 2nd Petitioner that the 1st Respondent was the one who used to provide transport to take the Headmen to the palace and that she never used to be in the vehicle. However, PW15 stated that they used to use their bicycles which they would leave at the 2nd Petitioner's home and then use the 1st Respondent's branded vehicle when going to the palace. That he saw the 1st Respondent on this vehicle on four occasions.

Furthermore, while PW16 and PW20 stated that they used to use the 1st Respondent's vehicle when going to the palace, they also told the Court that the 1st Respondent was never in the vehicle and that anyone who said she used to be in the vehicle lied to the Court. Their evidence clearly contradicts that of PW15.

Before I proceed, it is important for me to state that in point of fact, I have attached very little weight to the evidence of PW15 because not only was his evidence inconsistent with that of the other witnesses called to testify on this point but his demeanour was not impressive and therefore he didn't strike me as a truthful witness. This is because he first told the Court that the 1st Respondent attended the meeting twice and then later on in cross examination he stated that he saw her on the Canter on four occasions.

When it was brought to his attention in cross examination that he had initially stated that she only attended twice, he was hesitant to answer the question and he paused for a very long time before he could answer. This long pause

was not indicative of someone who was trying to recall the events but from my observation it showed that he had been caught in web of his lies and was thinking of how to get out. The explanation he proffered was that on two occasions, the 1st Respondent was just on the vehicle and went back to get the other Headmen who had remained to be picked.

I find this explanation to be illogical that the 1st Respondent would be bold enough and be on her branded vehicle which was used to ferry some Headmen from the 2nd Petitioner's house, her political opponent and then take them to the Chieftainess palace for a meeting.

It is for these reasons that I find that PW15 was not being truthful and I attach very little weight to his evidence in this aspect.

The other witness who I also observed to have given inconsistent evidence was PW20 who at first told the Court that there was one meeting which was called by the Chieftainess for all the Headmen. Later during his testimony, he changed and stated that there were three meetings that were called by the Chieftainess for all the Headmen.

Again in cross examination, he was asked if there was any problem with the candidature of the 1st Respondent in the village and he stated that there was no problem with her standing. When he was asked that there was no need therefore for her to come to the village as he had earlier told the Chieftainess,

he was hesitant to answer the question and he looked down and asked for the question to be repeated two times. This hesitation to me showed that he was trying to think hard of how to answer the question because he had earlier stated that there was a problem with her candidature as she was not seen in the village. In short, just like PW15, he was not being truthful.

Getting back to the evidence on the mode of transport, the evidence of PW19 was that they all used to use their bicycles and no one used to use a vehicle when going to the palace. In this regard, he didn't even mention that the 1st Respondent used to be in the vehicle. His evidence also contradicts that of PW15, 16 and 20.

It is surprising that counsel for the 2nd Petitioner has not addressed these inconsistencies on all these issues and only addressed the inconsistencies on the number of times that the 1st Respondent attended the meetings. In fact, he submitted that the evidence that the witnesses used to use the 1st Respondent's branded vehicle when they went for meetings was uncontested and uncontroverted in cross examination.

However, the inconsistencies and contradictions on the issues that I have alluded to were exposed through cross examination of these witnesses. And just amongst themselves, each one started professing that he was the one who told the truth whilst the others lied.

In my view, the inconsistencies and contradictions are significant and the Court cannot gloss over because they relate to the allegations that have been made that Chieftainess issued threats and used to work with the 1st Respondent during the campaigns and that she issued threats with the approval of the 1st Respondent. It would have been different if the inconsistencies were unrelated to the allegations made.

Additionally, this Court cannot gloss over these inconsistencies and contradictions because it is not in dispute that the 1st Respondent used to visit the palace. Her contention is that she used to go and pay courtesy calls on the Chieftainess. It is not unusual for subjects to pay courtesy calls on the traditional leaders. RW4 also denied that she used attend the meetings that were called for the Headmen. Therefore, in view of the position that she has taken, it is cardinal that there is clarity in the evidence relating to the allegation that threats were issued by the Chieftainess with the knowledge, consent and approval of the 1st Respondent so that any element of falsehood or exaggeration is eliminated.

In this regard, although the trial involved a fair number of witnesses the existence of inconsistencies and contradictions on significant issues raises serious doubt in my mind on the credibility of the witnesses in terms of truthfulness. These inconsistencies have reduced the weight I have attached to their evidence even as far as the issue that the threat was issued is

concerned. Hence, I find that the inconsistencies cannot be glossed over as contended by counsel for the 2nd Petitioner.

Having made this finding, I am guided by the principle enunciated by the Supreme Court in the *Ndongo v. Mulyango* case and adopted by the Constitutional Court in the case of *Abuid Kawanga* case.

So the question I ask is this: Is there a critical mass of evidence or corroborative evidence to support the evidence that the Chieftainess issued the threats to her subjects and that this was done with the knowledge, consent and approval of the 1st Respondent?

These witnesses were called to support the 2nd Petitioner's evidence because she told the Court that she was told by the Headmen that the Chieftainess had issued threats to the subjects and they used to leave their bicycles at her home when going to the palace and then get on the 1st Respondent's branded vehicle.

She was also told by PW13 Tylad Lungu who stood as an independent candidate that he was approached by Headman Chisungwi and Headman Kapala who told him that they were threatened by Chieftainess Kawaza that if they were not going to campaign for the 1st Respondent, their maize fields would be withdrawn from them and their people. PW13 also stated that he was told by Headman Mbeza, Kapala and Chisungwe that they were being threatened by the Chieftainess. PW13's evidence cannot provide the

corroborative evidence, because he was just told by the witnesses whose credibility is in issue.

Then again, there was evidence by PW11 that apart from being told by the Headmen, some Headmen used to leave their bicycles at her house and board the 1st Respondent's branded vehicle. However, her evidence is also in conflict with that of PW19 who stated that all the Headmen used bicycles and no one used a vehicle when going to the palace.

Furthermore, I am not entirely convinced that the Headmen used to leave their bicycles at the 2nd Petitioner's house and then board the 1st Respondent's branded vehicle. If that was the case, I am made to wonder why the 2nd Petitioner did not provide any pictorial evidence if it is true that's what used to happen. This would have provided corroborative evidence to strengthen her case. I say I am made to wonder because from my own observation of her demeanour, the 2nd Petitioner seems to be a sharp eyed person who was always on guard during the campaigns in anticipation of any electoral malpractices.

I am fortified in my observation because on the allegation regarding the opening of the ballot boxes, when the 2nd Petitioner was called to go back to Kafumbwe Totaling Center, she asked her driver to record what was transpiring and hence she was able to produce the video recording in Court. She also took pictures of the ballot boxes which she found at the totaling center and produced them in the bundle of documents.

In addition, when she felt aggrieved about the words which were allegedly being used against her, she made a complaint to the DCMC and the letters of complaint were produced in Court. After the hearing, pictures were taken apparently showing the reconciliation and they were also produced.

I should pause here again and state that while it goes without saying that the most important thing for a witness to do is to tell the truth, they must also remember that contemporaneous documents are the most important evidence for the fact finding exercise at trial. In the present case, this is what the 2nd Petitioner did on the other allegations as she adduced documentary and pictorial evidence which I have referred to in order to support her allegations.

On this particular allegation, she did not and I am not convinced that what she stated is what actually what happened. In my view, being the person I have observed her to be, she would not have missed the opportunity of collecting that vital piece of evidence if indeed it is true the Headmen used to leave their bicycles at her place and then got on the 1st Respondent's branded Canter especially that she contends that all this used to happen at her house.

In view of what I have highlighted above, I find that the 2nd Petitioner's evidence that the Headmen used to leave their bicycles at her house and then get on the 1st Respondent's branded Canter is insufficient to provide corroboration.

Having said that, there is also evidence from PW20 that after the meetings with the Chieftainess, the 1st Respondent held a meeting at Muthoseni village where she repeated the words that had been allegedly used by the Chieftainess that if they don't vote for her, then land would be grabbed from them.

Now, no witness was called by the 2nd Petitioner to support what PW20 stated that the 1st Respondent held a meeting in the village where she repeated the words allegedly used by the Chieftainess. That evidence could have provided some corroborative evidence that the 1st Respondent told them about the alleged threats from the Chieftainess if they didn't vote for her.

I have also noted that all the five witnesses told the Court that after they received the threat they went back to the villages and informed the subjects. I am at a loss as to why none of the subjects were called to testify on the alleged threat that was issued by the Chieftainess. It is important to note that the allegation of threats as it appears in the petition, is that the threats were issued by the 1st Respondent through her agent Chieftainess Kawaza to her subjects whilst targeting registered voters.

So if it is true that after they received the alleged threat they also informed their subjects, I am of the view that this would have been a topical issue in the village and the people who would have spoken about it to confirm that they received the information from the Headmen would have been the targeted subjects.

The failure to call any one of the subjects casts a doubt whether the threat was issued and whether it was even relayed to the subjects. I have also noted that counsel for the 2nd Petitioner submitted that it was prudent to only call the traditional leaders like Headmen because of time factor and also that they would be more credible than the other witnesses. I do not accept that argument because the issue of credibility is wide and it is the duty of the Court to make a determination who is a credible witness and who is not. As it has turned out, the credibility of these Headmen is in issue.

For the reasons that I have taken time to highlight above, I find that:

- (i) There is no corroborative evidence to tip the scale in view of the reduced weight I have attached to the evidence of PW15, PW16, PW19, PW20 and PW24 that the Chieftainess issued the threats. This is because of the inconsistencies and contradictions in their evidence that the threats were done with the knowledge, consent or approval of the 1st Respondent.
- (ii) These inconsistencies and contradictions which are related to the main allegation are indicative that their evidence was rehearsed that is why when it came to providing details of what allegedly happened and whether the threats were issued with the knowledge, consent or approval of the 1st Respondent, the witnesses were exposed. Their evidence was unreliable as a result.

(iii) Consequently, the allegation that the Chieftainess Kawaza issued threats to her subjects and that this was done with the knowledge and consent of the 1st Respondent has not been proved with convincing clarity.

Furthermore, even if I were to find that the Chieftainess issued threats and this was done with the 1st Respondent's knowledge and approval, the next ingredient would still have to be proved that the majority of the voters were prevented from voting for their preferred candidate.

However, I have already mentioned that the five witnesses stated that when they received the information, they went and informed their subjects in the villages. This evidence lacked specifics in terms of when and how many meetings were held and how many people were in attendance which again shows a lack of clarity in their evidence. The only information that was given to the Court was that when the message was relayed to the subjects, they were scared.

If it is true that the subjects were informed, these details should have been clearly canvassed in examination in chief by counsel but as the record will show, the question came apropos or just in passing. Meanwhile the law is very clear that an election can only be avoided by the Court not only by proving the illegal practice or misconduct but also whether this had an effect on the voters so as to prevent them from electing their preferred candidate.

What the foregoing means is that the subjects who were the intended target group of the threats as the voters should have been called as witnesses to firstly testify that the instruction was delivered to them by the Headmen and secondly the impact that it had on them as voters. This evidence would have also shown that there was a topical issue in the village concerning the grabbing of land if the subjects didn't vote for the 1st Respondent. Since this was not done, I find that there are gaps in the 2nd Petitioner's evidence. It appears to me that the 2nd Petitioner, PW13 and the Headmen are the only ones in the whole Constituency who knew about the threat.

So while the Headmen told the Court the subjects were scared, the second ingredient could not have been proved through the Headmen because the Headmen cannot speak on their behalf as to the impact the threat had on them.

I am fortified by what the learned authors of Halsbury Laws of England which I have already alluded to stated. For the avoidance of doubt, they stated when defining the phrase 'undue influence' that:

"In order to constitute undue influence, a threat must be serious and intended to influence the voter but it must appear that the threat should be judged by its effect on the person threatened and not by the intention of the person using the threat."

Given the foregoing definition, what is evident is that it was incumbent upon the 2nd Petitioner to prove to the required standard that not only was the threat

issued but also prove the effect that the threat had on the subjects who are the voters.

In the light of the foregoing reasons, I find that the first requirement that the threat was issued by Chieftainess Kawaza and that this was done with the knowledge and consent of the 1st Respondent has not been proved to the satisfaction of this Court. Most importantly, I also find that the second requirement of the effect the threat had on the voters has not been proved.

The net effect of my findings is that this allegation that the 1st Respondent acted through the Chieftainess and issued threats to the subjects has not been proved to a fairly high degree of convincing clarity as required by law. Hence, this allegation fails and it is dismissed.

(iv) **ISSUANCE OF ZAMBIAN NATIONAL REGISTRATION CARDS AND VOTERS CARDS TO MOZAMBICANS TO VOTE IN THE 12TH AUGUST, 2021 ELECTIONS.**

The 2nd Petitioner in her petition alleged that on unknown dates but between the months of March and July, 2021, numerous Mozambican nationals were issued with Zambian National Registration cards and voters cards and that in the same year on or about 11th August, 2021 the said Mozambicans were ferried and paid by the District Commissioner Joseph Makukula in an endeavour to inflate a favourable voter turnout for the 1st Respondent.

The 2nd Petitioner testified that in the past elections, Mozambicans were allowed to vote in the elections and this was brought to her attention in 2020 by the Headman in Mozambique that the DC Mr. Makukula was involved in the ferrying of Mozambicans to come and get their NRC's in Zambia.

On polling day, the Mozambicans came to vote in Zambia and that she had brought three (3) identity cards for each being the Zambian NRC, voter's card and the Mozambican voter's card. She identified the documents at pages 1 to 13 of the 2nd Petitioner's bundle of documents.

PW12, Iback Phiri who stated that he was a Headman from Daison village in Mozambique also led evidence in support of this allegation. He told the Court that in 2020 the District Commissioner from Zambia went and told them to go and get NRCs from Chimsithu village in Lunga so that they could vote. Everyone in the village came to Zambia and got NRCs. When it was time to get the voters cards, they came again and got the voters cards.

He further stated that before the polling day, a letter from the DC Makukula was delivered by Headman Padoko from Zambia that they should come and attend a meeting at Chimisthu village in Zambia. On poll day, a Canter from the DC was sent to pick them up from Mozambique and when they reached Zambia, the DC sent the same Canter back to go and pick more people.

PW15, Headman Chisungwe told the Court that when they were called to the palace by Chieftainess Kawaza, she told them to cook for the people from Mozambique who were coming to vote in Zambia. The mealie meal and the meat was given to them by the 1st Respondent and the mealie meal was received by Headman Padoko, the Chairman for all Headmen. He stated that he was also given twenty five bags of mealie meal and he gave them to the people in the village. He kept two bags and the other bags he cooked for the people from Mozambique.

Kalonga Phiri, PW23 from Daison village in Mozambique also told the Court that they received a letter from the DC for Katete that they should go and get NRCs from Lunga. After getting the NRCs they were told to go back and get voters' cards from Muthipa village and they were a group of them from Mozambique.

The 1st Respondent on the other hand denied the allegation and told the Court that the institutions which were mandated to issue NRCs and voters' cards were the Ministry of Home Affairs and the 2nd Respondent. She also stated that she did not ferry any Mozambicans to come and vote in Zambia.

RW5 addressed this allegation by stating that they started the campaigns in May 2021, during which period there was no issuance of any voters' cards and the 1st Respondent was nowhere near the issuance of voters' cards.

RW5 further told the Court that on polling day, one of their Canters was down as the pump got damaged and the only other transport they had was one Canter which they used to deliver breakfast and lunch for their polling agents across the constituency. Therefore, they had no programme to transport anyone to go and vote.

RW6 on behalf of the 2nd Respondent testified that its mandate was only to register people eligible to be registered as voters and the people who were eligible were Zambian nationals who should have produced a green National Registration Card. It was not therefore their mandate to issue NRCs but the Ministry of Home Affairs.

I have carefully analyzed the evidence in support of this allegation and the evidence in rebuttal.

The critical question which has to be determined when considering this allegation is whether there were Mozambican nationals who were issued with NRCs and voters' cards and were ferried to come and vote in Zambia.

As I have already alluded to, PW12 Iback Phiri and PW23, Kalonga Phiri told the Court that they were Mozambican nationals.

I will first start with the evidence of PW12 Iback Phiri. His evidence basically is that he is a Mozambican Headman who came and obtained his NRC in 2020, registered as a voter and also voted in the 12th August, 2021 elections. In terms

of proof, he did not produce any documents to show that he is a Mozambican national.

It is common cause that a national identity card provides proof that a person is a citizen of a certain country. When the witness was asked about his identity card, he stated that he had left at home. I find it difficult to understand why the witness who claimed to be a Mozambican national and who was called to speak on this allegation that Mozambicans voted in the last elections could have left such an important document and yet expects this Court to believe him that he is a Mozambican national.

The failure to produce this Mozambican identity card did not end there. The witness also stated that as a Mozambican national he was issued with a Zambian NRC last year and a voter's card after he received a letter from the DC that Mozambicans should come to Zambia and obtain NRCs and voters' cards. Then again, these documents were not produced in Court to show that he was issued with a Zambian NRC and a voter's card. His explanation was that he had left them home. Again I am perplexed, in fact at a complete loss by this tenuous explanation because the allegation that has been made that Mozambican nationals voted in Zambia in the 12th August, 2021 elections by the 2nd Petitioner is a very serious allegation. It is an offence under the Act.

Therefore it was incumbent upon the 2nd Petitioner who seeks this Court to believe this witness that he obtained a Zambian NRC and voter's card and voted

in the just ended elections to have adduced cogent and contemporaneous documentary evidence and not just oral evidence. This is because, it is not difficult for anyone to make such an assertion that they are a foreign national but what would provide conclusive evidence is production of cogent documentary evidence since one cannot tell by ocular observation alone that someone is a foreigner.

In addition, not only did PW12 not adduce documentary evidence to support his assertion that he was a Mozambican national, his evidence contradicted that of PW23 Kalonga Phiri (I will deal with his evidence shortly) who also addressed this allegation and told the Court that his documents were at page 5 of the 2nd Petitioner's bundle of documents.

However, in cross examination and re-examination PW12 also told the Court that his Zambian NRC was at page 5 of the 2nd Petitioner's bundle of documents and that his picture was the one on the document at the bottom. He also stated that he used the name Banda when getting the NRC.

Yet he didn't even explain why he used Banda as a Zambian name when he gave his real names to be Iback Phiri, and Phiri is also a Zambian name. In fact, the name Banda is not even indicated on page 5. Given the above contradiction, it is unclear to this Court who the owner of the documents at page 5 is.

Apart from not adducing supporting evidence of his assertion that he is a Mozambican who obtained a Zambian NRC and voter's card and voted in the past elections, PW12 didn't produce the letter he stated he received from the DC Makukula inviting them to come and vote. His explanation is that the letter was just a small paper from a book which he could not even give to his lawyers.

By that response what I discern from this witness is that he could not present the letter because he had made a conclusion that it was a document that could not be presented to Court because of the form in which it was. Can it be said to be a mere coincidence that this witness did not produce any documents pertaining to his identity and also the Zambian documents he was allegedly issued with and also the letter from the DC inviting them to come to Zambia and vote?

I do not consider this to be a mere coincidence but rather an odd coincidence which has made me conclude that his evidence is a total fabrication. I say this because I do not consider his explanation that he didn't adduce the letter from the DC because it was on a small paper to be a credible explanation.

If he came to Court to support the 2nd Petitioner's allegation, then the form in which the evidence was presented shouldn't have been a concern or of paramount consideration. Rather, what should have been of paramount consideration is the principle that his job as a witness was to help the Court find the truth of the case. In this regard, what should have been considered

was whether that document proved what was alleged that the DC invited Mozambicans to come and vote in Zambia in the 12th August, 2021 elections. Now as it is, that small letter was not produced.

It is this failure by the 2nd Petitioner to produce this small letter in the light of the fact that other supporting evidence was not produced which has made me reach the above conclusion that his evidence is fabricated. This is because I am not convinced that such a letter exists or even if it exists, the contents may be different from what the witness claims the DC wrote.

Moreover, I am not convinced that PW12 is a Mozambican who came and voted in Zambia because this witness also told the Court that in Daison village there are twenty (20) Zambian families and that his second wife is Zambian and she came and voted in Zambia. This evidence shows that there is a possibility that it was Zambians living in Mozambique who came to vote and not Mozambicans as this witness would like this Court to believe.

Additionally, following a Notice to Produce to the 2nd Respondent, RW6 produced the Zambian Voters Register R3, 4, and 5. RW6 was taken through the register by counsel for the 2nd Petitioner to show that the names of the alleged Mozambican nationals whose documents were produced in the 2nd Petitioner's bundle of documents were also on the register. It is surprising that counsel did not ask RW6 to confirm that PW12 was also in the Zambian Voters Register and yet this witness told the Court that he had registered and voted

in Zambia. If that was the case, then his name should have appeared on the register but the Court was not shown his name.

Given the above reasons, I find that the failure by this witness to adduce cogent and reliable documentary evidence to show that he is a Mozambican national who came to Zambia and obtained an NRC and voter's card in Zambia and even voted in Zambia and also the fact that his name is not on the Zambian Voters Register shows that he is not a credible and truthful witness. He actually lied to the Court. I therefore do not place any reliance on his evidence in this regard.

What about Kalonga Phiri PW23? Was he a truthful witness that he was a Mozambican national who was issued with a Zambian NRC and voter's card and voted in the 12th August, 2021 elections? His evidence as I have stated is that he is a Mozambican who came to Zambia and was issued with an NRC and voter's card in 2020.

In terms of proof, he identified the documents at page 5 of the 2nd Petitioner's bundle of documents. I have examined the documents at page 5. There is a document on top of the page which is in foreign language. PW23 stated that was his Mozambican card. It bears the names Calonga Farao John born on 20/11/70. At the bottom is an NRC which bears the names Kalonga Phiri born 15/05/74.

His explanation for the discrepancy in the names is that in Mozambique, the father and grandfather's name were included in the name. Therefore, Farao was his father's name and John his grandfather's name and Kalonga was his name and Phiri was his surname here in Zambia. This is the same explanation that PW4, Liyaya Willisone Liyaya gave but not PW3, Lumphani Amerco Lumphani the witnesses who testified on behalf of the 1st Petitioner.

Granted, he referred the Court to what he stated was his Mozambican voter's card, the Zambian NRC and voter's card. Now, the first question that he was asked in cross examination was what his real name was. He stated that his real name was Kalonga Phiri. He made no reference to the names Calonga Farao John which names if his testimony is true are his real names.

Furthermore, there is a disparity in the date of birth and no explanation was proffered for this disparity. Even if I were to assume that he was required to reduce the years so that he doesn't appear to be old, there is only four years difference between a person born in 1970 and a person born in 1974. And in my view, reducing the age would not have resolved the issue because obtaining an NRC in 2020 for a person born in 1974 is still late since the age for obtaining NRC in Zambia is 16 years old.

PW23 further told the Court he knew the Mozambicans in the 2nd Petitioner's bundle of documents and that they came to get NRCs together in 2020 and

that he knew the Mozambicans in the 2nd Petitioner's bundle of documents except for the ones at page 8 and page 11.

Then again, a perusal of the NRCs produced at pages 3, 6, 9, 10 and 12 for those he stated he came with to obtain the NRCs have revealed that the NRCs were issued on 2015, 2009, 2009, 2009 and 2006 respectively. This is clearly before 2020 the material time that the 2nd Petitioner alleges the Mozambicans were issued with NRCs.

When this was brought to his attention, he stated that what he had told the Court was the truth because he had a reading disability. When it was put to him that he was not asked to read but look at the pictures, he still maintained that they got the NRCs together.

What is clear from the above is that PW23 failed to explain to the Court why he stated that he got the NRCs with the persons at pages 3, 6, 9, 10 and 12. I am of the considered view that he failed to do so because he had fabricated evidence to support the allegation by the 2nd Petitioner that Mozambicans were issued with NRCs in 2020 when it is plain to see that the NRCs for the said persons were issued way before 2020.

The record also is clear that PW23 further changed statements on whether or not he knew the people he referred to and told the Court they obtained the said NRCs from different places and on different dates.

Just to add that as a trier of facts, I have said the credibility of a witness is always under microscope. I therefore paid particular attention to his demeanour as this was significantly important in revealing insight into his credibility.

From the outset, I should mention that he did not inspire me as a credible and sincere witness. Firstly, from his manner of speaking, he was looking down most of the time when answering questions. To me this was not in the sense that he was failing to overcome the fear of being in a witness stand or the stressful circumstances of a courtroom but indicative of a person who was not telling the truth. As a matter of fact, he was very evasive.

In addition, he could not promptly answer questions even when his own lawyer was leading him during examination in chief. As the record will show, his lawyer was at pains to elicit the answer from him whether he had any documents to show that he was a Mozambican national as the witness was unresponsive to the specific question that counsel was asking. Counsel repeated the question five times before he could move on with another question.

Similarly, during cross examinations the witness was reluctant to answer questions after his evidence was discredited and as such, most of the questions especially those pertaining to the alleged Mozambican nationals who were issued with NRCs way before 2020 went unanswered. The only reasonable

inference from the silence is that the witness was untruthful on material aspects and that is why he could not proffer any reasonable explanation on the answer he had earlier given.

Given the foregoing, I agree with counsel for the 1st Respondent that his evidence of registration of Mozambican nationals is questionable and lacks credibility. Therefore, on the authority of *Steven Masumba v. Elliot Kamondo* case, the apparent contradictions in his oral evidence with the documents produced, the absence of cogent evidence that he is a Mozambican and his unimpressive demeanour has made me conclude and find that PW23 is not a credible witness and therefore I attach very little weight to his testimony.

Is there any other evidence to support the evidence of PW12 and PW23? These are the witnesses that the 2nd Petitioner called to support her allegation that Mozambican's voted in the 12th August, 2021 elections. However, as I have already alluded to, documentary evidence was also adduced in the 2nd Petitioner's bundle of documents which appears at pages 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, and 13. These documents are a Mozambican card, Zambian NRC and voter's cards. RW6 in cross examination confirmed that the details on the voters' cards which are at pages 1 to 13 of the 2nd Petitioner's bundle of documents are the same as on R3, R4 and R5 which are the Zambian Voters Register compiled by the 2nd Respondent.

In this regard, the 2nd Petitioner contends that the above evidence is proof that Mozambicans voted in the 12th August, 2021 elections. However, apart from PW23 who I have found not to be a credible witness, none of the persons whose documents appear on the stated pages testified in Court regarding their nationality and under what circumstances they obtained the Zambian voters' cards.

Given the fact that NRCs for persons at pages 3, 6, 9, 10 and 12 were issued way before 2020 and also in view of the disparity in the names and ages on the alleged Mozambican cards and the NRCs, it is difficult for this Court to make an inference that Mozambicans voted in the 12th August, 2021 as the evidence is unconvincing and not cogent especially that PW12 also stated that there are Zambians living in Mozambique and that his wife who is Zambian also came and voted in the election.

I am therefore not entirely satisfied that the evidence has met the required standard of a fairly high degree of convincing clarity to support the evidence of PW12 and PW23.

The net result of my findings on the evidence of PW12 and PW23 and the documents produced at pages 1 to 13 of the 2nd Petitioner's bundle of documents is that the 2nd Petitioner has failed to prove to a fairly high degree of convincing clarity that Mozambicans were issued with Zambian NRCs and voters' cards and that they voted in the 12th August, 2021 elections.

Even assuming I made a finding that Mozambicans were issued with NRCs and voters cards and they voted, there is no evidence that has been adduced that the 2nd Respondent was involved in the national registration exercise. As rightly pointed out by counsel for the 2nd Respondent, all the witnesses admitted that the issuance of NRCs is the preserve of the Department of passport which falls under the Ministry of Home affairs.

According to Section 8(2) of the Electoral Process Act, the mandate to register voters is with the 2nd Respondent and according to Section 8(1) a person qualifies to be registered as a voter if he is a citizen of Zambia, has attained the age of eighteen years and is in possession of a national registration card. There is no provision in the Act which mandates the 2nd Respondent to inquire into the nationality of persons holding a national registration card when registering voters.

In view of what I have stated above, if there were Mozambicans who voted in the past elections, the right institution to have been answerable for this allegation was the Ministry of Home Affairs through the Attorney General so that they could have stated their position regarding the alleged issuance of NRCs to Mozambican nationals. As it is, the Petitioners did not join the Attorney General to the proceedings even after the 2nd Respondent made it clear in the Answer that it was not their mandate to issue NRCs but voters' cards which are issued when one is in possession of a green NRC.

Furthermore, even assuming that Mozambicans were issued with NRCs and voters cards, is there evidence to support the second limb of the allegation that the said Mozambicans were ferried and paid by the District Commissioner Joseph Makukula in an endeavor to inflate a favorable voter turnout for the 1st Respondent?

The evidence to support the allegation of ferrying Mozambicans was adduced through PW12 and PW23. They stated that when they came to Zambia, using the Canter, they found the DC and he sent the Canter to go and pick other people from Mozambique. So according to these witness the DC is the one who was at the center of ferrying alleged Mozambicans. However, as I have stated that the DC was not the 1st Respondent's agent. These witnesses didn't mention that when they came they found the DC with the 1st Respondent. Therefore, I find no link that whatever the DC did was with the knowledge and consent of the 1st Respondent.

Furthermore, there is no evidence to support the evidence of these witnesses who I found not to be credible witnesses.

Although the 2nd Petitioner submitted that the registration of Mozambicans as voters affected the results, there is no evidence that the 1st Respondent is the one who benefitted from this registration as it is not clear how many alleged Mozambicans were registered as voters. This is because the some of the persons whose documents appear in the 2nd Petitioner's bundle of documents

and who appear on the Zambian Voters Register show that they obtained their NRCs way before 2020 which is the material time the registration of alleged Mozambicans is said to have happened. In addition, PW12 told the Court that there were Zambians living in Mozambique and his wife who is a Zambian living in Mozambique came and voted. So in essence, the persons the 2nd Petitioner contends are Mozambicans could well be Zambians.

Further, while the 2nd Petitioner in her evidence stated that four of the twelve wards in Milanzi constituency that is Kapoche, Kafumbwe, Yowoyani and Milanzi were the border wards, the 2nd Petitioner did not demonstrate how the same affected the 2021 Milanzi elections.

The 2nd Petitioner has therefore not proved this allegation to a fairly high degree of convincing clarity that the 2nd Respondent was responsible for issuance of the NRCs to foreign nationals; that this was done with the knowledge, consent or approval of the 1st Respondent or her election or polling agents.

The 2nd Petitioner has also not proved that the Mozambicans were ferried from their villages to come and participate in the August, 2021, elections in order to inflate a favorable voter turnout for the 1st Respondent by the DC with the knowledge, consent or approval of the 1st Respondent and that this affected the 2021 Milanzi election results. This allegation fails and it is dismissed.

(v) BRIBERY AND CORRUPTION

The allegation by the 2nd Petitioner is that on 12th August, 2021, the 1st Respondent through her agents contravened the provisions of Sections 81(a) and (c) by visibly distributing money to voters on the voting queues and further, mealie meal marked "DMMU" being the initials of Disaster Management and Mitigation Unit by distributing to voters on the said date as voting was underway and throughout the campaign period.

To support this allegation, evidence was adduced through nine witnesses that is PW11, 12, 13, 15, 16, 18, 19, 20 and 23.

In her evidence the 2nd Petitioner, PW11 stated that the 1st Respondent was seen distributing DMMU mealie meal during the campaigns and also money to the electorate. This information was brought to her attention by the Headmen. She also stated that the DC was seen by the Headmen on several occasions campaigning for the 1st Respondent.

PW12 during cross examination by Mr. Phiri told the Court that at the meeting at Lunga, the DC, the 1st Respondent and the Headman gave them clothing like caps and a T-shirts. He and other Headmen were also given a K100 and when they were being given money by the DC they were told to vote for the 1st Respondent. He however testified that he did not see the 1st Respondent giving out money or mealie meal on 12th August, 2021.

PW13, Tylad Lungu also led evidence in this regard and told the Court that the pictures he produced before Court showed that the people in the Canter where the 1st Respondent stood were distributing mealie meal. However, in cross examination, he stated that there was no picture which showed the recipients of the mealie meal but that people received mealie meal. He however conceded that the reason he had produced the pictures was to show that mealie meal was given to electorate but there was nothing to show that the electorate received mealie meal.

He further testified that he had election agents in all polling stations but he did not receive any information from his agents that money was being distributed on the queues during voting.

PW15, Headman Lunga also told the Court that at the meeting at Lunga, they were given caps, T-shirts and money was given to the people. That he was also given a K200 by the 1st Respondent and she told them to vote for her. His evidence was that he was also given twenty-five (25) bags of mealie meal to cook for the Mozambicans on voting day. They cooked for the Mozambicans and what remained was distributed amongst the people in the village. He kept two bags for his family which he produced in Court and was marked **P5** and **P6**. PW15 stated that he voted from Lunga but did not see any money or mealie meal distributed on voting day.

PW16 also told the Court that Chieftainess Kawaza told them that the 1st Respondent would give them mealie meal and on voting day she would give them mealie meal, kapenta and meat. Mealie meal was then taken to them in a Canter by the 1st Respondent and he got fifteen (15) bags which he gave to the people so that they could cook on voting day. He also stated that one and half bags remained. This was produced in Court and marked **P7** and **P8**. That the 1st Respondent also gave other people in the village. He was also given relish to cook for people on voting day.

In cross examination by Mr. Phiri, he told the Court that during meetings, the 1st Respondent gave out Chitenge materials, t-shirts and money publicly and that he was given a K100. That the dancers were also given.

PW18 who testified as Headman Changuluka also stated that he received a letter for a meeting from the 1st Respondent. He informed the people in the village that the meeting would be chaired by the 1st Respondent in their village. When the 1st Respondent went to the village, she first met him as the Headman and gave him five (5) bags of mealie meal, relish and two (2) heads of cabbage. He explained that the 1st Respondent told him that he was supposed to cook for the people so that when it came to voting, people could vote for her. He was also given a K50 as Headman. His testimony was that he did not receive any money or mealie meal on 12th August from the 1st Respondent.

PW19 in examination in chief only spoke about the alleged visit to the palace. However, during cross examination by Mr. Phiri he stated that during the campaign period, the 1st Respondent went to his village and addressed a rally. She also gave three Headmen, K50 each in their houses so they could vote for her. Neither the Headmen nor the people were given mealie meal on voting day. That the 1st Respondent only gave out t-shirts and chitenges. He also stated that the 1st Respondent bought bicycles for all the Headmen and those are the bicycles they used to use when going to the palace.

PW20 also told the Court that at one of the meetings they attended, the 1st Respondent gave the people who attended money, T-shirts and chitenge materials. He and Headman Mjoro and Kalinde were given K100 each and the youths were given K300 in public. He also stated that on voting day, he was given a K100 by the 1st Respondent but he did not report to the police officer or electoral officers. The witness also told the Court that he was given a bicycle by a person called Daniel who was sent by the 1st Respondent.

PW 23 told the Court during cross examination by Mr. Phiri that he attended the meeting in Lunga and he was given a t-shirt and a K100 by the DC. When he gave him the money in the presence of the 1st Respondent, he told him to vote for the 1st Respondent and that she did not try to stop him.

The gist of the 1st Respondent's evidence in this regard was that she did not give anyone any money and mealie meal on the voting queues. When referred

to 'P2', the 1st Respondent told the Court the bag the gentlemen were holding contained campaign material as opposed to what PW13 stated that it was mealie meal. The witness stated that her Canter was never used to ferry DMMU material as the DMMU under the Vice President had the authority to distribute relief maize.

RW5 told the Court that on polling day, the candidate was at home the whole day apart from the time he took her to vote at Chimbundire School and she never carried any money or mealie meal. It was also his evidence that there was no other party material they distributed apart from caps, chitenges and t-shirts.

RW3 also testified that the 1st Respondent did not take any mealie meal and food to Changuluka village. It was his evidence that he did not receive any other gift from the 1st Respondent because she was poor and could not afford to give anyone anything.

I have already addressed the law on bribery and corruption when dealing with the 1st Petitioner's case. I have carefully analyzed the evidence adduced in this regard in the light of the provisions of the law.

I wish to state from the outset that I have noted from the 2nd Petitioner's submissions on what has been termed Fourth Allegation on Bribery and Corrupt Practices that it is contended that the 1st Respondent's campaign team

engaged in corrupt and illegal practices whereby they were visibly distributing money and mealie meal labelled 'Disaster Management and Mitigation Unit' (DMMU) when voting was underway and throughout the campaign period.

While the 2nd Petitioner has taken that position that distribution of money and mealie meal was done when voting was underway and throughout the campaign period, the allegation in paragraph 10 is couched as follows:

“That on 12th August, 2021, the 1st Respondent through her agents contravened the provisions of Sections 81(a) and (c) by visibly distributing money to voters on the voting queues and further, mealie meal marked “DMMU” being the initials of Disaster Management an Mitigation Unit by distributing to voters on the said date as voting was underway and throughout the campaign period. (Underlining mine for emphasis only).

What I discern from the foregoing is that money is alleged to have been distributed to voters on voting queues and not throughout the campaign period and that DMMU mealie meal was distributed on voting day and throughout the campaign period.

However, the witnesses who were called spoke about having received money during the campaign period and also on polling day. There was no objection raised by counsel for the 1st Respondent to the evidence that money was being given during the campaign period. The Supreme Court has guided on the approach to be taken on un-pleaded issues. In the case of **Kapembwa v. Danny Maimbolwa and Another** ⁽³⁶⁾ it was stated that:

"Where a defence not pleaded is let in evidence and not objected to by the other side, the rule is not one that excludes from consideration of the court the relevant subject matter for decision simply on the ground that it had not been pleaded. It leaves the party in mercy and the court will deal with him as is just."

It went further and stated in the case *Mazoka v. Mwanawasa* that:

"In case where any matter not pleaded is let in evidence, and not objected to by the other side, the court is not and should not be precluded from considering it. The resolution of the issue will depend on the weight the court will attach to the evidence of un-pleaded issues."

What is evident from the foregoing case authorities is that the Court is not precluded from considering the evidence and the resolution of the issue will depend on the weight to be attached on un-pleaded issues. Since there was no objection from counsel for the 1st Respondent, I will proceed to consider the evidence.

The evidence that was adduced by PW11 is clearly unreliable as she did not perceive the alleged distribution of the money and mealie meal because she just received information. I therefore place no reliance on her evidence.

According to the evidence of PW12, PW15, and PW23, it was the 1st Respondent and DC who gave out money at the meeting at Lunga. PW19 stated that the 1st Respondent gave him money at Kapala village and PW20 alleges that he was given the K100 when the 1st Respondent went to Muthoseni village and on the queue on polling day.

I have examined these witnesses when considering the evidence they adduced on other allegations.

In relation to PW12, he came to Court and stated that he was a Headman from Mozambique who voted in Zambia in the last elections. When analyzing his evidence on the allegation that Mozambicans voted in Zambia, I have made a finding that he is not a credible witness and that he was untruthful in his testimony regarding this allegation.

Regarding PW15, I have made a finding that he was an untruthful witness regarding the issue of how many times the 1st Respondent attended the meetings and whether she used to be on the vehicle which used to take the Headmen to the palace. I made this finding due to the significant inconsistencies in his evidence with the other witnesses who testified on the issue and also due to his demeanour which was unimpressive which revealed that he was not a credible witness.

I found PW19 not to be a credible witness when considering the allegation of undue influence because his evidence was inconsistent with what was given by the other witnesses.

On PW20, I have made a finding that his evidence was inconsistent with the evidence given by the other three Headmen. He was the one who stated that only three meetings were called for all the Headmen and that the 1st

Respondent attended all the three meetings where she confirmed what the Chieftainess told the Headmen. However, none of the Headmen mentioned that. His testimony was also inconsistent on a material aspect as he stated at first that there was a problem with the 1st Respondent's candidature and then later he changed in cross examination that he had not said that and that actually there was no problem.

Equally, on PW23, I have made a finding after analyzing his evidence on the allegation that he was a Mozambican who voted in the last elections and also his demeanour that he is not a truthful witness.

How then should this Court treat the evidence of PW12, PW15, PW 19, PW20 and 23 that they received K100, K200, K50, K200 and K100 respectively from the 1st Respondent during the campaign?

In answering this question, I am guided by what was stated by the Constitutional Court in the case of *Stephen Masumba v. Elliot Kamwendo*, which I have already referred to that once a witness or complainant has been shown to be untruthful in material respects, his or her evidence can carry very little weight.

Furthermore, as I have mentioned, the Supreme Court in the case of *Ndongo v. Moses Mulyango, Roostico Banda* and the Constitutional Court in the case of *Abuid Kawanga v. Elijah Muchima* which I have already referred to guided

that inconsistencies cannot be the basis of discarding or disbelieving her evidence. Therefore, since the weight of the remaining evidence is reduced, the Court has to weigh the evidence as a whole and consider if there is any other supporting evidence.

I have carefully analyzed their evidence. What is common in the evidence of these witnesses is that this evidence was adduced during cross examination by counsel for the 1st Petitioner. I am perplexed why no evidence was led in examination in chief on this very important allegation so that specific details of when the money was given, how the money was given at the meeting and how many people attended the meetings could have been properly canvassed.

As I have stated, due to the nature of the allegation of bribery, there should be clarity when it comes to proof. The standard is not on a balance of probabilities but to a fairly high degree of convincing clarity. These issues that I have mentioned above are not known and it is not clear whether PW12, 15 and PW20 attended the same meeting where the money was allegedly given or they attended different meetings. In my view, they are unclear because the evidence was adduced in cross examination by counsel for the 1st Petitioner without allowing the witnesses to explain to the Court the circumstances how the money was allegedly given out.

Further, in view of my findings that the witnesses were untruthful and gave inconsistent evidence, the view I hold is that mere confession that they were

given money is not conclusive. There should be some other supporting evidence. I have not found any evidence which supports the evidence of these witnesses that they received money during the campaign period from the 1st Respondent or the DC. If the 2nd Petitioner sought this Court to accept the evidence of these witnesses, corroborative evidence should have been adduced due to the nature of the allegation of bribery and also because of the inconsistent evidence that was given by these witnesses on other allegations.

In addition, if it is true that they were given money during the campaign period, that information should have been passed on to the 2nd Petitioner so that her allegation in the petition could not have been restricted to the distribution of money on the day of voting. The allegation was very specific that the money was given out on voting day and yet these witnesses testified that it was given during the campaign period. I have mentioned that when evidence is let in on un-pleaded issues, it is incumbent upon the Court to determine what weight to attach to it.

Given the fact that this serious allegation was not pleaded that money was given during the campaign, the evidence of the witnesses was not corroborated and it was adduced during cross examination with no specifics on how the money was given has made me conclude that the evidence that money was given to PW12, 15, 19, 20, and 23 during the campaign is fabricated.

It is for these reasons that I find that PW12, PW15, PW19, PW20 and PW23 were again not truthful witnesses on this material aspect and therefore their evidence does not carry any weight. In the absence of any other supporting evidence to prove the allegation, I have discounted their evidence. It's unreliable.

Then again, there is evidence from PW15 from Lunga village, PW16 from Mbeza village and PW18 from Kapoche ward who testified that they were given mealie meal to cook for people on voting day and that the mealie meal that remained was distributed to the people. They also told the Court that they received money from the 1st Respondent.

I have already stated when dealing with the 1st Petitioner's case that the essence of the offence of treating is that it should be corrupt. According to the Halsbury Laws of England, they state that:

"Where refreshments are a mere incident of a political meeting, there is no offence but if persons are gathered together merely to gratify their appetites and so influence their votes, then it is corrupt treating.

In this regard, time of at which the act is done is also a relevant consideration because the treating must have reference to some election and must be for the purpose of influencing the vote of the person treated and must have a continuing operation on the elector at the time of the election.

In terms of treating after an election, the same authors state that:

"Treating after an election to be illegal must be done under such circumstances as to lead to the inference that it was done in pursuance of an antecedent agreement."

I will begin by considering the evidence of PW15. His evidence was that DMMU mealie meal was distributed by the 1st Respondent and was received by Headman Padoko so that they could cook for Mozambicans. That he received twenty-five (25) bags of mealie meal and he kept two bags after they cooked and these bags were produced in Court and were marked as P5 and P6. So basically, the 2nd Petitioner contends that cooking for the alleged Mozambicans was treating.

As I have already mentioned, I have found PW15 to be untruthful witness on the other allegations. What this means is that his other evidence carries very little weight. Is there any other evidence to show that he was given the bag twenty five (25) bags of mealie meal by the 1st Respondent and that they cooked for the alleged Mozambicans?

Although PW15 stated that other villagers were beneficiaries of the mealie meal and that they cooked for the Mozambicans, none of these villagers testified before Court that they also received the bags of mealie meal from PW15. Twenty five bags of mealie is a lot and I don't see how those who helped PW15 off load the bags were not called as witnesses.

What about the evidence from PW23 that after voting they passed through Padoko's place and ate nshima?

The view that I hold is that this evidence could have provided some corroborative evidence if it was clear from PW15's evidence where the cooking was done from and where the alleged Mozambicans ate from. From the evidence given by PW23, they ate from Padoko's place and not from PW15's place. I find it difficult to make an inference that the food that was allegedly eaten was the food that was cooked by PW15 because his evidence lacked specifics and there is no evidence to support his evidence that Headman Padoko received mealie meal from the 1st Respondent.

In order to support the allegation that the 1st Respondent distributed DMMU mealie meal so that they could cook for the alleged Mozambicans, I have noted from the 2nd Petitioner's submissions that they contend that the 1st Respondent was linked to the DMMU mealie meal. The 1st Respondent in her evidence denied distributing DMMU mealie meal.

It is common cause that mealie meal that was produced in Court is also distributed by the DMMU under the Office of the Vice President as relief food. However, the 2nd Petitioner's contention is that there was no disaster in Milanzi Constituency for relief food to have been distributed. In this regard, I have been urged to take judicial notice that there was no disaster in Milanzi Constituency.

I am reluctant to take that route in the absence of any cogent evidence from the relevant authorities presented before Court that there was no disaster in Milanzi Constituency. This is particularly so especially that the 1st Respondent

stated that she didn't know that there was no disaster in Milanzi Constituency and RW6 also stated that there were different types of disaster and that she couldn't confirm that there was no disaster in Milanzi Constituency. In view of these responses, it is not the role of this Court to fill in gaps for the 2nd Petitioner and try and ascertain whether there was a disaster or not.

In my view, if the 2nd Petitioner sought to link the 1st Respondent to the distribution of DMMU by contending that there was no disaster in Milanzi Constituency, it was incumbent upon the 2nd Petitioner to adduce cogent evidence to establish the link so as to avoid other inferences being made that the mealie meal could have been distributed by the DMMU which is a department under the Office of the Vice President.

For the reasons that I have given above, I find that the evidence of PW15 has not been corroborated having found him to be an untruthful witness. I decline to rely on it that the 1st Respondent distributed mealie meal marked DMMU so that PW15 could cook for the alleged Mozambican nationals.

Getting back to PW16 and PW18. It is clear from the evidence that the 1st Respondent contested the Headmanship of PW16 and PW18. In this regard, RW4 told the Court in supporting the 1st Respondent's case that according to their tradition, for one to be recognized as Headman, they needed to have a village register or to be confirmed by the Chieftainess. RW4 therefore contested the Headmanship of PW16 that there was no village called Mbeza and no

Headman. However, he admitted that he did not come to Court with a village register to show that he was a Headman but he came with an introductory letter from the Chieftainess which confirmed that he was a Headman.

I have carefully considered this evidence in rebuttal that village Mbeza does not exist. However, the view that I hold is that if indeed this village ceased to exist in 1978 as the witness would like this Court to believe, documentary evidence in addition to oral testimony should have been adduced to support the assertion so that there is clarity on the issue. I hold this view because Section 3(3) (b) of the Registration and Development of Villages Act, Chapter 289 of the Laws of Zambia provides that:

“(3) A Chief shall in his area-

(a).....

(b) Compile and maintain the master village register of all

The villages in his area mentioned in paragraph (a) (ii) of subsection (1).”

It is evident from the foregoing that a Chief is supposed to maintain the master register of all the villages. Since RW4 testified as a representative of Chieftainess Kawaza, apart from the oral testimony, he should have produced the master village register because this would have showed which villages are in the Chieftainess and those which are not. This was particularly important especially that during cross examination of PW16, it was never suggested to

him or the issue did not arise that he was not a Headman as the village didn't exist.

For this reason, I find that RW4's oral evidence is insufficient to show that the village does not exist.

The issue does not end here. PW16 testified that he was told by Chieftainess Kawaza when they went to the palace that the 1st Respondent would give them mealie meal. And so on 11th August, 2021, the 1st Respondent took mealie meal kapenta and cooking oil. He then distributed bags of mealie meal to the other voters after they cooked for the voters on polling day. Two bags of mealie meal were produced and marked P7 and P8. He also stated that he was given K100 by the 1st Respondent.

The question I ask myself is this: Is there clarity in this evidence that the 1st Respondent gave PW16 mealie meal, Kapenta, cooking oil and K100?

PW16 is the only witness from Mbeza village in Kazala ward who testified on this allegation. As I have already alluded to, evidence of the person who has received is not conclusive. This means that there should be some other supporting evidence due to the nature of the allegation of bribery. However, there is a glaring lack of evidence to support this allegation as no other witness was called even though PW16 stated that he distributed mealie meal which had

remained to the other villagers. It is surprising that the other recipients were not called to testify on this allegation.

When PW16 was asked in cross examination whether there were any other people who witnessed this distribution of the mealie meal by the 1st Respondent, he stated that he was the only one who was present in the village. I am reluctant to accept this explanation because it is most unusual that a village Headman, senior in hierarchy could be left alone in the village when distribution of such a kind is made.

Moreover, a link should have been established through cogent evidence that it was possible for the 1st Respondent to have distributed DMMU mealie meal in view of the 1st Respondent's denial that she didn't distribute DMMU mealie meal.

When I consider PW16's evidence in the light of the other evidence, I am not convinced that the 1st Respondent gave PW16 mealie meal, Kapenta and cooking oil especially that his evidence has not been supported. Moreover, if it is true that Kapenta, cooking oil were distributed during the campaign period and that he was given a K100, this information should have been given to the 2nd Petitioner who has brought this petition to Court so that it could have been one of the allegations in the petition. If it was done, it would have added some credence to his evidence that he was given mealie meal, Kapenta, cooking oil and money by the 1st Respondent during the campaign period.

Yet, when he was asked in cross examination by counsel for the 1st Respondent if he had given this information to the 2nd Petitioner, he answered in the negative. This explains why the petition does not have any allegation that food stuff such as Kapenta and cooking oil and money were distributed during the campaign period. And since this was not included, the conclusion I can make is that no such distribution was made by the 1st Respondent and therefore the PW16's evidence is just a concocted story and so I find.

For the reasons that I have given above, I am not convinced that PW16 was given K100, mealie meal, Kapenta and cooking oil by the 1st Respondent. His evidence is discounted.

The net effect of this finding is that the 2nd Petitioner has failed to prove the allegation of bribery through this witness to the required standard.

RW3 also contested the Headmanship of PW18 stating that he was the acting Headman Changuluka who was known by the Chieftainess Kawaza and Chief Kathumba as the substantive Headman Daniel Phiri was old and could not perform the functions. In this regard, he produced in Court the village register for Changuluka village which shows that the Headman is Daniel Phiri and he also came to Court with the old man Daniel Phiri.

While this evidence in rebuttal challenging the Headmanship of PW18 did not come out during cross examination of this witness, I am inclined to accept it

because unlike the evidence by RW4 who challenged the Headmanship of PW16, RW3 produced before Court documentary evidence being the village register. This supports the oral evidence of RW3 that the substantive Headman is Daniel Phiri and not PW18. The information contained in this village register is in line with Section 3(2) (a) of The Registration and Development of Village Act which reads as follows:

“(2) A Headman shall-

- (a) Prepare and maintain the village register for his village which shall be recorded in so far as they can be ascertained, the following particulars in respect of such village an its inhabitants**
- (i) The name of the village;**
 - (ii) The name of the Headman;**
 - (iii) The name in full of every inhabitant...**

PW18 is not indicated on R3 which is the village register that he is the Head man. He is indicated as an inhabitant. The authenticity of this document was not raised. I therefore find based on the village register that the substantive Headman for Changuluka village is Daniel Phiri.

What then is the effect of this finding? The effect is that PW18 who told this Court that he is Headman Changuluka lied to the Court. This has made me conclude that if he can lie to this Court about such a serious issue that he is a traditional leader when in fact not, it means that he is not a credible and truthful witness. He can lie about anything.

Even if I assume that he was the one who was chosen to act on a caretaker basis, this material fact should not have been suppressed but it should have come out in his evidence by informing the Court in what capacity he appeared in Court. It is trite that litigants are supposed to make full and frank disclosure of all material facts relevant to the case. The Supreme Court has in a number of cases including MM Integrated Steels Limited v. African Trading Limited and 3 others ⁽³⁷⁾ ably guided on this issue when it stated that:

“The duty to make full and frank disclosure is wide and the Applicant must put all the relevant facts before it. The Application must identify the critical points for and against the application and not rely on general statements and mere exhibition of documents. This duty applies to facts known by the Applicant and facts that would have been known had proper enquiries been made.”

As it has turned out, if he was the caretaker he didn't disclose that. Although RW4 stated that he was acting Headman Changuluka but didn't produce any documents, I am inclined to accept his evidence because he explained to the Court and he came with the old man to Court who is the substantive Headman according to the village register.

Since PW18 lied on this material aspect that he is Headman Changuluka I find based on the authority of *Stephen Masumba v. Elloit Kamondo* that his evidence that the 1st Respondent went to his village and gave him five bags of mealie meal, relish and two cabbages so that they could be cooked for the voters carries very little weight. I have to consider if there is any other evidence

that supports his evidence especially that his evidence relates to bribery and treating.

From what is on record, no other witness was called to support his evidence and the pictures he identified at page 30 of the 2nd Petitioner's bundle of documents do not add any evidential value because it is not known who took the pictures and where they were taken from. In addition, the letter that he stated he received from the 1st Respondent was not produced in Court. That would have supported his evidence that the 1st Respondent informed him that she would be going to hold a meeting in the village.

Given that there is no other evidence to support this witness, I find that the allegation of bribery through PW18 has not been proved to the required standard of convincing clarity. It is dismissed.

I have already mentioned that to support the allegation of bribery, there was also evidence adduced by Tylad Lungu. He produced before Court pictures that he downloaded from the 1st Respondent's Facebook page and they were marked P1, P2 and P3. According to him, the pictures showed the 1st Respondent standing in front of a Canter and that some people in the Canter were distributing mealie meal.

I have had a closer look at the pictures that were produced. I wish to state that the pictures are not very clear as only half a bag is shown on P2 and it is

obscured. Furthermore, the Canter on P1 seems to have some white items which are not clear. When I look at the bag which is on P2 and P3, *prima facie*, or on first view, the bag that was being lifted in the Canter does appear to be a bag of mealie meal. I say *prima facie* because mealie meal is usually packed in white bags of similar size as the one on P1 and P2. A presumption therefore has been raised.

However, it is common cause that empty bags of mealie meal can also be used to pack other items and not necessarily mealie meal. So without taking into account the explanation given by the 1st Respondent, it looks like a bag of mealie meal.

That notwithstanding, the 1st Respondent has denied that the bags contained mealie meal but that she used the 50kg grain bags on which was written VOTE PF to pack party regalia. The people who can shed more light on this are the ones who allegedly received the bags or who witnessed the alleged distribution of the bags and also the people who distributed those bags.

As I have stated, the 1st Respondent denied distributing mealie meal. Her evidence was supported by RW5, her campaign manager. Now, in terms of categorization, RW5 is a partisan witness whose evidence requires corroboration from an independent source. Is there any corroborative evidence to support the evidence by the 1st Respondent and RW5 that the bags didn't contain mealie meal but party regalia?

PW13 in his evidence stated that the pictures didn't show anyone receiving mealie meal. I have carefully checked the pictures and I have not seen anyone who had received a bag of mealie meal especially that the men in the Canter had lifted a bag which meant that they were in the process of distributing something.

The view I hold based on these pictures therefore is that if it was mealie meal that was being distributed, the pictures could have shown the recipients of the mealie meal. And yet, all that is shown in the pictures are people that attended the meeting clad in party regalia. The pictures do not show anyone with a bag of mealie meal. Additionally, the pictures at page 35 of the 2nd Petitioner's bundle of documents also show people attending a meeting wearing party regalia.

Given the foregoing, I find that the 1st Respondent's evidence and that of RW5 is corroborated by the pictures at the bottom of P2 and P4 showing people wearing party regalia and also PW13 himself who stated that none of the pictures showed that anyone had received the mealie meal.

I am fortified in making this finding because none of the witnesses who testified as having attended a meeting addressed by the 1st Respondent stated that mealie meal was given out at the meeting during the campaign period. And if the evidence of PW15, 16 and 18 is anything to go by, these witnesses who spoke on the allegation that mealie meal was distributed alleged that the 1st

Respondent took mealie meal to their villages and not that it was distributed during the meetings. PW19 also stated that he attended a meeting in Kapala village which was addressed by the 1st Respondent but told the Court that no mealie meal was distributed at the meeting. That was the same with PW12 who stated that he attended a meeting at Lunga.

Furthermore, no witness appeared in Court and stated that they received mealie meal in a bag written VOTE PF. If there was such evidence, the 2nd Petitioner could not have been specific in the petition by alleging that the 1st Respondent was distributing DMMU mealie meal.

In view of what I have stated above, I accept the evidence and explanation by the 1st Respondent and I find that what was being distributed in the bags was party regalia and not mealie meal. The presumption therefore that it was mealie meal has been displaced by the explanation given by the 1st Respondent which is supported by the other evidence. Therefore, I find that the allegation of bribery through PW13 that the 1st Respondent distributed mealie meal during the campaign period has not been proved with convincing clarity.

The other limb of this allegation is that the 1st Respondent distributed money to the voters on voting day. The evidence to support this allegation was adduced by PW20 who in cross examination stated that he was given a K100 by the 1st Respondent on the voting queue but also stated that he did not report this issue to the police or electoral officers.

Apart from his confession, there was no other evidence that was adduced to support this allegation that he received money whilst he was on the voting queue. In point of fact, PW13 stated that he had polling agents in all polling stations and he did not receive any reports that there was money and mealie meal being distributed on voting day.

Further, apart from the evidence of PW20, there was no other evidence that suggested that the 1st Respondent was distributing money and mealie meal to the electorate on the voting day. The 2nd Petitioner has therefore not substantiated the allegation that the 1st Respondent was distributing money on voting day. I therefore accept the 1st Respondent's evidence and I find that she was not distributing money and mealie meal on voting day as she was home after voting.

For this reason, I find that the allegation that money and mealie meal were distributed on polling day has not been proved through this witness as it is not supported by any clear evidence. It is dismissed.

The 2nd Petitioner did not adduce any evidence to prove that the Chieftainess Indunas used to distribute campaign material on behalf of the 1st Respondent using her vehicle. That allegation is also dismissed.

The 2nd Petitioner has also asked this Court to consider the evidence that was adduced by PW19 and PW20 that they were given bicycles by the 1st

Respondent even though it was not pleaded. As I have stated, the Court is not precluded from considering evidence let in with no objection from the other side.

PW19 when asked in cross examination what mode of transport they used to use when going to the palace, stated that they used bicycles and that the 1st Respondent bought bicycles for them. PW20 also stated that he was given a bicycle by a person called Daniel who told him that he had been sent by the 1st Respondent.

I have difficulties in appreciating the evidence of these two witnesses because firstly, PW19 stated that when going to the palace, he borrowed a bicycle. There was no explanation that was given why he borrowed a bicycle if he had a bicycle of his own.

Furthermore, PW20 stated that he was just told by Daniel that the 1st Respondent is the one who had sent him to give him the bicycle. Since Daniel was not called, his evidence falls in the realm of hearsay because the evidence was tendered in for its content value and not that Daniel actually said it. I have therefore discounted it.

Secondly, the fact that the issue that bicycles were distributed was not pleaded in the petition raises a doubt whether these witnesses were telling the truth. I say this because if they had told the 2nd Petitioner that the 1st Respondent also

bought bicycles for them, she would not have omitted to include this issue in her petition especially that they allege that they used to leave the bicycles at her house when going to the palace.

For these reasons, I attach no weight to their evidence as I find that it is a total fabrication.

The 2nd Petitioner also submitted that the 1st Respondent should consider the admission by the 1st Respondent that she used to distribute 50kg grain bags.

Whilst giving her evidence the 1st Respondent denied using a canter to ferry bags of DMMU mealie meal. She instead told the Court that two Canters were used to ferry campaign materials which consisted of empty 50 kg grain bags, T-shirts, chitenges and caps. They used some of the empty 50kg bags that were branded 'VOTE PF' to pack their campaign materials.

RW5 in cross examination told the Court that there was no other party material they had distributed apart from caps, chitenges and t-shirts as they did not distribute bags of grain branded 'VOTE PF'. The witness told the Court that he would not know whether his testimony and that of the 1st Respondent were contradictory in this regard.

RW5 being the 1st Respondent's campaign manager falls in the category partisan witnesses whose evidence needs corroboration to eliminate the dangers of falsehood and exaggeration.

When the 1st Respondent was referred to 'P2' in cross examination, she stated that the bag the gentlemen held contained campaign material and that at page 34 of the 2nd Petitioner's bundle of documents, were bags with campaign material.

In further cross examination she stated that apart from chitenges, caps and T-shirts, she also distributed 50kg grain bags. Then again she stated that they used the bags branded 'VOTE PF' to pack campaign materials which did not contain mealie meal. In cross examination by Mr. Muyatwa, the 1st Respondent stated that the bags were manufactured to carry campaign material. RW5 didn't mention that they distributed grain bags.

I have already made a finding based on the pictures P1, P2 and P3, what was distributed in the bags branded 'VOTE PF' were campaign materials. I am inclined to accept the 1st Respondent's evidence because the 2nd Petitioner called a number of witnesses who included PW12, PW15, PW16, PW18, PW19, PW20 and PW23. The evidence of all these seven (7) witnesses included the assertion that they received party regalia consisting of caps, T-shirts, and chitenge material. None of these witnesses intimated that apart from the party regalia, there were empty 50Kg grain bags distributed by the 1st Respondent at the various meetings and rallies they attended.

My position is further fortified by the fact that if there was any possibility that empty grain bags were distributed as an inducement for the agriculture centred

electorate of Milanzi to other people other than the witnesses called, the witnesses who testified would have mentioned that.

I therefore find that the evidence of PW12, PW15, PW16, PW19, PW20 and PW24 that they received caps, t-shirts and chitenge material corroborates the 1st Respondent's evidence that the empty 50Kg grain bags were used to pack campaign material and not distributed to the electorate of Milanzi to induce the voters.

In the result, I find that the 2nd Petitioner has failed to prove this allegation of bribery and corruption to a fairly high degree of convincing clarity that the 1st Respondent through her agents distributed money to voters on voting queues and also DMMU mealie meal on voting day and throughout the campaign period. This allegation is therefore dismissed for lack of merit,

I will take it further that even assuming that I found that the 2nd Petitioner had proved this corrupt practice, on the standard of proof in cases of bribery, the Constitutional Court in the case of *Sunday Chitungu v. Alfred Mwewa* held thus:

“The standard of proof demands a fairly high degree of convincing clarity that not only was payment made by the respondent or with his blessing but that it was widespread and that it did or could have affected the result”.

There is no evidence that was adduced by the 2nd Petitioner to prove this second ingredient that the bribery was widespread and that the majority of the voters were prevented from voting for a candidate of their choice.

In this regard, I find that the 2nd Petitioner has failed to prove the allegation on paragraph 11 to a fairly high degree of convincing clarity that the 1st Respondent through her agents visibly distributed money to voters on the voting queues and further mealie meal marked DMMU to voters whilst voting was underway and throughout the campaign period. This allegation is dismissed.

(vi) CHARACTER ASSASSINATION

The 2nd Petitioner has alleged in her petition that during the campaigns, the 1st Respondent employed a rampant use of insulting language and character attacks on her. Therefore, she wrote to the Electoral Commission of Zambia on the 17th and 20th of July 2021 but the said complaint was only addressed two days before the date of elections.

In her evidence, the 2nd Petitioner told the Court that during her campaigns, the 1st Respondent, the District Commissioner, Allan Mvula and Daniel Lungu employed a rampant use of insulting language and character assassination and discriminatory remarks against her. That the DC used to refer to her as a very old woman who could not perform and that was why he had given the people a young person. That Allan also used to sing a song and used to move

with a bone that the old bone was Rosemary as she couldn't do anything in the constituency. This was done with the full support of the 1st Respondent. That this message came to her through her leaders across the constituency.

In the light of this information, she wrote to the District Conflict Management Committee on 17th and 20th July but her complaint was only addressed on 10th August, 2021, two days before the polling day. The outcome of their discussion was that the DC apologized.

PW18 Chailani Phiri also addressed this allegation and told the Court that at the meeting that was held at his village in Kapoche, the 1st Respondent sang a song to the effect that a letter had been received from Edgar Lungu to inform the 2nd Petitioner that she had aged and should go back to the fields. The witness however stated that he never heard the 1st Respondent insult anyone at the meetings.

Furthermore, PW12, Iback Phiri stated that at a meeting at Chimsithu village, the DC told them to vote for a young beautiful lady and not for the 2nd Petitioner who was aged.

PW15 Kelempino Banda told the Court in this regard that during campaigns, the DC Mr. Makukula at a meeting in Lunga village informed them that he had gone to advertise some business and he referred to the 1st Respondent. He told them that they should vote for the 1st Respondent and not the 2nd Petitioner

because she was old. He stated in cross examination that Allan Mvula sang a song referring to the 2nd Petitioner that they should throw away the old bones and get a new one.

Another witness although not called by the 2nd Petitioner who spoke on this allegation was PW7. He stated that at the first meeting they attended, the DC was campaigning for the 1st Respondent. At the same meeting Allan Mvula and Daniel Lungu also spoke and Allan Mvula sang a song that they should throw away old bones and that Daniel Mvula mentioned the 2nd Petitioner's name. At the second meeting, the DC was not in attendance but that the 1st Respondent told the crowd to vote for her because she was female, new and that they shouldn't vote for any old person. However, she did not mention any names.

The 1st Respondent in rebuttal told the Court that she did not insult anyone, not even as alleged that she insulted the 2nd Petitioner. She stated that she conducted a clean campaign and treated every candidate with respect, especially that the 2nd Petitioner was much older than her.

It was her testimony that the 2nd Petitioner did not lodge a complaint against her. She found out when she was called by the DCMC to be part of the spectators to listen and resolve the 2nd Petitioner's complaints against Mr. Makukula, the DC. The matter was resolved after Mr. Makukula apologized to her and she accepted the apology.

RW2 in support of the 1st Respondent's case told the Court that the committee only received one complaint from the 2nd Petitioner who stood as an independent and complained that the DC used demeaning words by referring to her as an old lady. The witness told the Court that he came to learn that the matter was resolved and the DC had apologized to the 2nd Petitioner.

RW5 Sam Zulu also told the Court that they received one letter during campaign and attended one meeting on a complaint from an independent candidate, the 2nd Petitioner and the meeting was convened by the Conflict Management Committee on 10th August, 2021. However, he never heard the 1st Respondent issue insults to any other candidate during the campaign period.

I have carefully analyzed the evidence adduced on this allegation. The 2nd Petitioner contends that the 1st Respondent used disparaging words as she used to refer to her as an old bone who could not perform any more on account of age. It is clear that she did not witness the 1st Respondent utter the alleged words as she just received information from her leaders. I therefore consider her evidence to be unreliable.

As I have alluded to, the evidence to support this allegation was adduced through PW12, 15 and 18. These witnesses are discredited as I have when considering the other allegations found them to be untruthful in a material aspect. On the authority of the case of *Stephen Masumba v. Elloit Kamondo*,

I have to consider their evidence in the light of other evidence because I have attached very little weight to their evidence.

While testifying in support of the 1st Petitioner's case, PW7 also alluded to this allegation that the 1st Respondent at a meeting held at Katiula told the crowd that they should vote for her and not any old person. That at the same meeting, Allan Mvula sang a song about throwing away an old bone. However this witness is a member of the UPND and I found that his evidence required corroboration being a partisan witness.

Based on PW11's evidence, she told the Court that in light of information that she received, she wrote to the DCMC on 17th and 20th July. The letters that the 2nd Petitioner wrote are produced in the bundle of documents at pages 17 and 18. The letter at page 18 was written on 17th July, 2021 wherein the 2nd Petitioner complained about the conduct of the DC Mr. Makukula. The letter at page 17 was written on 20th July, 2021 and the complaint was against the 1st Respondent and Allan Mvula. The matter was mediated and the outcome is shown at page 20 to 21 of the bundle that the DC apologized and that the 2nd Petitioner accepted the apology. It was also resolved that there should be no name calling.

The 1st Respondent has denied this allegation and contends that she never uttered these words and that she attended the meeting as a spectator. Counsel

for the 1st Respondent also submitted at length that the letters produced at pages 17 and 20 did not make reference to the 1st Respondent.

I have read the said letters. While the letter at page 20 made no reference to the 1st Respondent, the letter at page 17 is very clear that the second letter was a complaint against her and Mr. Allan Mvula. Therefore, I do not accept the argument by counsel to that extent that reference was not made to the 1st Respondent in the letter.

In addition, she and Mr. Mvula were cited as a Respondent on the Conflict Management Mediation Agreement Form and the nature of the complaint indicates that the complaint was against the named officials.

In this regard, I find that she attended the meeting as a Respondent and not a spectator. Although Allan Mvula was cited as a party, there was no evidence that Allan Mvula he attended the meeting.

Having made this finding, is there any evidence that she also uttered the words complained of? From the evidence that was adduced by PW11, the Court was informed that a settlement was reached and the DC asked for forgiveness and that a request to stop name calling was made. What I take from the apology is that the DC admitted to have uttered the words complained of and so I find.

However, there is no evidence that shows that the 1st Respondent made an admission that she uttered the words. While counsel for the 2nd Petitioner

submitted that the 1st Respondent signed the resolution form, it is evident from the document at pages 19 to 20 that she didn't sign the resolution form. Her signature appears at page 22 which I take was the attendance list because if it was part of the resolution form, the 1st Respondent and the DC who had already signed on the resolution form could not have signed on the document at page 22.

So, even after being cross examined, the 1st Respondent was consistent that she didn't make an admission. There is no evidence that Allan Mvula admitted that he uttered the words as he was not in attendance and nothing was said about Daniel Lungu.

The only witness who stated that the 1st Respondent uttered the words was PW18 as he stated that she sang a song at a meeting and referred to the 2nd Petitioner as an old bone. Then again, I have already mentioned that I have to consider the testimony of this witness in the light of other evidence as I found him to be an untruthful person having lied to the Court that he was Headman Changuluka. His evidence needs to be corroborated. There is no evidence on record from the people who attended the meeting that the 1st Respondent sang the song at that meeting. In fact, he didn't even produce the letter he stated he received from the 1st Respondent which could have shown that it was true the 1st Respondent held a meeting at the village.

I have mentioned that PW7 also spoke on this allegation. Being a partisan witness, his evidence requires corroboration, I have not found any corroboration from an independent source that at the meeting he attended the 1st Respondent spoke the words complained of.

Furthermore, there is no evidence that when Allan Mvula sang the song about the old bone and when Daniel Lungu allegedly mentioned the 2nd Petitioner's at the first meeting, it was done with the knowledge of the 1st Respondent because she was not in attendance.

From the evidence on record, there is no cogent evidence that was adduced apart from PW18 who is a discredited witness and also PW7 whose evidence requires corroboration to show that the 1st Respondent uttered the words complained of. In the absence of any evidence, I find that it has not been proved that the 1st Respondent uttered the words at the said meeting.

That notwithstanding, Section 97 (2) (a) (i) is clear that the election of a candidate can only be nullified if the person challenging the election of the candidate proves to the satisfaction of the Court that the candidate in question personally committed a corrupt or illegal practice or other misconduct or that the same was committed by another person with the candidates knowledge, consent or approval or by a candidates election or polling agent.

What the foregoing means is that since I have made a finding that there is no cogent evidence to prove that 1st Respondent uttered the words complained of, what I have to determine is whether the DC who admitted to have uttered the words complained of was the 1st Respondent's agent or what he did was done with the 1st Respondent's knowledge, consent or approval.

I am ably guided by what was stated by the Constitutional Court in the case of *Nkandu Luo v. Doreen Sefuke Mwamba* which relied on the case of *Lewanika v. Chiluba* and held that:

"A candidate is only answerable for those things which he has done or which are done by his election agent or with his consent.

I have already stated that an agent is the person who has been mentioned in the nomination paper. The Constitutional Court in the case of *Chrispin Siingwa v. Stanley Kakubo* ⁽³⁸⁾ declined to stretch the meaning of agent beyond what is clearly provided for in the law. It stated that:

"We also agree with Mr. Chungu that not only is it untenable for us to stretch the meaning of agent beyond what the law clearly provides, but for us to do so would also entail ascribing fault to candidates for electoral malpractices committed by persons who are not appointed by the candidate as election agents. The fact that the Legislature was specific on the definition of election agent was meant in our considered view to avoid endless permutations of who an agent is in particular circumstances."

From the evidence adduced, it is clear that the DC was not the 1st Respondent's agent. Can it be said that he uttered the words with the 1st Respondent's knowledge, consent or approval.

The witnesses who addressed the allegation that the DC uttered the words complained of in the presence of the 1st Respondent are PW12 and PW15. PW12 is the witness who stated that he was a Mozambican Headman from Daison village and that he voted in the last elections. He stated that at a meeting in Lunga, the DC in the presence of the 1st Respondent told them that they should vote for the 1st Respondent and that the 1st Respondent was present at the meeting.

PW15 also stated that at the meeting at Lunga, the DC told them to vote for the young lady and not the 2nd Petitioner who was old and that the 1st Respondent was present.

I have carefully considered the evidence of these witnesses. By stating that the 1st Respondent was present at the meeting, PW12 and PW15 meant that she knew about the words that were uttered by the 1st Respondent.

The 1st Respondent denied that she campaigned with the DC. Her campaign manager RW3 also stated that the DC was not in their campaign team. Even though RW3 denied this, he is a partisan witness whose evidence requires

corroboration from an independent source. No such evidence was adduced to support what RW3 stated.

That therefore leaves the evidence of PW12 and PW15 against that of the 1st Respondent herself. Thus the question centers on the credibility of these two witnesses. I have made a finding that PW12 was an untruthful witness. He fabricated a story and lied to the Court that he came and obtained an NRC and voters card from Zambia and that he voted in the last election. However, he didn't adduce any documents to support his assertion that he voted. The 2nd Petitioner didn't even adduce any evidence that he was on the Zambian Voters Register.

I have also made a finding that PW15 lied to the Court on a material aspect on the number of times the 1st Respondent attended the meetings at the palace.

The issues that these witnesses lied on are material. The remainder of their evidence carries very little weight and if it has to be considered, there should be other evidence to support the truthfulness of their testimony. I have found no such evidence from any independent witness who attended the meetings which PW12 and PW15 attended which supports or matches their testimony that the 1st Respondent was at the meeting at Lunga were the DC uttered the words complained of.

In the absence of any cogent evidence, I am inclined to accept the evidence of the 1st Respondent that the DC was not in her campaign team as it also supported by the Mediation Form that she did not offer any apology which was indicative that she didn't admit any wrong doing. If she had admitted, the 2nd Petitioner would have told the Court. This means that she has been consistent and maintained her story that she was not working with the DC.

Given the foregoing reasons, I find that the 2nd Petitioner has failed to prove with cogent evidence that the words uttered by the DC were uttered with the knowledge, consent or approval of the 1st Respondent or that he was the agent as by law defined.

Having made this finding, it means that the conduct of the DC cannot lie at the feet of the 1st Respondent.

If I have to take it further, even assuming that I found that the words uttered by the DC were made with the 1st Respondent's knowledge or approval, apart from showing that an electoral offence was committed contrary to Regulation 15(1)(c), the 2nd Petitioner must have shown that the utterances influenced the majority of voters from voting for a candidate of their choice as the utterances affected how she was perceived by voters in the constituency and consequently affected the election results.

In the case of *Mubika Mubika v. Poniso Njeulu* the Court stated that:

“While we uphold this finding by the learned trial Judge in the course of his election campaign, we are at pains to verify the extent of influence on registered voters in the whole constituency.”

The Court went further to state at Page J30 that:

“The evidence, therefore, does not indicate widespread vilification of the Respondent, neither does it indicate that the majority of the registered voters were influenced against the Respondent. In this type of allegation, statistics of registered voters who attended the rallies should have been given to assist the trial court on the extent of influence in the constituency.”

In another case, the Supreme Court in the case of Kufuka Kufuka v. Mundia Ndalamei ⁽³⁹⁾ stated that:

“...it was for the Petitioner to show how the electorate was influenced by these utterances allegedly made by the Respondent and his campaign team. In our view, it is not enough for the Petitioner to say, ‘people were saying’ what was required was for him to provide proof of his allegation and the extent of influence these allegations had on the electorate.”

The 2nd Petitioner told the Court that the words were uttered at all the rallies in the constituency but her oral testimony contradicts what she indicated in the letter dated 17th July, 2021 that the political rallies were held in villages that were along the Kafumbwe-Lunga road. This to me shows that in that letter she only made reference to one ward being Kafumbwe ward. PW12 and PW15 who addressed this allegation made reference to a meeting at Lunga in Kafumbwe ward.

Even with that, on the authority of *Mubika Mubika v. Poniso Njeulu* there should have been statistical evidence given to show an approximation of how many people were present at the said rallies and the extent of the influence that it had on the electorate. As it is, there was no such evidence led as the questions centered on whether the words were uttered but it is not sufficient to show that the malpractice was perpetrated by the 1st Respondent or her agents. All the elements or ingredients must be proved with cogent evidence and not mere assumptions.

Similarly, a reference to the words that a lot of people attended the meeting has been found not to be proof to show the extent of the influence. I am fortified by what the Constitutional Court stated in the case of *Mbololwa Sibulwa v. Kaliye Mandandi* which I have already referred to.

The evidence adduced cannot therefore be proof that the DC uttered the words all over the constituency so that it can be held that the message that she was an old bone who couldn't perform was so widespread that the electorate were prevented from voting for their preferred candidate. I find that the threshold was not met in this case.

On the second limb of the allegation that the 1st Respondent used to use insulting language, no cogent evidence was adduced that the 1st Respondent used insulting language. None of the witnesses who testified said they heard the 1st Respondent use insulting language during the campaign.

In light of the above, I find that the 2nd Petitioner has failed to prove the allegation to the required standard of convincing clarity that the 1st Respondent between 1st August and 12th August, 2021 employed a rampant use of insulting language and character attacks on her and that this was widespread as the majority of the voters were prevented from voting for a candidate of their choice. This allegation is accordingly dismissed as it lacks merit.

(vii) USE OF GOVERNMENT VEHICLES

The last allegation against the 1st Respondent is that on unknown dates but between 1st August and 12th August 2021 the District Commissioner Mr. Makukula was seen on multiple occasions campaigning for the 1st Respondent with the use of government vehicle registration number GRZ 229 CM.

This allegation contravenes Regulation 3 (1) (b) and 15(1) (k) of the Act. I have already made reference to these provisions when dealing with the 1st Petitioner's case. The Regulations above proscribe the use of Government and parastatal transportation for campaign purposes for the benefit of any political party.

The 2nd Petitioner did not lead evidence in support of this allegation. Since no cogent evidence was adduced to support this allegation, the allegation under paragraph 14 of the petition is accordingly dismissed.

8. CONCLUSION

The 1st Petitioner and 2nd Petitioner filed their petitions separately against the 1st Respondent and 2nd Respondent. They both alleged that the elections for the Parliamentary seat in Milanzi Constituency were not free and fair as they were conducted amidst breaches of the Electoral Process Act and the Regulations passed thereunder and that there was non-compliance with the provisions of the law which affected the results.

As was stated by the Constitutional Court in the case of *Chrispin Siingwa v Stanley Kakubo*, the burden of proof was on the Petitioners. So where this Court found the evidence unconvincing, and where they did not prove the allegations to the required high standard, it matters not the evidence proffered by the other party, the case fails.

On the totality of the evidence adduced by the 1st Petitioner on all the allegations against the 1st and 2nd Respondent, I find and hold that the 1st Petitioner has failed to prove her case to the required standard of a fairly high degree of convincing clarity that there was electoral malpractice and non-compliance with the law.

The 1st Petitioner sought to a declaration that the 1st Respondent was not duly elected and that the election be declared null and void. She also sought a

declaration that the illegal practices committed by the 1st and 2nd Respondent materially affected the result and so it be nullified.

In relation 2nd Petitioner on the totality of the evidence adduced by the 2nd Petitioner on all the allegations against the 1st and 2nd Respondent, I find and hold that the 2nd Petitioner has failed to prove her case to the required standard of a fairly high degree of convincing clarity that there was electoral malpractice and non-compliance with the law. The 2nd Petitioner sought a declaration that the election of the 1st Respondent was void.

The 1st and 2nd Petitioner having failed to prove their cases, I decline to grant the reliefs sought.

In this regard, I therefore declare that the 1st Respondent Melesiana Phiri was duly elected as Member of Parliament for Milanzi Constituency. The 1st and 2nd Petitioners' petitions are accordingly dismissed. I order that each party shall bear their own costs.

Leave to appeal is granted.

DELIVERED AT CHIPATA THIS 24TH DAY OF NOVEMBER, 2021


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M.C. KOMBE
JUDGE

