

**IN THE HIGH COURT FOR ZAMBIA  
AT THE KITWE DISTRICT REGISTRY  
HOLDEN AT KITWE  
(Civil Jurisdiction)**

**2021/HK/EP/002**

**IN THE MATTER OF: THE PARLIAMENTARY PETITION RELATING TO  
THE PARLIAMENTARY ELECTION HELD ON 12<sup>TH</sup>  
AUGUST 2021**

**AND**

**IN THE MATTER OF: AN ELECTION PETITION FOR KALULUSHI  
CONSTITUENCY PARLIAMENTARY ELECTION**

**AND**

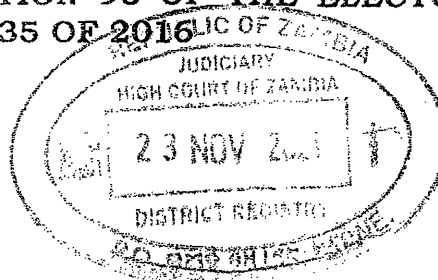
**IN THE MATTER OF : ARTICLES 73, 45 (1), 54 OF THE CONSTITUTION  
OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA  
AS AMENDED BY ACT NO. 20 OF 2016**

**AND**

**IN THE MATTER OF : SECTION 96 OF THE ELECTORAL PROCESS ACT  
NO. 35 OF 2016**

**BETWEEN:**

**RASHIDA MULENGA**



**PETITIONER**

**AND**

**KAMPAMBA MULENGA  
ELECTORAL COMMISSION OF ZAMBIA**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT**

**Before the Honourable Mr. Justine C. Chanda in Open Court on the 23<sup>rd</sup>  
November 2021**

**For the Petitioner : Mr. C. Tafeni and Ms. S. Mwewa both of Messrs  
Tafeni and Company & Ms. C. Mulenga and Mr.  
L.K. Phiri both of Messrs KBF & Partners as Co-  
Advocates**

**For the 1<sup>st</sup> Respondent : Mr N. Simwanza of Messrs Noel Simwanza and  
Musukwa of Messrs Nyirondo & Co.**

**For the 2<sup>nd</sup> Respondent : Mr Freddie Chalenga & Ms. S Ngobola both of  
Freddie and Company.**

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## J U D G M E N T

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### Cases referred to:

1. *Stephen Masumba v Elliot Kamondo* (2017) 3 ZR 130
2. *Muhali George Imbuwa v Enock Kaywala Mundia* selected Judgment No. 25 of 2018 (CC).
3. *Herbert Shabula v Greyford Monde* Appeal No. 13 of 2016
4. *Mubika Mubika v Poniso Njeulu* SCZ Appeal No. 114 of 2007
5. *Robby Mulenga v Bwalya Kabwe & Prisca Kantumoya & the ECZ* 2021/SKO/LET/001
6. *Webster Chipili v David Nyirenda* SCA Appeal No. 35 of 2003
7. *Mubita Mwangala v Inonge Mutukwa Wina* SCZ Appeal No. 80 of 2007
8. *Batuke Imenda v Alex Caldman Luhilo* SCZ Judgment No. 3 of 2003
9. *Saul Zulu v Victor Kalima* SCZ Judgment No. 2 of 2014
10. *Mazoka v Mwanawasa* (2005) ZR 138
11. *Belsford James Gondwe v Catherine Namugala* – SCZ Appeal No. 129 of 2012
12. *Abuid Kawanku v Elijah Muchima* Appeal No. 8 of 2017
13. *Richwell Samunene v Sialubalo Gift* – Selected Judgment No. 58 of 2017
14. *Jonathan Kapaipi v Newton Samakayi* – Appeal No. 13 of 2017
15. *Nkandu Luo & Ecz v Doreen Sefuke Mwamba* selected Judgment No. 51 of 2018
16. *Khalid Mohamed v The Attorney General* – (1982) ZR 49
17. *Nabukeera Hussen Hanika v Kibule Ronald & Another* (2011) UGHC 72
18. *Lewanika & Others v Chibuba* (1998) ZR 79
19. *The People v Lloyd Chipalabwe & George Chibesa* SKO/26/2019
20. *Mbololwa Subulwa v Kaliye Mandandi* selected Judgment No. 25 of 2018
21. *Subramanian v The Public Prosecutor* (1956) 1 WLR 956
22. *Austin Liato v Sitwala Sitwala* selected Judgment No. 23 of 2018
23. *Wilson Masauso Zulu v Avondale Housing Project Limited* (1982) 172
24. *Michael Mabenga v Sikota Wina & Others* (2003) ZR 110
25. *Chrispin Siingwa v Stanely Kakubo* Appeal No. 196 of 125
26. *Sunday Chitungu Maluba v Rodgers Mwewa & The Attorney General*
27. *Hakainde Hichilema & Another v Edgar Chagwa Lungu & Others* Ruling No. 33 of 2016
28. *Sitali Sitali v Namuchana Sepiso* Appeal No. 6 of 2016
29. *Sunday Chitungu Maluba v Rodgers Mwewa & The Attorney General* Appeal No. 4 of 2017

### Legislation and other works referred to:

1. *The Electoral Process Act*. 35 of 2016 –
2. *Halsbury's Laws of England* 4<sup>th</sup> Edition Vol 15 paragraphs 689, 705, 789

1. **RASHIDA MULENGA**, the Petitioner herein, and **KAMPAMBA MULENGA**, also known as "**Chela Moche**" the 1<sup>st</sup> Respondent herein, are both politicians by occupation and were among those who contested the 12<sup>th</sup> August 2021 Kalulushi Constituency Parliamentary Elections conducted and managed by the Electoral Commission of Zambia (ECZ) the 2<sup>nd</sup> Respondent herein. The Petitioner contested as an independent candidate while the 1<sup>st</sup> Respondent stood on the Patriotic Front (PF) ticket.
2. After the elections, the Returning Officer declared the 1<sup>st</sup> Respondent as the duly elected Member of Parliament for Kalulushi Constituency having polled 18,677 votes while the Petitioner polled 17,713 votes. The other candidates' results were as follows: **KALETA MULENGA** of the United Party for National Development (UPND) 10,785 votes, **PATRICK MULENGA** another independent candidate polled 733 votes, **FAITH MUNTHALI** of the Democratic Party (DP) got 289 votes while **CHRISTINE MULENGA** of the Socialist Party (SP) got 267 votes.
3. The Petitioner has, however, presented this petition as amended in terms of the provisions of the Constitution of Zambia Chapter 1 of the Laws of Zambia as amended by Act No. 2 of 2016 and also in terms of the provisions of the Electoral Process Act No. 35 of 2016 of the Laws of Zambia as set out above seeking to nullify the election of the 1<sup>st</sup> Respondent. In her Petition, the Petitioner contends that the 1<sup>st</sup> Respondent was not validly nominated as she did not file a declaration of her assets and liabilities. Further, the 1<sup>st</sup> Respondent was alleged to have conducted her campaigns in a manner that was in violation of both the Electoral Process Act aforesaid and the Code of Conduct promulgated thereunder with the resultant effect that the said elections were not free and fair much to the detriment of the Petitioner.

4. Specifically, the 1<sup>st</sup> Respondent was alleged to have by either herself and/or through her agents and with her knowledge or Consent misconducted herself and was alleged to have engaged in illegal and unfair practices itemized as follows:

*"4.1. The 1<sup>st</sup> Respondent hired people among those Martha Mwale, Amos Kalasa and Norman Kasuku who were residents of Kitwe and Pinot Kalaswa from Mufulira to register as voters in Kalulushi constituency in exchange for cash payments and "empowerment" and on election day she sent out buses, to pick up the hired voters and ferried them to different polling stations across the constituency and back, which gave the 1<sup>st</sup> Respondent an in-built unfair advantage. Several audio recordings among the beneficiaries are at hand.*

*4.2. The 1<sup>st</sup> Respondent, on Polling Day, hired voters for K200-K300 from Twaiteka Ward to go and vote in, and ferried them to, Mwambashi Ward in order to have control over the voters. This was observed by Sunday Silawe.*

*4.3. The 1<sup>st</sup> Respondent engaged in vote buying by going from house to house and showing voters to place an "X" against their names and party symbol and would then give them cash. Particularly, there is a lady captured on video being given cash by the 1<sup>st</sup> Respondent for a vote.*

*4.4. The 1<sup>st</sup> Respondent, using the Kalulushi District Commissioner's Office, mobilized and addressed civil servants in the Kalulushi District on various dates during the campaign period and asked them to vote for her and paid them cash. One Francis Banda participated in one such meeting on the 30<sup>th</sup> July 2021 at Kalulushi Secondary School around 14:30 hours and received a cash amount of K250*



*and a chitenge. This happened on several dates and with several other people hence largely influencing the mindset of several of the electorates.*

- 4.5. The 1<sup>st</sup> Respondent also distributed cash in various Wards for voters to share after voting for her on 11<sup>th</sup> August, 2021, in Lubanga Ward. In Kalulushi, the 1<sup>st</sup> Respondent went to meet several people there and gave them various cash sums to vote for her. Several people witnessed these acts such as Edward Iibaji and Alice Mwamba witnessed this at Chati East (Shamakule area).*
- 4.6. On or about 31<sup>st</sup> July 2021 around 20:00 hours, in Lubanga Ward, the 1<sup>st</sup> Respondent gave the residents of those Lubanga and Chembe wards K5,000.00 to share amongst themselves for their votes for her. One Esther Chileshe, Regina Chileshe and John Chola received the cash amount of K5,000.00. This happened in several wards throughout Kalulushi and the vote buying was critically widespread.*
- 4.7. On or about 11<sup>th</sup> August 2021 in Musakashi ward, the 1<sup>st</sup> Respondent by her agent around 21:00 hours took a cash sum of K20,000.00 and told the voters of that ward to vote for her and share the money amongst themselves. The Ward Councilor from the UPND one Robbie Mulenga purporting to be an agent of the 1<sup>st</sup> Respondent called on phone one of the beneficiaries and recorded the conversion which confirmed the receipt of the said cash and its purpose of buying votes for the 1<sup>st</sup> Respondent. Further, the arrival of the said money was witnessed by one Mable Munwanwa.*
- 4.8. The 1<sup>st</sup> Respondent made various cash donations during campaigns for example K100,000.00 to Chambeshi Football Club which was received among others by Smart Banda,*

*Mwanshilindi, Chama Kasonde, Chipoma Mulenga and Felix Mwaba on or about 28<sup>th</sup> July 2021 and on or about 25<sup>th</sup> July 2021 the 1<sup>st</sup> Respondent donated K14,500.00 to Shalom Church in London area in Kalulushi, which was received by Buda Simposya, which had an impact on the electoral process.*

- 4.9. On many occasions the 1<sup>st</sup> Respondent invited voters to her residence and other places in Kalulushi and dished out mealie meal and cash.*
- 4.10. On 12<sup>th</sup> August 2021, polling day, at Kankoshi Secondary School (Kankoshi Ward) and Pentecostal Holiness Church (Dongwe Ward), agents of the 1<sup>st</sup> Respondent known as Safron and Bana Panso were paying out money to voters on voting queues, respectively, for the voters to vote for the 1<sup>st</sup> Respondent and that was witnessed by many people including one Martin Sakala at Kankoshi and Romeo Bwembya at Pentecostal Holiness and the Kankoshi incident was captured on video.*
- 4.11. On 12<sup>th</sup> August, 2021 (polling day) in Sitwe Ward, the 1<sup>st</sup> Respondent's agents were giving out K50s and a chitenge to the voters for their votes for the 1<sup>st</sup> Respondent as witnessed by Maria Bwembya.*
- 4.12. On the same Polling Day in Lulamba Ward the 1<sup>st</sup> Respondent's agent Febby Simwanza was seen by Wesley Kangomba paying money to voters on the voting queue for them to vote for the 1<sup>st</sup> Respondent.*
- 4.13. The 1<sup>st</sup> Respondent, who is the immediate past Community Development and Social Welfare Cabinet Minister, through her agents namely Lewis Kampamba and Bana Nyirenda*

*(CWAQ members) deceived and/or threatened Social Cash Transfer beneficiaries that they would not receive payments if they did not vote for the 1<sup>st</sup> Respondent. One Mary Liashi of Chibote Ward and one Mary Mwape and Regina Kabwe of Chambeshi Ward were recipients of such threats and will testify that several beneficiaries feared that these threats would be actualized if they did not vote for the 1<sup>st</sup> Respondent.*

*4.14. One of the 1<sup>st</sup> Respondent's campaign agents by the name of Victor Kapungwe was caught by Carrington Sichula with a number of other people's voters cards and the matter was reported at Chambeshi Police Station on 29<sup>th</sup> July 2021.*

*4.15. The 1<sup>st</sup> Respondent also engaged in various acts of violence and intimidation for example on or about 30<sup>th</sup> July 2021 in Chibuluma area one of the Petitioner's campaigners, Violet Bwalya, was attacked and beaten with her family at home by the agents of the 1<sup>st</sup> Respondent among them namely Catherine Chella, Muzo and Chichi and the matter was reported at Kalulushi Police Station and the 2<sup>nd</sup> Respondent. After the said beatings, Violet's father discouraged her and several other family members, relatives and neighbours to campaign for the Petitioner anymore as a result of the fear instilled in them.*

*4.16. On or about July 2021 the 1<sup>st</sup> Respondent's agents namely Ba Jive and Kolala refused youths who were not supporting the Petitioner from working at the Black Mountain slag dump in Chambishi and among those affected was Jack Simfukwe, a supporter of the Petitioner, who was told to publicly defect to the 1<sup>st</sup> Respondent's camp if he wanted work at the said dump.*

- 4.17. *The Petitioner's Assistant Campaign Manager a Wesley Siwila was beaten on or about 21<sup>st</sup> May 2021, by the 1<sup>st</sup> Respondent's agents, among them Anthony Lungu in Chibuluma Ward. There were also several reports of violence in Kalulushi.*
- 4.18. *Despite the 2<sup>nd</sup> Respondent banning the holding of campaign rallies the 1<sup>st</sup> Respondent and her political party continued holding rallies. One such rally was held near the Kalulushi market on 29<sup>th</sup> June 2021 and, inter alia, addressed by the 1<sup>st</sup> Respondent and one Chishimba Kambwili who was consequently banned by the 2<sup>nd</sup> Respondent on 30<sup>th</sup> June, 2021 for hate speech and conducting rallies.*
- 4.19. *The 1<sup>st</sup> Respondent through her agents engaged in deliberate acts of removing the Petitioner's campaign posters, which acts were reported to the police, and engaged in false allegations and made defamatory statements against her of stealing land in Kalulushi district and tyres from Kalulushi Municipal Council garage.*
- 4.20. *The 2<sup>nd</sup> Respondent had given dates on which each candidate was allowed to hold their campaigns, however, whenever the Petitioner would try to campaign on her dates, the 1<sup>st</sup> Respondent and her agents would interfere with that as it happened in ZamClay and Kameme in Ichimpi area. This disadvantaged the Petitioner as she was unable to freely campaign as per her right.*
- 4.21. *In Kalanga Ward, the Petitioner arranged a meeting for 30<sup>th</sup> July 2021 to campaign which was disturbed by the 1<sup>st</sup> Respondent and her agents who went there to address the people in Kalanga Ward and threatened that if they attended and continued to attend the Petitioner's meeting*

***they would be beaten. Among the people chased were Beverly Muchanga and Carol Mukweka."***

5. Further it was alleged that despite a complaint being brought to the 2<sup>nd</sup> Respondent that at Chibuluma Primary School Polling Station, there were more votes cast than the number of ballot papers that had been taken there, but nothing was done to rectify those serious inconsistencies.

6. It was on the basis of the above set out allegations that the Petitioner prayed:

***"6.1. That it may be determined and declared that the declaration of the 1<sup>st</sup> Respondent as duly elected MP for Kalulushi Constituency by the 2<sup>nd</sup> Respondent is null and void and such seat be declared vacant;***

***6.2. That the Petitioner may have such further or other reliefs as the Court shall deem fit; and***

***6.3. That costs be for the Petitioner."***

7. And in her affidavit verifying the amended petition, the Petitioner deposed that she was a Zambian National and a resident of Plot Number 16330, Kalengwa North, Kalulushi. She also deposed that she was a politician and the immediate past Mayor for Kalulushi District. The Petitioner further stated that the 1<sup>st</sup> Respondent was a former Cabinet Minister in the former Patriotic Front Party government who purported to have retained her Parliamentary seat of Kalulushi Constituency. That the 2<sup>nd</sup> Respondent was a body created by the Constitution of Zambia with the mandate to implement the electoral process and conduct elections in Zambia which declared the 1<sup>st</sup> Respondent as the purported winner of the 12<sup>th</sup> August 2021 elections.

8. The Petitioner further deposed that she had on the 11<sup>th</sup> May 2021 successfully filed her nomination papers as an Independent Parliamentary Candidate for the Kalulushi Constituency elections slated for 12<sup>th</sup> August 2021. That there were four (4) other candidates who had successfully filed their nomination papers being **KALETA MULENGA (UPND), PATRICK MULENGA (INDEPENDENT), FAITH MUNTHALI (DEMOCRATIC PARTY) AND CHRISTINE MULENGA (SOCIALIST PARTY)**.
9. Regarding the said election, the Petitioner deposed that the campaign period ran from the 14<sup>th</sup> May 2021 to the 11<sup>th</sup> August 2021 and that on 14<sup>th</sup> August 2021 the 1<sup>st</sup> Respondent was declared the purported duly elected Member of Parliament (MP) for the said constituency after polling the results as set out in the Petition as per the declaration of results form exhibit marked "RM1". It was, however, deposed by the Petitioner that the 1<sup>st</sup> Respondent was not validly nominated as she did not file a declaration of her assets and liabilities. The Petitioner further deposed that the 1<sup>st</sup> Respondent was not validly elected as she violated the provisions of the Electoral Process Act and the Code of Conduct during her campaigns to the detriment of the Petitioner. The Petitioner then went on to highlight the specific incident allegedly committed by the 1<sup>st</sup> Respondent and produced the relevant exhibits to support her allegations as contained in the amended Petition set out above which is not necessary for me to repeat.
10. The 1<sup>st</sup> Respondent, in her answer to the Petition confirmed having been a Parliamentary candidate for Kalulushi Constituency in the 12<sup>th</sup> August 2021 elections under the Patriotic Front (PF) ticket at which election she was declared as having been duly elected. The 1<sup>st</sup> Respondent then averred that she had validly filed all her documents and emerged winner in an election conducted in an atmosphere of complete freedom and fairness. The 1<sup>st</sup> Respondent denied all the allegations of violence,

corrupt and illegal practices either by herself or with her knowledge or consent by her agents during the electoral process.

11. Regarding the specific allegations contained in the petition, the 1<sup>st</sup> Respondent averred that although there was no law that prevented people from registering to vote in an area of their choice, she denied either by herself or her agents hiring anyone outside Kalulushi to register in Kalulushi or paying any person any money. The 1<sup>st</sup> Respondent also denied by herself or her agents ever engaging anyone to hire voters and pay them between K200-K300 on the polling day and denied ever taking control over any voters. She averred instead that she spent the morning of the polling day at her residence resting from the long campaign the previous day and only went to vote at around 15.00 hours and thereafter went back home. Thus, the 1<sup>st</sup> Respondent denied engaging herself in the alleged activities as she had no such financial capacities to distribute what was alleged and put the Petitioner to the strict thereof.
12. The 1<sup>st</sup> Respondent further denied engaging herself in vote buying as alleged and pleaded that she merely conducted door to door campaigns distributing fliers of herself, the Presidential and Local government candidates. That she also conducted voter sensitization or education to the would be voters as to how she would appear on the ballot paper and at all times did so whilst adhering to the guidelines and regulations set by the 2<sup>nd</sup> Respondent.
13. The 1<sup>st</sup> Respondent then pleaded that she canvassed her candidature among eligible voters including civil servants from Kalulushi District but denied ever paying anyone money. She also denied ever holding a meeting at the District Commissioner's office and denied meeting **FRANCIS BANDA** nor asking anyone to pay him or pay any other person anything. The 1<sup>st</sup> Respondent stated that she met civil servants at their request at Kalulushi Secondary School which was a more central place.

14. The 1<sup>st</sup> Respondent further denied distributing any cash to voters in Lubanga ward, Kalulushi or meeting **EDWARD LIBAJI** and **ALICE MWAMBA**, nor engaging in acts of bribery of giving out cash on the 31<sup>st</sup> July 2021 at 20.00 hours in the sum of K5,000.00 for anyone to share. She also denied knowing or giving **REGINA CHILESHE**, **ESTHER CHILESHE** and **JOHN CHOLA** any money. She averred that on the 11<sup>th</sup> August 2021 around 21.00 hours, she was home resting from the campaigns that had just been closed. That the alleged conversation between a UPND ward Councillor from Musakashi and an alleged beneficiary had no connection to her and her agents. She denied making any donations to Chambeshi Football Club during the campaign period, and asserted that the K100,000.00 which she advanced was in her capacity as the official sponsor of the club following its promotion to the Premiere League. That the said amount came from well-wishers, moreover, she lost the Chambishi ward to the Petitioner. She also denied ever making any donation to Shalom Church.
15. It was the 1<sup>st</sup> Respondent's contention that the Petitioner's allegations were generally pleaded without particulars. She then denied inviting voters to her home and denied dishing out mealie meal and money and that she was not residing in Kalulushi on account of renovations going on at her residence. The 1<sup>st</sup> Respondent also denied recruiting **SAFRON** or **BANA PANSO** as her agents and neither was **FEBBY SIMWANZA** her agent and as such denied giving out money or material to people on the queues on 12<sup>th</sup> August 2021.
16. In relation to the alleged threats of loss of social cash transfer, the 1<sup>st</sup> Respondent denied ever issuing any such threats and pleaded that it was a government programme for which she had no control over. She further stated that the named CWAQ members were not her agents and that in wards where there were majority recipients of the same were in Luapula, Kalanga, Dongwe and Ngweshi Wards where they did not vote for her.



Furthermore, the 1<sup>st</sup> Respondent denied ever appointing **VICTOR KAPUNGWE** as her agent and denied ever getting anyone's voters card and pleaded that the said person was an official of GOZA.

17. Finally, the 1<sup>st</sup> Respondent pleaded that her campaigns were free from the alleged corrupt and illegal practices as she campaigned purely on the PF manifesto and her past achievements and no incidence is known to her to have been reported to the District Conflict Management Committee of the 2<sup>nd</sup> Respondent or to the Police. She further stated that the voting was free of any violence and denied directing anyone to injure anybody and that the said **CATHERINE, CHICHI, MUZO** and **CHELLA** were not her agents. She further averred that **JIVE** and **KOLALA** were not her agents and denied refusing anyone from working at the slag dump site in Chambishi a property which did not belong to her. Further that she had no means whatsoever of controlling which people are to work on the dump site.
18. The 1<sup>st</sup> Respondent reiterated that she never engaged herself in any acts of violence and that the said **ANTONY LUNGU** was not her agent and explained that the PF had held a roadshow where **CHISHIMBA KAMBWILI** canvassed the candidature of the presidential candidate **EDGAR LUNGU**. That the said roadshow was not organized by the 1<sup>st</sup> Respondent and neither was **CHISHIMBA KAMBWILI** her agent. In the same vein she denied removing any campaign materials for the Petitioner but that she equally suffered the removal of her campaign posters and in any case her alleged agents were not named at all. The 1<sup>st</sup> Respondent then denied defaming the Petitioner insisting that only the truth about her was stated at all material times. However, it was the 1<sup>st</sup> Respondent's assertion that it was the Petitioner instead who had called her a thief. Even then the 1<sup>st</sup> Respondent averred that she never stopped the Petitioner from campaigning nor did she disrupt any of the Petitioner's campaigns. Thus, the voting was done freely and the counting was done

openly and results were signed for by the agents and hence she denied that at Chibuluma Primary School there were more votes cast than the ballot papers taken there.

19. In her affidavit verifying her Answer, the 1<sup>st</sup> Respondent stated that she was a Zambian citizen, a resident of House No. 2727, North Kalengwa, Kalulushi and confirmed having been a candidate for the PF for the Kalulushi Constituency for which she deposed was duly elected as such. The 1<sup>st</sup> Respondent then reiterated the issues contained in her Answer which is not necessary for me to repeat.
20. The 2<sup>nd</sup> Respondent also filed its Answer in which it averred that the 1<sup>st</sup> Respondent was the duly elected MP for the Kalulushi Constituency in the 12<sup>th</sup> August 2021 elections which were conducted in a free and fair manner. The 2<sup>nd</sup> Respondent averred that the 1<sup>st</sup> Respondent was validly nominated and that none of the alleged complaints were lodged with the 2<sup>nd</sup> Respondent. It was also denied that there were more votes cast at Chibuluma Primary School Polling Station than the number of ballot papers and the Petitioner was put to the strict proof thereof of all her allegations.
21. **SAMUEL MUSENGA**, the appointed Returning Officer for Kalulushi Constituency swore the 2<sup>nd</sup> Respondent's verifying affidavit in which he confirmed that the 1<sup>st</sup> Respondent was the duly elected Member of Parliament for Kalulushi Constituency and that the contents of the 2<sup>nd</sup> Respondent's Answer were true.
22. In her reply to the Answers, the Petitioner maintained that some of the alleged illegal activities of the 1<sup>st</sup> Respondent were reported to the Police by her campaign manager one **BOB NKOSHA** and to the 2<sup>nd</sup> Respondent. She reiterated her allegation in her petition and insisted that the campaigns and the elections of 12<sup>th</sup> August 2021 were not free and fair

as they were characterized by acts of bribery, violence and other illegal acts by the 1<sup>st</sup> Respondent. That some of these incidences were only discovered by the Petitioner after the elections.

23. At trial, the Petitioner testified in her own right and called 26 other witnesses. I now proceed to summarize their testimonies.
24. The Petitioner testified as PW1 and in her testimony stated that she was a 38 years old Politician of House No. 66330, North Kalengwa Kalulushi. That she was a former Mayor for Kalulushi and contested the 12<sup>th</sup> August 2021 parliamentary elections for Kalulushi Constituency as an Independent Candidate. She then indicated that Kalulushi Constituency was divided into four (4) political districts namely: Chambishi, Chibuluma, Chati and Kalulushi Central and 24 Wards with about 76 polling stations and an estimated population of about 100,000 people as per the 2010 population census.
25. Regarding the said elections, PW1 testified that there were six (6) candidates that contested for the same seat together with herself. The other candidates were **KALETA MULENGA (UPND)**, the 1<sup>st</sup> Respondent **(PF)**, **FAITH MUNTHALI (DP)**, **PATRICK MULENGA (INDEPENDENT)** and **CHRISTINE MULENGA (SP)**. That the election period ran from 14<sup>th</sup> May 2021 to 11<sup>th</sup> August 2021 and on 17<sup>th</sup> May 2021 she successfully filed her valid nomination papers with the 2<sup>nd</sup> Respondent and submitted certified copies of her Grade 12 Certificate, NRC, Voters Card, tax clearance certificate and a declaration of her assets and liabilities. After the filing of nominations, the candidates were addressed on how they were supposed to conduct themselves to the effect that they were not supposed to engage in violence, bribery, vote buying or corruption and a calendar of events was issued which guided on when a particular candidate would be in a particular ward for about three (3) days while the other candidates stayed away from that ward.

26. The Petitioner then stated that the elections were held on the 12<sup>th</sup> August 2021 and on the 14<sup>th</sup> August 2021, the 1<sup>st</sup> Respondent was declared winner after polling 18,667 votes while she polled 17,713 votes and the results of the rest of the candidates were as per the declaration of results appearing at page 7 of her bundle of documents. She was, however, aggrieved by the outcome of the polls alleging that there was a lot of vote buying, bribery, corruption, ferrying of people from Kitwe, Luanshya, Mufulira and Lufwanyama to vote in Kalulushi.
27. Specifically, the Petitioner testified that after elections, **CHRISTOPHER KOLALA** (PW2) had confided in her that when filing her nomination papers on 13<sup>th</sup> May 2021, the 1<sup>st</sup> Respondent's documents were incomplete. That she did not submit the declaration of her assets and liabilities. A video was shared to that effect in which the 1<sup>st</sup> Respondent was alleged to have addressed her supporters as being refused to file her nomination papers. Further that although people were advised not to come to the nomination centres in party regalia, the 1<sup>st</sup> Respondent was clad in her party regalia and so were her supporters. The said video was played which showed the 1<sup>st</sup> Respondent and her supporters clad in PF regalia. It also showed the 1<sup>st</sup> Respondent seated before the 2<sup>nd</sup> Respondent's officials and later stood up to talk to her supporters but sat down again. The Petitioner insisted that the 1<sup>st</sup> Respondent did not file the declaration of her assets and liabilities and she was, therefore, surprised that her nomination papers were accepted.
28. The Petitioner's other grievances related to the alleged vote buying, violence and intimidation. It was her testimony that when conducting door to door campaigns, the 1<sup>st</sup> Respondent used to pay voters after showing them a marked ballot to vote for her. One such would be voter was a **MRS. CHIKAYA** who was visited at her home and confirmed having been given a K60.00 to vote for the 1<sup>st</sup> Respondent. In support of her assertion a video recording which she uploaded from the 1<sup>st</sup>

Respondent's Facebook was equally played which showed the 1<sup>st</sup> Respondent and her campaign team visiting the said **MRS. CHIKAYA** of Lusokolo Ward in which the 1<sup>st</sup> Respondent was shown explaining to the said lady how to vote and campaigning for the PF. The 1<sup>st</sup> Respondent was shown handing a flier to the said lady. The Petitioner then explained that after she interacted with the said lady, she said the 1<sup>st</sup> Respondent had K20 notes in her hands and gave her K60.00 from which a K10.00 was to be given to her child.

29. The Petitioner continued with her testimony of how she later came to learn that on the 30<sup>th</sup> July 2021 at around 20.30 hours the 1<sup>st</sup> Respondent had visited the residence of **ESTER** and **REGINA CHILESHE** and gave them the sum of K5,000.00 to share with others in order to vote for her in the election and not for the Petitioner. A **MR. LIBAJI** also shared with the Petitioner that on the 11<sup>th</sup> August 2021, the 1<sup>st</sup> Respondent had visited Shamakule area after 21.00 hours and the residents were given K100.00 each and were told to vote for the 1<sup>st</sup> Respondent the next day. The Petitioner insisted that the 1<sup>st</sup> Respondent knew Esther and Regina and had a relationship and she knew this because she was also a PF member before she resigned. The Petitioner produced photos depicting the 1<sup>st</sup> Respondent inside a house sitting with **ESTHER** and **REGINA CHILESHE**.

30. In her further testimony, the Petitioner lamented that these acts of vote buying happened across Kalulushi District. She pointed out that in Lukoshi Ward of Chambishi, the 1<sup>st</sup> Respondent made a donation of K14,500.00 to the Spring of Shalom Church which money was delivered by a **MR. KAUSENI** on the 1<sup>st</sup> Respondent's behalf. That the said donation was received by **MR. BUDAH** who confirmed to the Petitioner that the donation was made on 29<sup>th</sup> July 2021.

31. The Petitioner also complained that the 1<sup>st</sup> Respondent again made a donation of K100,000.00 cash to Chambeshi Football Club between the 29<sup>th</sup> - 30<sup>th</sup> July 2021 during the campaign period. She learnt of this information from a **MR. CHIPOMA MULENGA** a member of the Chambeshi Football Club Supporters Association who told her that the money was delivered by **KEAGAN CHIBUYE** and members of the Executive of the said club were present. Among them were **SMART BANDA** and **CHARLES KASONDE**, and that the said **KEAGAN CHIBUYE** was a PF member who was very close to the 1<sup>st</sup> Respondent. The Petitioner refuted the 1<sup>st</sup> Respondent's assertion in her Answer that she was the sponsor of the Club and indicated that the main sponsor was Chambeshi Metals Limited. And that as Mayor then, a resolution was passed for the Council to take over the responsibility of sponsoring Kalulushi Modern Stars and Chambeshi Football Clubs. The Petitioner insisted that during her tenure as Mayor, there was no such prior donation made by the 1<sup>st</sup> Respondent.
32. The Petitioner's further grievance was that she received information from **WESLEY KANGONGA** that on the polling day 12<sup>th</sup> August 2021, the 1<sup>st</sup> Respondent had engaged one **FEBBY SIMWANZA**, a former Councillor for Lulamba Ward who was at a polling station giving money to voters on the queue in exchange for voting for the 1<sup>st</sup> Respondent. That this incidence was even reported to the police and that the said **FEBBY SIMWANZA** had worked closely with PF. Similarly, the Petitioner had received information from **MARTINE** of vote buying in Kankonshi, where **SACRONE** who was in the 1<sup>st</sup> Respondent's campaign team was giving money to people on the queue to vote for the 1<sup>st</sup> Respondent. And in Ndonga Ward, **ROMEO BWEMBYA** shared information with the Petitioner that he had chased **BANA MPASO** at the Pentecostal Polling Station for giving people money on the queue to vote for the 1<sup>st</sup> Respondent. That the said **BANA MPASO** worked closely with the 1<sup>st</sup> Respondent and the matter was reported to the police.

33. Further that one **ROBBIE MULENGA**, who had stood as a Councillor in Musakashi Ward shared an audio recording in which the sum of K20,000.00 was delivered to **PRISCA KANTUMOYA** on 11<sup>th</sup> August 2021 between 21 and 22 hours after the campaigns had closed at 18.00 hours. That the said **PRISCA KANTUMOYA** was a Polling Agent for the 1<sup>st</sup> Respondent at Musakashi Polling Station and the money was meant for the residents of Musakashi Ward to share after voting and not to be shared before voting. In the said audio, the Petitioner testified that **PRISCA** had confirmed receiving the money from the 1<sup>st</sup> Respondent but the dispute was only about the amount whether it was K20,000.00 or K6,000.00. The said audio recording was played in Court in which the Petitioner identified the voices of **ROBBIE** and **PRISCA** who confirmed receiving the money K6,000.00 which was shared in the Branches. **ROBBIE** then asked for a list of the names of the people who had received the money which was distributed after the elections.
34. It was the Petitioner's further lamentations that after the elections she again came to learn from **MR. KALASA** that the 1<sup>st</sup> Respondent had ferried people from Luanshya, Kitwe, Mufulira and Lufwanyama to register in Kalulushi during the voter registration and also were ferried on the election day to vote in Kalulushi. That these people were provided with transport, lunch and some payment and among them were **NORMAN, MARTHA** and **PHINOT** from Mufulira confirmed of how they were recruited. A list of those recruited to vote for the 1<sup>st</sup> Respondent in exchange for payment was compiled and there was a video recording of the people who were chased in Chibuluma who had been brought by a bus belonging to the 1<sup>st</sup> Respondent. The said video recording was played which showed a blue Higer Bus and with some people that had dropped from the said bus which had a PF flag on the dash board. The Petitioner explained that the bus in the video was donated by the 1<sup>st</sup> Respondent and that the said video was recorded on the morning of the poll day. She further narrated that Mr. Kalasa shared a list of the people that had

registered in Kalulushi and **PHINOT** equally confirmed being recruited from Mufulira and being picked up from Shinde Stadium around 03-04 hours and after he voted in Lubuto Ward, the vehicles took them back and he was given K200.00. Also that **MARTHA** voted from Kalengwa and was given K1,000.00 and others were given about K8,000.00. In the case of **NORMAN**, he was ferried from Wusakile and **KALASA** from Ndeke in Kitwe. That after voting they passed through Buchi but a fracas ensued and the Bus was stoned because what they were given was not what they were promised and rushed to Mindolo Police.

35. **SUNDAY SILAVWE** also informed the Petitioner that the 1<sup>st</sup> Respondent had ferried people into Twaiteka Ward and those who voted were paid K200.00 and others were also registered in Mwamboshi. That the said **SUNDAY SILAVWE** had witnessed the ferrying of the voters on the 12<sup>th</sup> August 2021 who were given K200.00 after voting. That some of these voters were registered under Chilano Primary School, Kamusale and Minsenga.
36. Regarding her grievances concerning violence and intimidation, the Petitioner lamented of how her campaigns were such a challenge under the hands of the 1<sup>st</sup> Respondent. She stated that ECZ had shared a calendar of events of campaigns in different wards. In her case, the Petitioner complained that whenever it was her turn to campaign in a particular ward, the 1<sup>st</sup> Respondent would also be in the same area. For instance, the Petitioner narrated of how in July 2021 it was her turn to be in Ichimpe Ward and had arranged to meet with the Community Leaders. But when she went to ZamClay, she was surprised to see the 1<sup>st</sup> Respondent's motor vehicle with her entourage whom she signaled and three (3) people dropped from her car and threatened to disrupt her meeting. She stopped her meeting for fear of the lives of the people and left. The Petitioner complained that there were a number of such incidents where in Kameme B she could not hold her meeting as she



found the 1<sup>st</sup> Respondent there and avoided any fighting by leaving the area. Another incidence was a meeting she had arranged in Kalengwa Ward when on her way she received a phone call from **CAROL** and **BEVELY** informing her that the 1<sup>st</sup> Respondent had arrived at the venue and addressed a meeting she had arranged. That the said **CAROL** and **BEVERLY** were chased and she never reached the venue.

37. Again somewhere in mid July 2021, the Petitioner went to do her door to door campaign in Chibotc but the 1<sup>st</sup> Respondent also went there to campaign and she was forced to leave for fear of any fighting or loss of lives. The Petitioner complained that the 1<sup>st</sup> Respondent made deliberate moves which made it difficult for her to freely go into the Wards but stayed away to protect the safety of the people and anybody else.
38. The Petitioner also complained of how her campaigns were negatively affected after her assistant campaign manager was assaulted and matter reported to Chambeshi Police Station. She also narrated of how in Chibuluma **EVELYN BWALYA's** family was assaulted by agents of the 1<sup>st</sup> Respondent and matter was reported to Kalulushi Police Station. That the said assaults instilled fear in her campaign team as they feared for their lives. She mentioned that **CATHERINE CHELA** stayed in Chibuluma and was mobilizing for the 1<sup>st</sup> Respondent before campaigns and she knew her very well when she was in PF before her resignation.
39. Also that her campaign strategy was by way of door to door campaigns, meetings, radio programmes, posters and banners. However, the 1<sup>st</sup> Respondent's agents kept on removing her posters a matter she used to report to the Police but no action was being taken. That action was only taken when her three (3) metres banner worth K2,200.00 she had placed at the market was torn by the agents for the 1<sup>st</sup> Respondent and the person who tore it was apprehended. After that action, the Officer In Charge of Kalulushi Police Station was transferred. The Petitioner

complained that most of her posters were removed by the 1<sup>st</sup> Respondent and her agents most of whom she knew as they worked together in PF when she was still a member. That she reached out to some of them and complained because it was too costly for her but they told her they were doing it because of the money they were given by the 1<sup>st</sup> Respondent. The people she spoke to were **ZEGMAN, NYANTA** and **BRIAN** who worked for a government clinic in Kalulushi Township. Further that the Petitioner had complained and reported to ECZ and her campaign manager wrote a letter of complaint appearing at page 5 of her bundle of documents.

40. The Petitioner also narrated that she was not the only one who had been intimidated but that other elderly women from Chibote were threatened. She mentioned of one **MARY LIASHI** who was threatened to be removed from the recipients of the social cash transfer if she did not support the 1<sup>st</sup> Respondent. The said **MARY** confirmed that one **EVANS KAMPAMBA** one of the Social Welfare CWAQ, who identified the beneficiaries of the said fund had threatened her. The other person was **REGINA KABWE** from Chambishi who also confirmed that she was threatened to be removed from the Social Cash Transfer if she did not vote for the 1<sup>st</sup> Respondent. The net effect was that the Petitioner lost votes from the elderly women given the background that the 1<sup>st</sup> Respondent was the immediate past Minister of Community Development and Social Welfare that had oversight of social cash transfer. That the said women told the Petitioner that they did not want to lose such funding and hence could not vote for her.

41. The Petitioner continued her lamentations of how during the campaigns, the 1<sup>st</sup> Respondent had engaged in character assassination and falsely told people that she had stolen all the land in Kalulushi which she sold. She complained that such accusations negatively affected her election results as people thought she had sold all the land. A video recording was played in Court in which the said accusations were made by the 1<sup>st</sup>

Respondent in which the Petitioner was alleged to have contested the elections in order to raise money to pay back. She also complained of the 1<sup>st</sup> Respondent's assertion in the said video that she should not have contested as an independent given what the former President Edgar Chagwa Lungu had done to her. The Petitioner felt aggrieved in that it affected the results of the election. That she only learnt of these accusations after the elections and to date she was perceived as a person who had stolen land.

42. The Petitioner then lamented on lack of employment opportunities for the youths in Kalulushi, who were only making a living from the slug dump sites known as "black mountains." It was her testimony that these youths depended on the slug with some mineral ore as a source of income which they had lobbied in Chambeshi from the NFCA. However, she was aggrieved that any youth who was supporting her could not be allowed access to the said black mountain by the 1<sup>st</sup> Respondent and her agents and thereby deprived of their only source of livelihood. As a result, the youths run away from her and that affected the results of the poll as these youths needed money. The affected youths included one **JACK SIMFUKWE** and the 1<sup>st</sup> Respondent's agents were identified as being **JIVE, KOLALA, MWAMUNYIMA** (former Mayor) and **KAPESO** (Councillor).
43. A video recording which was provided to the Petition by **JACK SIMFUKWE** was played in Court showing the mentioned people addressing the youths asking for support from the 1<sup>st</sup> Respondent. It was the Petitioner's testimony that as former Mayor she lobbied for the use of the black mountain in Chibuluma but as a result of the actions of the 1<sup>st</sup> Respondent and her agents, she lost support from the youths whose only source of income was the black mountain. That the results of the poll she got was from the relationship and foundation she had built. The Petitioner insisted that having worked in PF, she knew **JIVE** and

**KOLALA** very well as they were agents for the 1<sup>st</sup> Respondent and **JIVE** instructed the Police to chase all those who did not support the Petitioner.

44. The Petitioner also narrated of how on the 3<sup>rd</sup> of July 2021 she received a phone call from a **MR. BANDA** who shared with her that the 1<sup>st</sup> Respondent had invited the head teachers across the district and they would meet at Kalulushi Secondary School and he would share the outcome of the said meeting. Unfortunately, the said **MR. BANDA** did not share the outcome of the meeting but only did so after the elections who informed her that the 1<sup>st</sup> Respondent was asking them to vote for her and after the meeting the 1<sup>st</sup> Respondent stood by the exit door and gave each head teacher K250.00 and a PF Chitenge and asked for their votes. That the said **MR. BANDA** was a beneficiary of the K250.00 and a chitenge. Further that the 1<sup>st</sup> Respondent told the head teachers to go and campaign for her in the schools they came from.
45. Her further lamentations were that on the voting day in Sitwe Ward of Chambishi, one **MARIA BWEMBYA** shared with her that the 1<sup>st</sup> Respondent had given them money to vote for her. Again that a **VICTOR KAPUNGWE** who was working for the 1<sup>st</sup> Respondent was found with a number of voters cards and NRCs and the matter was reported by **CARLINTON SICHULA** to Chambishi Police Station. However, when she made a follow up on what had happened to the report, the Petitioner got no response.
46. The Petitioner also complained that on the 29<sup>th</sup> July 2021 the 1<sup>st</sup> Respondent and Mr. Chishimba Kambwili held a rally near Kalulushi Market attended by over 1000 people. She complained to the Officer in Charge why PF was allowed to hold rallies when ECZ had banned rallies. Unfortunately she received no help and as such she was aggrieved because ECZ did not allow her to hold rallies which disadvantaged her

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when the 1<sup>st</sup> Respondent was given an opportunity to address the masses. A video recording of the said rally was played in which the 1<sup>st</sup> Respondent's campaign posters were displayed and she was also introduced by Chishimba Kambwili and other candidates for Mayor and Councillor and she complained that Chishimba Kambwili told the electorates not to vote for the Petitioner.

47. Finally, the Petitioner complained that the 1<sup>st</sup> Respondent had distributed mealie meal from her home and through the Office of the District Commissioner. That on 11<sup>th</sup> August 2021, the DC had been distributing mealie meal and the beneficiaries had been asked to come in PF regalia and with a voter's card. This was done in exchange for a vote for PF and the 1<sup>st</sup> Respondent.
48. And in her continued examination in chief, by Ms. Mulenga, the Petitioner explained that the donation of K14,500.00 to the Church amounted to vote buying as it was done during the campaign period. Also that the donation was made to a Church with a lot of voters and would likely influence the voting. Again she complained that the donation of K100,000.00 to Chambeshi Football Club amounted to influencing or enticing the would be voters. Further, that her grievances on ferrying of voters was that it gave the 1<sup>st</sup> Respondent additional numbers of voters who enticed them with money. Most importantly, the Petitioner complained that people from outside Kalulushi were deciding the affairs of the people of Kalulushi. In short, the Petitioner was of the considered view that the difference of the votes that the 1<sup>st</sup> Respondent got was from these "Foreign Voters." And finally that there were a lot of violence, intimidation, bribery, corruption, ferrying of voters, incomplete documentation made her feel that the elections were not free and fair. She lamented that she did not enjoy the space to campaign freely, her Assistant Managers were assaulted, her chairlady was equally assaulted and people were now afraid to campaign for her which disadvantaged her

especially that her posters were torn and pulled down with no action taken against her complaints and only response was to transfer the officer in charge who tried to take some action.

49. It came out of the Petitioner's cross examination by Mr. Musukwa that regarding the issues she raised, most of them came to her knowledge way after the elections and could not verify them but others she had personal knowledge of. Specifically, the Petitioner confirmed that election agents were appointed at the time of filing nomination papers but she did not know who the 1<sup>st</sup> Respondent had appointed as her agents. The Petitioner also confirmed that she did not conduct any search with ECZ to verify if indeed the 1<sup>st</sup> Respondent did not file a declaration of her assets and liabilities even at the time of filing the petition.
50. The Petitioner then conceded that although she had alleged a lot of violence, she only produced two (2) incomplete Zambia Police Medical Report Forms which were never signed by any medical practitioner. Regarding the ECZ communiqué, the Petitioner confirmed that it specifically talked about banning Chishimba Kambwili and not the 1<sup>st</sup> Respondent and neither was there any report against the 1<sup>st</sup> Respondent. Further, the Petitioner conceded that whenever there was violence and disruption of her campaigns, she never reported the matter either to ECZ or the Police. She, however, insisted that a formal report was made to ECZ by her campaign manager which appears at page 5 of her bundle of documents. In the said letter, the Petitioner admitted that it did not address any disruption of her meetings but contended that she made verbal complaints to the conflict management committee. In the same vein the Petitioner admitted that she only learnt of the alleged dishing out of money by the 1<sup>st</sup> Respondent way after the election.
51. On the issue of the bus which was allegedly ferrying voters, the Petitioner insisted that it belonged to the 1<sup>st</sup> Respondent although she did not

conduct a search to establish the owner. The Petitioner also conceded that the video did not show any polling station where the bus had stopped and only one person came out of the bus which was difficult to tell where the bus came from or where it was going. Furthermore, the Petitioner conceded that in the said video there was no distribution of money, mealie meal or chitenge material and that it was difficult to tell when the said video was taken.

52. In relation to the video of the alleged vote buying of Ms. Chikaya, the Petitioner conceded that the video was about how to identify the 1<sup>st</sup> Respondent on the ballot and that it did not show any giving of money to Ms. Chikaya. And the same goes for the photos of the Chileshe in which the Petitioner also conceded that it never showed any money, mealie meal or chitenge material being distributed and was also difficult to tell when same was taken.
53. In the case of the audio recording of the alleged vote buying in Musakashi, the Petitioner admitted that the said recording did not show any faces or the phone number which was called and when same was done. And in relation to the video of the alleged public rally, the Petitioner confirmed firstly that ECZ had not banned people from putting up posters and that the said Chishimba Kambwili had been talking about the President and the Tongas. Secondly, the Petitioner conceded that the 1<sup>st</sup> Respondent never addressed the crowd.
54. Coming to **SUNDAY SILAVWE**, the Petitioner confirmed that he also stood as a Councillor who was campaigning for himself and that she did not know if he was the appointed agent for the 1<sup>st</sup> Respondent. The Petitioner did not also know if Chishimba Kambwili was not the appointed agent for the 1<sup>st</sup> Respondent. Concerning the allegations in Chibuluma, the Petitioner admitted that she did not know the exact number of the registered voters and that she had no evidence as to any



anomalies regarding the results. The Petitioner, however, knew that the law did not prohibit a person from registering anywhere and from voting where a person had registered from. The Petitioner on the other hand, had no knowledge that the law did not prohibit the ferrying of voters. Even then, the Petitioner conceded that she had no evidence that the 1<sup>st</sup> Respondent had ferried anyone to register and to vote. Similarly, the Petitioner admitted that she had no evidence of the 1<sup>st</sup> Respondent or her appointed agents giving out money or mealie meal.

55. The Petitioner also conceded that apart from the two (2) incomplete medical forms, she had no evidence of any violence during the campaigns. She also conceded that none of her media campaign team ever captured any incidence of the alleged violence. On the alleged donations, the Petitioner admitted that she had no evidence that Chambeshi Metals was the only sponsor of Chambeshi Football Club. She equally admitted that she had no receipts for the alleged K100,000.00 and K14,500.00 donations allegedly made by the 1<sup>st</sup> Respondent. The Petitioner, however, did not know the number of polling stations in Chambishi and neither did she know that the 1<sup>st</sup> Respondent lost elections in Chambishi.
56. In relation to the issue of the Black Mountain, the Petitioner admitted that there was nowhere in the video where they talked about her. She also admitted that **JIVE** when addressing the crowd did not talk about the Petitioner's supporters and that he talked about issues of stopping the outsiders from operating in Chambishi. The Petitioner confirmed that she could not tell when the said video recording was made and that she did not know that the Treasurer for the said Black Mountain empowerment was from UPND.
57. In concluding Mr. Musuwa's cross examination, the Petitioner was referred to the handwritten list of names appearing at pages 8 to 10 of

her bundle of documents, the Petitioner confirmed that she never drafted the lists and that they were only given to her after she had requested for the same. The Petitioner also confirmed that the said lists did not show receipt of any money, mealie meal or chitenge and there was no telling when the same was written. That the said lists were not those mentioned in the audio recording. Further that the document at page 11 of her bundle of documents did not show any receipt of money, mealie meal or chitenge and had no signatures. That there was also no knowing from the same that the names of people appearing at page 11 were actually in Kalulushi on the voting day nor can it be proved where they had voted from.

58. In relation to the social cash transfer issue, the Petitioner stated that she did not know that Mr. Kampamba was not the registered agent for the 1<sup>st</sup> Respondent. The Petitioner also confirmed that she had no evidence if at all the elders were visited and she equally had no evidence that the 1<sup>st</sup> Respondent had knowledge of the alleged threats of removal from the Social Cash Transfer. Finally, the Petitioner confirmed that she was suspended from the PF party in writing and also confirmed that property which was stolen from the Council was recovered from her residence although she alleged she was merely framed by the 1<sup>st</sup> Respondent. The Petitioner also confirmed that during her tenure as Mayor, the Kalulushi Land Agency was cancelled on allegations of failing to follow procedure by the Minister of Lands.
59. In her continued cross examination by Ms. Ngobola, the learned Counsel for the 2<sup>nd</sup> Respondent, the Petitioner confirmed that in alleging that the 1<sup>st</sup> Respondent did not submit her declaration of assets and liabilities she relied on information provided for by **CHRIS KOLALA** and the video. The Petitioner, however, conceded that the video did not show anywhere the 1<sup>st</sup> Respondent mentioned that she had been refused to file because she had no declaration of assets and liabilities. The Petitioner also

confirmed that she did not take time to verify this information with ECZ and neither did she write to ECZ asking why the 1<sup>st</sup> Respondent was allowed to participate when her nomination papers were incomplete.

60. The Petitioner then confirmed that she had no evidence that the votes at Chibuluma were more than the registered voters and conceded that the results of the said ward were correct. It also came out of the Petitioner's further cross examination that she only wrote one complaint letter and never wrote any complaint about her posters being pulled down. The Petitioner however insisted that she made oral complaints to the conflict management committee and finally confirmed that there was no breach of the electoral rules or code of conduct. The Petitioner was not re-examined.
61. **CHRISTOPHER KOLALA**, a 26 years old student of House No. 23 Matanda, Kalulushi, testified as **PW2**. His testimony was that he was one of those fortunate from Assistant Registration Officers who were trained as Returning Officers by ECZ after the voter registration exercise closed on 21<sup>st</sup> December 2020. PW2 stated that he received training by ECZ which equipped him with knowledge on how to handle nominations. That on 17<sup>th</sup> May 2021 was the nomination day for Members of Parliament which was being conducted in the Council Chamber at Kalulushi Civic Centre.
62. PW2 testified that on this day (17<sup>th</sup> May 2021) he was to have a real time experience of his training of how to handle the nomination proceedings. Specifically, PW2 stated that there was a check list of documents to be submitted which included sworn nomination forms and affidavit accompanied with certified Grade 12 results by the Examination Council of Zambia, certified voter's card and NRC, declaration of assets and liabilities and the provisions of a passport size photo was optional.

63. Regarding the said nomination proceedings, PW2 testified that the 1<sup>st</sup> Respondent was the fourth (4<sup>th</sup>) person to file her nomination papers and at that time he was taking a video recording of all the proceedings using his Samsung S8 phone. It was PW2's testimony that during the filing of nomination papers by the 1<sup>st</sup> Respondent, it was noticed that the copy of her NRC had not been certified and hence she asked someone to go and have same certified. That the 1<sup>st</sup> Respondent then told the Returning Officer verbally that she had no list of assets and liabilities. PW2 then considered this to be an irregularity as according to their training GEN 4 was supposed to be signed and to it attached a list of assets and liabilities. PW2 then alleged that when she had no list of assets and liabilities, she rose and addressed her supporters that she was denied to file her papers and there was confusion in the Chamber. A video that PW2 had taken was played in Court in which he identified the Returning Officer Mr. Musenga and also identified the 1<sup>st</sup> Respondent.
64. PW2 was then surprised that the Returning Officer accepted the 1<sup>st</sup> Respondent's nomination papers despite the omission of the declaration of assets and liabilities. That the Returning Officer should not have accepted the documents but he told the 1<sup>st</sup> Respondent that her nomination was successfully filed. PW2 explained that the nomination process went beyond the scheduled one (1) hour due to the commotion and the delay in waiting for a certified copy of the NRC. That after receiving her nomination papers, the 1<sup>st</sup> Respondent's biometric portrait was taken. PW2 also explained that he had stopped recording the video of the proceedings on advice by **MR. ISAAC MUKAWA** the Technical Support.
65. That was how PW2 kept the video recording which he tried to discuss with his friends but there was nothing he could do because according to his training the decision of the Returning Officer could only be challenged before a Court of Law. As such, when PW2 heard of this

petition, he shared the said video with the Petitioner's campaign manager **MR. BOB NKOSHA** on 25<sup>th</sup> August 2021.

66. Under cross examination by Mr. Simwanza, PW2 confirmed that he was witnessing the filing of nomination papers for the first time on the material date. PW2 also confirmed that GEN 4 is filed with attachments provided by the candidate and it was then signed before the Returning Officer. PW2 confirmed that he did not sit with the Returning Officer but was recording a video and his interest was on the checklist and insisted that the 1<sup>st</sup> Respondent did not file a list of assets and liabilities. PW2 then explained that in an event a candidate had no assets and liabilities to declare, the candidate was to write on a piece of paper. PW2 also explained that the provision to write on a piece of paper was provided for in the law and also that there was no time frame within which the decision of a Returning Officer can be challenged. PW2, however, was not told in the training the Court in which the decision of the Returning Officer could be challenged but they were merely informed that ECZ would go on behalf of the Returning Officer.
67. PW2 admitted that the submission of the list of election agents was done when filing nomination papers even if he had not mentioned it as part of the check list. PW2 also confirmed that the Returning Officer had the discretion to extend the one (1) hour provided and that ECZ used that discretion well. PW2, however, denied that his interest was to serve the Petitioner although he only shared the video with the Petitioner's campaign manager and not with ECZ, Police and other candidates or even his Training instructor.
68. When cross examined further by Mr. Musukwa, PW2 stated that he heard the 1<sup>st</sup> Respondent having been denied filing her papers from what she said. PW2 also confirmed that the 1<sup>st</sup> Respondent participated in the election and that during this period PW2 never notified anyone of the

alleged anomalously. PW2 also confirmed that on nomination day only those coming within 400 metres of the nomination centre were not allowed to wear party regalia. And that PW2 verified from the file although he had not informed the Court as that question was not asked.

69. When cross examined further by Ms. Ngobola, PW2 confirmed that he was not an employee of ECZ. PW2 also confirmed that the Returning Officer was the person mandated to receive nominations but PW2 was not satisfied with the receipt of the 1<sup>st</sup> Respondent's nomination papers even if he never reported to anyone. Finally that PW2 never submitted any report and neither anyone reported the omission. PW2 also confirmed knowing the 1<sup>st</sup> Respondent and conceded that she was not participating in elections for the first time. PW2 was not re-examined.
70. **PW3** was **AMOS KALASA**, a 43 years old Bricklayer of House No. 986 Mukuba Natwange, Ndeke, Kitwe. His testimony was that on the 19<sup>th</sup> November 2020, he was visited by his neighbour **ANGELA MBEWE** who informed him of how she had failed to get any money from the 1<sup>st</sup> Respondent. That the said **ANGELA** told him that the 1<sup>st</sup> Respondent would only give her money if she formed a group of people to register as voters in Kalulushi. PW3 got interested where upon the said **ANGELA** gave him a phone and he spoke with a person who identified himself as **IGNITIUS SIAME** who told him to follow what **ANGELA** had told him as good things were coming working with the 1<sup>st</sup> Respondent. PW3 then got **MR. SIAME**'s phone number and continued communicating with him and was encouraged to register in Kalulushi.
71. On the 23<sup>rd</sup> November 2021, PW3 went to Sisuna Primary School in Ndeke and registered to vote from Kalulushi Ward near the Council Library. PW3 then started looking for people and recruited 10 people including the said **ANGELA MBEWE** and Mr. Siame promised him a big package. He then got an exercise book in which he registered the names

of the people he recruited with their NRC and Voter's Card numbers. That when they faced challenges with long queues, PW3 phoned **MR. SIAME** who promised to send a motor vehicle for them to go and register in Kalulushi and on the 28<sup>th</sup> November 2020 a Rosa Bus was sent and about 29 people went to Kalulushi. When going to Kalulushi, they passed through Wusakile Filing Station where they found other people from Wusakile and that was how they went to Kalulushi.

72. After their registration, PW3 and other people went back to Kitwe using the said buses and were paid K50.00 each and were told the 1<sup>st</sup> Respondent would not meet them. Sometime in February 2021, PW3 decided to go to Kalulushi and meet with the 1<sup>st</sup> Respondent but did not find her. He only found **DAVID** who gave him his phone number and forms for "MAUZU" empowerment which he was to fill in the names, NRC number, Phone number, Voter's Card number and name of the Wards. Unfortunately, he did not fill in all the names as others did not give him their voter's card numbers.
73. It was PW3's further testimony that on 30<sup>th</sup> May 2021, he received a call from **SIAME** who told him to call his people as the 1<sup>st</sup> Respondent wanted to meet them. That the 1<sup>st</sup> Respondent only went to Kitwe at around 20.40 hours and gave them K150.00 each. She then promised to take party regalia to them over the weekend and asked them to vote for her and left. PW3 indicated that they were about 105 in number and he was promised to be empowered and would be receiving K5,000.00 per month but which money he never received.
74. Despite the non-fulfillment of the promises, PW3 continued communicating with **SIAME** and on 11<sup>th</sup> August 2021 the said **SIAME** called him to remind him about the voting on the 12<sup>th</sup> August 2021. On the 12<sup>th</sup> August 2021, PW3 received a phone call from **DAVID** and two buses were sent around 10.00 hours and they went to Kalulushi to vote.

After voting, firstly they were treated by **SIAME** with **MR. KASANDA** of PF with drinks at "Bana Mwango" and later had nshima with chicken, beans and cabbages at a house near the Council Library. At around 18.00 hours, three (3) Rosa buses came and he got onto the third (3) bus. The first two (2) buses had taken people to the 1<sup>st</sup> Respondent's residence.

75. In the bus where he was, people from Wusakile started making noise until they were paid by **KAMPAMBA**. The driver being fearful of the threats went and packed the bus at the Police Station but **SIAME** ordered him to move the bus and it was taken to the bus station. At that time confusion erupted and all the people disembarked and **SIAME** called another bus and PW3 saw a blue Higer Bus ALF 4188, written "Chambishi Community Bus" donated by Hon. K. Mulenga.
76. Whilst on the said bus, PW3 requested to pick up people from Chibuluma and Kampamba's house. PW3 then noticed that there were more people on the said bus he did not know. Around 19.00 hours, the bus went to Kitwe and at Kandabwe, people started insulting and the driver asked where they were going and he was told to start with Buchi. When the bus turned into Buchi, the driver was told to stop behind Petroda and three (3) people beat up a young man from Wusakile while others picked up stones and started stoning the bus and the windscreen was broken. The driver then drove to Mindolo Police Station. PW3 escorted the driver to the inquiries where the matter was reported as **SIAME** had been apprehended by the people from **BUCHI**.
77. About 30 minutes later, PW3 saw two (2) Toyota Land cruisers with police officers who after inspecting the damage on the bus told them to go since the matter was reported. PW3 then promised to escort the driver back to Kalulushi this time using the Chingola Road. In Kalulushi, the



bus was parked at the 1<sup>st</sup> Respondent's house and PW3 spent a night in the said bus and only returned to Kitwe on 13<sup>th</sup> August 2021.

78. PW3 then complained that nothing had been done about the empowerment he was promised but went on to produce the list of names he had recruited appearing at page 8 to 13 of the Petitioner's Bundle of Documents. He explained that the list on page 8 was given to him by **MR. MUGALA** while he wrote the names from pages 9 to 13. Finally, that he only had a meeting with the 1<sup>st</sup> Respondent once on 30<sup>th</sup> May 2021 and after voting he never saw the 1<sup>st</sup> Respondent again.
79. Under cross examination by Mr. Musukwa, PW3 admitted that the list he compiled from pages 8 to 13 did not show that they were paid any money. He also admitted that the said list did not show that they were ferried to go and register and also that they were ferried to go and vote. PW3 also conceded that he was not appointed as an Agent for the 1<sup>st</sup> Respondent and that there was no evidence that he indeed got in touch with the 1<sup>st</sup> Respondent. PW3 further admitted that there was no evidence of a bus whose windscreen had been shattered and equally there was no evidence of anyone injured from Buchi.
80. In his further cross examination, PW3 conceded that the list he compiled did not show that anyone on the said list voted and also that he never produced any of the "**MAUZU EMPOWERMENT**" documents. PW3 further admitted that he never provided any proof that he received money from the 1<sup>st</sup> Respondent and neither did he see anything wrong in going to register from Kalulushi and that all he wanted was money. That although he spent a night at the 1<sup>st</sup> Respondent's residence he did not see her and he never bothered to ask to see her. Finally, PW3 admitted not knowing whether **SIAME** was an Agent of the 1<sup>st</sup> Respondent and also admitted not producing the telephone conversation, nor the minutes of the alleged meeting held in Ndeke, Kitwe. Lastly, that he never reported the request

to register and vote from Kalulushi to the Police and that he was in Court because he never received the money and the regalia that was promised. PW3 was not re-examined.

81. **NORMAN KASUKU**, a 37 year old Businessman of House No. C5157, Wusakile Kitwe testified as **PW4**. He testified of how on 25<sup>th</sup> November 2020, he met **KALASA** (PW3) who suggested to him to register in Kalulushi and he would be given capital for his business. PW4's testimony was in all material respects similar with that of PW3 in relation to how he was recruited and how he registered in Chibuluma and was given K50 for lunch and the buses took them back to Kitwe. PW4 also testified of how the 1<sup>st</sup> Respondent met them at PW3's house on 30<sup>th</sup> March 2021 and gave them K150.00 each with the promise to bring them regalia but which never materialized.
82. Again PW4's testimony regarding the events of 12<sup>th</sup> August 2021, was just as testified by PW3 except that **SIAME** had sent money via mobile which he went and withdrew and they bought food for the people who were not even satisfied and accused him of having squandered the money. After finishing voting, a big blue bus came at around 19.30 hours written Hon Kampamba Mulenga which they boarded and went to Kampamba's house where **SIAME** announced that they will not be paid the money but that they will receive the capital for their businesses using their voter's cards. PW4 then testified in the like manner as PW3 of how the bus was stoned, taken to Mindolo Police and eventually driven back to Kalulushi at the 1<sup>st</sup> Respondent's residence and that was how he left and went to his home leaving some people at the 1<sup>st</sup> Respondent's residence.
83. In his cross examination by Mr. Musukwa, PW4 confirmed it was his first time to vote and confirmed that the production of his voter's card would have shown that he indeed registered in Kalulushi and voted from there.

PW4 confirmed that he had no evidence that he received K300.00 and neither did he have any proof that the stoning of the bus was reported to the Police as he remained outside the Police Station. PW4 denied seeing the 1<sup>st</sup> Respondent and also that he did not know the registration number of the said bus. That he only saw the 1<sup>st</sup> Respondent once at around 21.00 hours and that he did not see anything unusual about being paid in order to vote as he was looking for money. PW4 confirmed that he did not report the matter to the Police, ECZ or other candidates and that he only knew about the petition from PW3 and lastly that he did not know the residential address of the 1<sup>st</sup> Respondent. PW4 was not re-examined.

84. **PINOT KALASWA**, a 29 year old Photographer of House No. 4, Section 2 Kantanshi Mufulira testified as **PW5**. He commenced his testimony by seeking to be freed from the burden he had been carrying from sometime in September 2020 when he met a **MR. MWAPE**, a PF Member from Kalulushi at the Silicosis in Kitwe. **MR. MWAPE** asked him where he stayed and told him that he came from Mufulira and was looking for employment and the two (2) exchanged their phone numbers. In October 2020, Mr. Mwape called PW5 and requested him to register as a voter in Kalulushi and vote for Kampamba Mulenga a candidate in Kalulushi. When PW5 asked about the logistics, **MR. MWAPE** assured that he will link him up with the coordinator based in Mufulira.
85. That on 17<sup>th</sup> November 2020, Mr. Mwape called PW5 and told him to prepare himself as the bus would come on 19<sup>th</sup> November 2020 to ferry people to go and register as voters. And on the 19<sup>th</sup> November 2020 he was called and directed to go to Shinde Stadium where he found six (6) buses and he asked which bus he was to board and who the coordinator was. He was, however, asked to submit his details which were written down in a book but he did not know the name of the coordinator.

86. PW5 then stated that two (2) buses went to Kalulushi Central and when they passed through Kalulushi Basic School, an unknown number of people disembarked and even at Musamba Basic School it was the same. In his case, he dropped off at Lubuto Primary School where he registered from and obtained his voter's card. After registering, he called **MR. MWAPE** who asked him to wait for him and he came. The agreement was that they were to vote for the 1<sup>st</sup> Respondent and Edgar Chagwa Lungu and after winning, the 1<sup>st</sup> Respondent would write a letter to President Edgar Chagwa Lungu for them to be employed at Kagem Mine. At this time PW5 was with **MWAPE** at a bar opposite the Catholic University when he saw a white Toyota Hilux come and **MWAPE** went there after which he gave him K200.00 to use for transport back to Mufulira as they could not wait for the others to obtain their voter's cards. That was how PW5 went back to Mufulira and started waiting.
87. At the peak of the campaigns, **MWAPE** called PW5 to go to Kalulushi and meet the 1<sup>st</sup> Respondent. He was given directions and dropped off at BELL where he found a group of people from Mufulira he had been with at Shinde Stadium. Between 11.00 and 12.00 hours, he saw four (4) motor vehicles come from Kitwe and young men rushed there shouting "mother", "mother" and he also joined. One car's window was opened and that was the first time he was seeing the 1<sup>st</sup> Respondent who then gave them K200 but the cars did not go to the civic centre but turned to go to Sabina. **MR. MWAPE** then told PW5 that the person who was giving out the money was Hon. Kampamba Mulenga. There was no interaction between **MR. MWAPE** and the 1<sup>st</sup> Respondent and she said she was going to Chambishi.
88. PW5 was of the view that there was a relationship between **MR. MWAPE** and the 1<sup>st</sup> Respondent because he was asked to vote for her and when he said she was coming indeed the 1<sup>st</sup> Respondent came and he saw her at BELL. PW5 then left and went back to Mufulira. On the 11<sup>th</sup> August

2021, **MWAPE** called him to remind him not to oversleep and on the 12<sup>th</sup> August 2021, PW5 went to Shinde Stadium and found a lot of people with six (6) buses. They went to Kalulushi and arrived at Lubuto Primary School at around 04.30 hours and he was number 65 on the queue.

89. At around 06.00 hours, the Polling Station was opened and he voted. After voting, he called **MR. MWAPE** who asked him to go to the football ground, which he did with three other people. At around 10.00 hours **MR. MWAPE** came and asked if he could take them to where food was being prepared but they refused. **MR. MWAPE** then gave them K200.00 for transport and they went back to Mufulira.
90. After the results had started being announced, PW5 called **MR. MWAPE** who told him they had not finished in Kalulushi but he never called him back and only learnt of the results from another person in Mufulira. On the 16<sup>th</sup> August 2021 when the Presidential results were announced PW5 was worried because Edgar Chagwa Lungu had lost. PW5 then called **MWAPE** and asked him what would happen and he only responded that there was no ruling party without an opposition party. PW5 also asked whether the K200.00 he received was the only payment, but **MWAPE** told him not to worry and asked for his details and that was the end of their communication. PW5 concluded his testimony by expressing a sigh of relief having testified because he felt guilty for doing something wrong for choosing an MP whom the people of Kalulushi did not want. He then described the buses which they had used as being Rosa Buses of which two (2) went to Chambishi and the other two (2) went to Chibuluma, and that the coordinator had recorded his details.
91. Under cross examination by Mr. Musukwa, PW5 admitted that he had not produced any list where his details were entered and also that he had not produced his voter's card which could have shown the polling station he voted from. PW5 equally admitted that there was no evidence

showing that he voted from Kalulushi and also that he had not produced any recording of the conversation he had with **MWAPE**.

92. PW5 also conceded that although he was a photographer, he never got any photographs of **MWAPE** and **KAMPAMBA**. PW5 further admitted that he never gave the address he had used when registering and also that he did not know that **MWAPE** was an Agent for the 1<sup>st</sup> Respondent. When asked about his desire to be freed and whether he had reported the matter to the Police or ECZ, PW5 denied making any report as he was interested in the money he was given and the prospects of a job and other benefits. He, however, denied being paid to tell lies and that he did not know that the 1<sup>st</sup> Respondent never owned a white motor vehicle. That although he was ferried from Mufulira three (3) times, he never captured the registration number of the buses and also that he did not know who paid for the buses or who gave the money to **MWAPE** from the Toyota Hilux. PW5 denied there being any incidence of violence in Kalulushi or anyone giving money to people who were on the queues. PW5 was not re-examined.

93. PW6 was **ROBBIE MULENGA**, a 37 years old Miner and a resident of House No. 27 Lukoshi, Chambishi. His testimony was that he stood as a Councillor under UPND for Muskashi Ward but lost the elections. That on the 11<sup>th</sup> August 2021, he went to Musakashi Ward at around 13 hours and was there up to 17.30 hours as campaigns were closing at 18.00 hours. In the night, he received a call from **ANNE BWALYA** a UPND member who informed him about people who had taken money to Musakashi, which they were fighting for but would be shared after voting. That he was just told there were some young men who had brought the money to be shared among the people.

94. On the 12<sup>th</sup> August 2021, PW6 went to cast his vote but later started receiving calls of how much he would give people if they voted for him.

But he had no money and asked them to vote in any way which they liked. After receiving a number of phone calls about vote buying, on the 15<sup>th</sup> August 2021, PW6 called **PRISCA KANTUMOYA** who was one of the Polling Agents for PF and pretended to be one of the people who took money to Musakashi.

95. An audio recording was played in Court in which PW6 had pretended to call from the 1<sup>st</sup> Respondent and the said **PRISCA KANTUMOYA** explained that the money received was K6,000.00 and not K20,000.00 as alleged and was shared in the branches of which people received between K15.00 to K30.00 depending on the number of people in the branch. In the said recording **PRISCA** denied any fighting but that the money was shared well except that they were afraid of UPND carders who had threatened to beat them up. PW6 confirmed that **PRISCA** was a Polling Agent for PF and had signed on Gen 20.
96. Under cross examination by **MR. MUSUKWA**, PW6 confirmed that he did not mention the phone number and neither did he produce the phone records to prove the conversation. PW6, however, admitted that the person speaking in the audio did not receive the money but it was received by **MR. NGOSA**. PW6 also admitted that the source of the money was not known and neither was the purpose of the money disclosed. That there was no violence when he was voting and neither did he see anyone buying votes on the queue. Further that he did not know if **PRISCA** or her husband and **NGOSA** were agents for the 1<sup>st</sup> Respondent.
97. In his further cross examination by Mr. Chilenga, PW6 confirmed that people took money into the ward but he never had a recorded conversation with **ANNE BWALYA** and that he relied on her statement. PW6 then admitted that he never reported the incidence to the Police or Conflict Management Committee. PW6 was not re-examined.

98. **ESTHER CHILESHE**, a 48 years old Business Lady of Farm 155, Chembe West, Kalulushi testified as **PW7**. Her testimony was to the effect that on 31<sup>st</sup> July 2021, the 1<sup>st</sup> Respondent and her crew visited her at her place in Chembe and told them that "People of God" I have come to visit you. PW7 was with **REGINA CHILESHE, RANA WALU, JOHN CHOLA** and other people as there was a sawmill. That they entered the house and she sat on the same chair with the 1<sup>st</sup> Respondent who then complained that they were not seen at PF campaign meetings. PW7 then told her that she had defected from PF and was now supporting the Petitioner and advised her to leave as it would cause confusion. However, the 1<sup>st</sup> Respondent insisted that they came a long way and asked her not to turn her back on her and demeaned the Petitioner whom allegedly she said would have dragged her and thrown by the roadside and slap her. Then, the 1<sup>st</sup> Respondent produced money which she gave her in her hands saying it was K5,000.00 which they needed to share and asked her to leave the Petitioner and join her side. Further that the 1<sup>st</sup> Respondent demanded that the Petitioner's posters be removed but she refused. That they shared the money K100.00 each and the following morning only discovered that the Petitioner's posters had been removed and torn. PW7 produced two (2) photographs showing herself with the 1<sup>st</sup> Respondent and her sister **REGINA** which photos she said were taken by **JOHN CHOLA**.

99. It came out of her cross examination by Mr. Musukwa that it was not possible to tell the date when the photos were taken and also that the photos showed her sister smiling and did not look like someone was issuing threats. However, when asked as to whether the photos showed her being given K5,000.00, PW7 did not answer. PW7 nonetheless confirmed that she got K5,000.00 from the 1<sup>st</sup> Respondent which they shared but did not report the matter to the Police or ECZ and neither did she inform other candidates. PW7 denied removing the posters even if they got the money.



100. In her further cross examination, PW7 stated that she defected from PF to UPND and that she had no position in PF and her resignation was not in writing. PW7 also confirmed that a bore hole was sunk at her place prior to the elections and her view was that the 1<sup>st</sup> Respondent ought to have inspected the project during the day and not at night. However, when asked if she told the 1<sup>st</sup> Respondent to leave because it was at night, PW7 never gave any answer.
101. Regarding the events of 12<sup>th</sup> August 2021, PW7 confirmed voting and indicated that there was no violence on the day of voting and there was no one buying votes from people on the queue. That the 1<sup>st</sup> Respondent had asked her to come back to her and nothing else was promised apart from the K5,000.00. PW7 also confirmed that a fire had gutted a house at the said premises and that was the only time the 1<sup>st</sup> Respondent was visiting the area after the fire. And in her further cross examination by Mr. Chilenga, PW7 admitted that no one prevented her from voting for a candidate of her choice and also that the K5,000.00 did not influence her vote. Finally that the photos were taken by **JOHN CHOLA**.
102. In her re-examination, PW7 confirmed that there was a fire at the same place where a lady rented her house.
103. **PW8** was **JOHN CHOLA**, a 34 years old Businessman of Farm 155 Chembe South Kalulushi. His testimony was that on the night of 31<sup>st</sup> July 2021 at around 20.00 hours, the 1<sup>st</sup> Respondent had visited their home where he stayed with his parents **ESTHER CHILESHE** (PW7) and **REGINA CHILESHE**. That he had received a phone call from PW7 and when he reached his house he found carders had surrounded the yard and one cadre asked him where he came from and explained he stayed there and had been called. When he entered the house, he found the 1<sup>st</sup> Respondent had come with other PF candidates for councillorship for

Chembe and Lubanga Wards and was also with the Mayoral Candidate for PF **MODESTER KABWE**.

104. It was PW8's testimony that the 1<sup>st</sup> Respondent informed them that she had gone to ask for a vote and asked them to stop receiving the Petitioner as there was nothing she would do for them. It was then alleged that the 1<sup>st</sup> Respondent had taunted at them that even if they did not vote for her she would still go through using her own powers. That they were threatened and forced to receive the sum of K5,000.00 which they later received because they were hungry and shared K100.00 each.
105. It was PW8's further testimony that the 1<sup>st</sup> Respondent then told them to vote for her and to remove the Petitioner's posters. PW8, however, refused to do so because it was not permissible. He then took photographs of the 1<sup>st</sup> Respondent which photos he identified in Court showing the 1<sup>st</sup> Respondent, PW7 and **REGINA CHILESHE**. Finally, that in the morning PW8 discovered that the Petitioner's posters had been removed and torn.
106. In cross examination by Mr. Musukwa, PW8 confirmed that it was difficult to tell when the photos were taken and equally confirmed that he never mentioned the details of the motor vehicles nor the total number of the same. PW8 then conceded that it was not necessary to capture the K5,000.00 and also that he never reported the matter to the Police and ECZ and that he did not capture the pulling down of the posters because it was dark. Nevertheless, PW8 stated that he never experienced any fire but admitted that a borehole was installed at the said premises and that the money was shared the very night and there was no confusion during the night. PW8 also denied there being any violence on the day of voting and neither did he see anyone buying votes on the queue. Finally PW8 admitted that he could lie if paid because of hunger.

107. In his re-examination PW8 explained that he could not however, lie in Court.
108. **EDWARD LIBAJI**, a 70 years old Farmer of Shamakule Village, Kalulushi testified as **PW9**. His testimony was that on the 11<sup>th</sup> August 2021 he attended the door to door campaign mounted by the 1<sup>st</sup> Respondent at **JOHN MUTALE's** farm where the 1<sup>st</sup> Respondent reminded them of the polling day being the following day. That she also showed them where to vote on the ballot paper as there were many candidates with the name of "Mulenga" and to ensure that the ballot paper was stamped. PW9 then alleged that at the end of the meeting the 1<sup>st</sup> Respondent gave them K100.00 each and reminded them to vote for her and told them to go to the home of the Branch Chairperson after voting to be ferried to her home for celebrations.
109. In his cross examination by Mr. Chilenga, PW9 confirmed that he had not produced any evidence that the 1<sup>st</sup> Respondent distributed money. PW9 also admitted that he was not prevented from voting for a candidate of his own choice and neither did the money influence him to change his choice. In his further cross examination by MR. MUSUKWA, PW9 stated that even if he saw something wrong in receiving the money, he did not report the matter to the Police or ECZ and neither did he notify any other candidates. Finally, PW9 denied witnessing any violence nor seeing anyone buying votes and to him the elections were free and fair. PW9 emphasized that even when he met the 1<sup>st</sup> Respondent there was no violence and estimated the number of people to have been 200 as he did not see properly when it got dark.
110. In his re-examination, PW9 stated that at that time the sun had set and it was getting dark.

111. **ROMEO BWEMBYA**, a 26 years old Businessman of House No. E9 Minsenga, Kalulushi, testified as **PW10**. His testimony was that on the 12<sup>th</sup> August 2021 at around 10.00 hours, he met a girl after he had cast his vote at the Holines Church in Dongwe Ward. The girl then asked him if he was going to vote and informed him that there was a lady in a yellow chitenge with a bag who was giving out money and had given her K50.00 to vote for "Chela Moche" the 1<sup>st</sup> Respondent. PW10 then observed what the lady was doing and then recognized her to be **BANA MPASO** of House No. C3, Misenga, a well-known cadre for the 1<sup>st</sup> Respondent.
112. PW10, however, could not approach her as he needed witnesses and called **JANE KACHENGELA**, **EMMANUEL FUNDAKI** and **MARTIN SAKALA**. When they decided to approach her, Bana Mpasaso had already entered the Polling Station and that was how the matter was reported to the Police Officer who reprimanded her and asked her to leave as she had already voted. They then reported to UPND as well and people started complaining about her conduct of campaigning on the voting day. PW10 insisted that Bana Mpasaso was a cadre for the 1<sup>st</sup> Respondent because she was a person he knew very well as they lived in the same compound and she used to be found with the PF whenever they conducted their door to door campaigns.
113. Under cross examination by Mr. Musukwa, PW10 stated that there was no violence malpractice or vote buying at the time he voted and admitted that he had not given any details of the girl. When asked if he saw her being given the money PW10 insisted he saw Bana Mpasaso give her K50.00. PW10 also confirmed that Bana Mpasaso was not an agent for the 1<sup>st</sup> Respondent and neither did the 1<sup>st</sup> Respondent give her any money. That he never heard what Bana Mpasaso said to the girl when he saw her being given the money and that he never made a follow up on the Police report he made and also that the girl did not tell him whom she voted for.

114. In his further cross examination by Ms. Ngobola, PW10 stated that he did not report Bana Mpasu to ECZ that she was giving money at a Polling Station. He was not re-examined.
115. **PW11** was **MARIA BWEMBYA**, a 31 years old Business Lady of House No. F145, Chambishi, Kalulushi, who testified that on an unknown date in August 2021 she attended a meeting at Febby's house, who was a former PF Councillor for Chambishi Ward. Febby was campaigning and addressing a meeting about the 1<sup>st</sup> Respondent who went there at around 19.30 hours together with a **MR. KABWE**. That the 1<sup>st</sup> Respondent told them that she had prepared K40,000.00 for them and asked them to vote for her. That the women then requested that she personally gave them the money which she did and each received K200.00 and she left. On her way, however, she overheard some women saying that if they did not vote for the 1<sup>st</sup> Respondent their first borns would start dying and for fear for her child she ended up voting for the 1<sup>st</sup> Respondent.
116. Under cross examination by Mr. Musukwa, PW11 stated that there were about 200 marketers but she did not hear the 1<sup>st</sup> Respondent utter the threats that if they did not vote for her their first borns would die. That the person who said those words remained unknown and she did not know if Febby was an agent for the 1<sup>st</sup> Respondent. PW11 then stated that she merely guessed if Febby was a Councillor in Chambishi. PW11 finally admitted that she received the money even after threats because she needed the money and that there was no proof that the sum of K40,000.00 was received. PW11 was not re-examined.
117. Assistant Superintendent **THOMAS SIWALE** 2069 the Officer in Charge of Chambishi Police Station testified as **PW12**. It was his testimony that on 26<sup>th</sup> July 2021 he received a **MR. CHEPESANI MUSONI** who was a Ward Councillor for Chambishi Ward under UPND at his office in a

company of **VICTOR KAPUNGWE** a PF supporter. The complaint was that **VICTOR KAPUNGWE** was found with NRCs and voters cards belonging to other people. PW12 immediately interviewed the suspect and admitted that he was in possession of such documents and also had photo copies and affidavits from ECZ. His explanation was that he was trying to join an NGO called Good Governance of Zambia (GOZA) by way of being appointed election monitors for the 12<sup>th</sup> August 2021 general elections. He further explained that whilst he was away to secure colour photo copies in Kitwe, a service which was not available in Chambishi, some of the owners of the documents visited his home. That when he would return he would submit the documents to the NGO in Kalulushi especially that they were running out of time for accreditation period. PW12 then decided to retain all the documents in his possession and an entry was made in the Occurrence Book which entry was produced and admitted into evidence as exhibit marked "P1".

118. At that point PW12 requested **KAPUNGWE** to go and bring the owners of the documents for purposes of verification of the story. The following day on 30<sup>th</sup> July, 2021 the Complainant together with the suspect in the company of **GREGORY CHAIWA, RUTH CHAMA, PEGGY MULALA, VERONICA CHIBINDA** and others who were the owners of the said documents, confirmed the story and agreed to submitting the documents to **KAPUNGWE** merely for purposes of appointments as election monitors under the said NGO. That when he looked at some of the photo copies, he noted that they were actually certified by the Head Teacher of Twaiteka Primary School in Chambishi which was one of the requirements. He stated that the inquiry and interview was done in the presence of the Complainant and a few people who had accompanied him. Having been satisfied with the whole information given, PW12 returned the documents to the owners and requested them to individually submit same to the NGO and warned them not to entrust such documents to a third party especially given the political

environment relating to elections. Finally, PW12 testified that he conducted investigations and contacted the person behind the NGO who confirmed **MR. KAPUNGWE** having been appointed as their agent to recruit those who wanted to be monitors. He then took it that the issue was over in view of his 26 years experience in the Police Service and having overseen over 10 elections. PW12 commented that lately, it was not unusual for people to produce voter's cards for them to be appointed as elections monitors which never used to be the case in the past.

119. In cross examination by Mr. Musukwa, PW12 stated that he never voted but denied receiving any report of violence or bribery. PW12 confirmed that he was satisfied that **KAPUNGWE** was merely an agent of the NGO and was not an agent for the 1<sup>st</sup> Respondent. PW12 also confirmed that what **KAPUNGWE** was doing was for the benefit of the NGO and not for the PF and as such he never reported the matter to ECZ. He denied dealing with any Carrington Sichula in this matter but with a **MR. CHEPESANI MUSONI**. Finally, PW12 reiterated that he returned the documents to the owners and confirmed that a person can only vote once and cannot vote on behalf of another person.
120. In his re-examination PW12 stated that there were other reports of damage to materials.
121. **MATHIAS MUSEPO**, the Officer in Charge for Mindolo Police Station testified as **PW13**. His testimony was that on 12<sup>th</sup> August 2021 at around 21.10 hours a report of malicious damage was received from a driver by the name of **KENNEDY CHARLES** of a Higer Bus, ALF 4188 who reported that on the way coming back from Kalulushi, he found a group of unknown people by Kazembe junction who maliciously damaged the windscreen. PW13 then advised the said driver to park the Bus within the Police Station in order for him to follow up the case but they did not find any person at the mentioned scene of crime. That the said report

was recorded in their Occurrence Book as complaint number 4450 and the driver was asked to give an estimated value of the total cost of the damage for a docket to be opened. But unfortunately, after 10 minutes, the driver drove off of the police station and from that time no one made a follow up. An entry number OB 4450 was produced and admitted into evidence as exhibit marked "P2" to that effect.

122. Under cross examination by Mr. Musukwa, PW13 confirmed that Mindolo Police was not in Kalulushi and also that the colour of the bus was not mentioned in the report. Similarly, PW13 confirmed that the reason why the bus was damaged was not indicated and after the report the bus was driven off. PW13 also confirmed that he never went to RATSA to investigate the owner of the bus as he was waiting for the driver to go back. Finally, PW13 confirmed that the said report only talked about Kalulushi and did not mention the 1<sup>st</sup> Respondent and no one else reported anything relating to the incidence and that the said bus was damaged in Mindolo.
123. In re-examination, PW13 stated that the driver of the bus was alone and not with any other people.
124. **MAGGIE MWEWA MUSONDA CHIKAYA**, a 30 years old Housewife, testified as **PW14** and her testimony was that she met the Petitioner who had visited her at her home and asked her about a video in which she appeared but she was not shown the video. The Petitioner then asked her to be her witness but she refused because she did not have any evidence. When the video was played in Court, PW14 confirmed being in the video with her two (2) children and also identified the 1<sup>st</sup> Respondent. It was her testimony that the 1<sup>st</sup> Respondent went to introduce herself like other candidates were doing in their door to door campaigns. That the 1<sup>st</sup> Respondent produced a flier and showed her how to vote and told her to vote for the 1<sup>st</sup> Respondent and other PF candidates. That afterwards she



handed her a flier where the portrait for the 1<sup>st</sup> Respondent and that of President Edgar Chagwa Lungu were and she left after sticking a poster to a Zesco pole.

125. PW14 denied being given K60.00 by the 1<sup>st</sup> Respondent insisting that she was not given any money and that the Petitioner was lying and that was the reason she was refusing to come and testify for her because it was not true. PW14 insisted that she was only given a flier and not money and that she did not know what the 1<sup>st</sup> Respondent was holding in her left hand as there were a lot of people. Lastly, PW14 denied being given anything.
126. When cross examined by Mr. Musukwa, PW14 denied being given any money by the 1<sup>st</sup> Respondent whom she met for the very first time and insisted that she was only given a flier. Finally, she did not know who took the video. PW14 was not re-examined.
127. **PW15** was **MULENGA CHIPOMA** a teacher by profession and a resident of Plot 3509, Moomba Street in Chambishi. He stated that he was also the Secretary of Chambishi Football Supporters Club and on 25<sup>th</sup> June 2021 when he had a bereavement of his late mother in Kitwe, he received a phone call from the Media Secretary of the Supporters Club. The said Media Secretary informed him of how the former MP for Kantanshi in Mufulira **DR. ANTONY MUMBA** had promised to give Mufulira Wanderers the sum of K50,000.00 if they won the match against Chambishi Football Club and be promoted back into the premier league. The Media Secretary then wanted to know how the players of Chambishi Football Club could be motivated like their counterparts.
128. PW15 then excused himself as he had a bereavement and requested that they consulted the main executive members of Chambishi Football Club. Later PW15 received a phone call from **KEAGAN CHIBUYE** who informed

him that they had a conversation with the 1<sup>st</sup> Respondent who had agreed and was willing to double the amount to K100,000.00 if the team won and was promoted into the premier league. That on the 30<sup>th</sup> June 2021, the money was given to the club but he was not present.

129. It came out in cross examination of PW15 that the 1<sup>st</sup> Respondent never addressed the players and also that the 1<sup>st</sup> Respondent never went to them. PW15 confirmed that his team won and the 1<sup>st</sup> Respondent honoured her pledge of K100,000.00 after she was informed of a pledge of K50,000.00. PW15 also confirmed that the pledge was about motivating the players to win the game and nothing more and the money was given after the game was won even if he never watched the game.
130. In his re-examination, PW15 clarified that the issue of the money came about after he received a call from his Media Secretary about the developments in Mufulira.
131. **SMART BANDA** a 56 years old self-employed entrepreneur testified as **PW16**. He stated that he was a Committee Member of the Chambishi Football Club Executive whose duties were to oversee the daily affairs of the members of the Club. PW16 testified of how Chambishi Football Club had a last crucial game against Mufulira Wanderers on 26<sup>th</sup> June 2021. If Chambishi lost that game they would not be promoted to the premier league and its sponsor had been Chambishi Metals. PW16 then received a call from Mr. Muma of an emergency executive meeting at which they were informed that there were people from Hon. Kampamba with a pledge of K100,000.00 if the team won and were promoted to the premier league. The pledge was accepted as a welcome gesture. The players were then informed of what was at stake and were jovial and won the match. On 30<sup>th</sup> June 2021 the 1<sup>st</sup> Respondent went to the club and addressed the team of how happy she was that after 11 years Chambishi was promoted back to the premier league.

132. PW16 then testified that the pledged money of K100,000.00 was given cash which was received by the Secretary then given to the Treasurer who in turn gave the Team Captain. From the people who delivered the money he only recognized **KEAGAN CHIBUYE** who was the Media Secretary of the Supporters Association. He stated that Chambishi Football Club was a very popular club with supporters in Kalulushi, Kitwe, Chambishi even in Lusaka with a supporter's base in thousands. PW16 denied that the Executive asked for the donation but rather the initiators were Media and Secretary of the Supporters Association. He denied the donation having been broadcast but that it was only known by the executive members and the players. Finally, that only one or two players resided in the community but the majority of the players were Kitwe residents. That the donation was made at Chambishi Recreation Club between 18 and 19 hours and some members of the public were there.
133. In cross examination by Mr. Musukwa, PW16 stated that he was not aware that the 1<sup>st</sup> Respondent used to help out on logistical movement of the players. However, PW16 admitted that the donation was initiated by the Media Secretary and Secretary of the Supporters Club Association and that the 1<sup>st</sup> Respondent did not go there to donate. PW16 also confirmed that the General Secretary was the official who spoke with the people and the treasurer was the person who could talk about finances of the club. PW16 confirmed that he did not know the finances of the club but insisted that Chambishi Metals never stopped sponsoring the club. Finally PW16 confirmed that the majority of the players were not from Chambishi and that the money was pledged to be paid if the team won and that there was no condition of voting for the 1<sup>st</sup> Respondent. PW16 was also not aware that Kalulushi Municipal Council wanted to adopt the Club and that he never heard of any vote buying or violence during the elections. PW16 was not re-examined.

134. **WESLEY KANG'OMBA**, a 27 years old Businessman/Driver of 10 Mwambashi, Chambishi testified as **PW17**. His testimony was that on the 12<sup>th</sup> August 2021, he was engaged as a security officer on behalf of UPND to protect the votes in Lulamba Ward Chambishi at Providence School polling station. He recalled that at around 18 hours the voting closed and a barrier gate was put and he stood on the one side while the Police stood on the other side. PW17 then saw **FEBBY**, a former PF Councillor for Lulamba Ward who came and parked her motor vehicle a Toyota Allion and joined the queue for those who were voting. That she joined the queue at around 18.30 hours and when asked if she was going to cast the vote she admitted.
135. It was PW17's testimony that the said **FEBBY** used to tell people on the queue to vote for **KAMPAMBA** and was giving them K20.00 and said would get the balance afterwards and would exchange phone numbers. He then alerted the Police and told them that she was not voting as he heard what she was saying. When she was asked by the Police what she was doing she insisted that she was voting. PW17 then informed the soldiers who followed her and asked her to leave and was forcibly removed from the queue while retorting that she would use her power and authority. It was at that point that PW17 told her to let people choose on their own as the campaigns ended. **FEBBY**, however rudely responded to him and he got upset but she started dragging him and demanded to know where he stayed. He then explained what was happening and reported her to a UPND Councillor that she was giving people money but she challenged him as to why he was embarrassing her. The soldiers then came and assured him that they would deal with the issue and he was asked to cool down. PW17 ended his testimony by stating that he knew **FEBBY** was working for the 1<sup>st</sup> Respondent as she was telling people to vote for her and also that he had seen **FEBBY** together with the 1<sup>st</sup> Respondent who was giving a T-shirt and K100.00. He then gave the directions to **FEBBY**'s house as being near the Police

Camp that was near Simama Lodge and that he only told the incidence to the Police and Soldiers.

136. In cross examination by Mr. Musukwa, PW17 admitted that he was working as a security officer having been trained and that was the first time he voted. He also confirmed that he never notified ECZ and that he did not know that **FEBBY** was not an agent for the 1<sup>st</sup> Respondent. Other than that, PW17 confirmed that he never noticed any violence although he was not aware that **FEBBY** had been arrested for any electoral malpractice and also that he did not know that the 1<sup>st</sup> Respondent did not win in Chambishi.
137. When further cross-examined by Ms. Ngobola, PW17 confirmed that he was aware that giving out money was misconduct but he did not tell ECZ and that he had no Police report although he claimed to have reported the matter to the Police. In his re-examination PW17 explained that **FEBBY** was a former PF Councillor and her motor vehicle had stickers and he even saw her giving T-shirts and K100.00.
138. **CHRISPINE NKANDU**, a 56 years old Businessman of House No. 126 Lutenge, Kalulushi testified as **PW18**. He stated that he was a Ward Chairperson for the Petitioner and his duties were to liaise with foot soldiers who were going into the communities to campaign for the Petitioner. It was also his duty to receive reports of how they operated. His testimony was that on the 22<sup>nd</sup> May 2021 when it was their turn to start working according to the ECZ calendar, he went with **GIFT** to find a place where the foot soldiers would meet from at the Mango area. And on their way using Sabina Road, they gave a lift to an old man who told them he was going to attend a UPND meeting. At that time PW18 was in the company of **PRINCE, SIWILA, EDGAR MUSONDA, HENRY MUKUKA, MARCELINO** and **MWIZA**.

139. When they reached at the Mango, the old man dropped and they were surprised to see PF cadres in their regalia instead of UPND cadres. That he then saw the 1<sup>st</sup> Respondent and **KABWE** Deputy Mayor addressing a meeting and they by passed a White Landcruiser and proceeded. When they stopped at a junction, the White Landcruiser carrying a lot of people blocked them and the other passengers he was with were beaten and he was slapped but he got a bottle and threatened to retaliate and that was how he was spared. Among the people who attacked them was **ANTHONY LUNGU** their fellow resident of Chambishi on Lupenge Road who threatened them that his boss would make them be killed for undoing what they were working on and were ordered to leave. The boss referred to was the Petitioner.
140. PW18 complained that it was difficult for them to freely campaign and the matter was reported to the Police and **SIWILA** was given a Police Medical Report Form. That they were instilled with fear and insisted that **ANTHONY LUNGU** was working for the 1<sup>st</sup> Respondent because he was given a car for campaigns and was wearing PF regalia.
141. Under cross examination by Mr. Musukwa PW18 admitted that he did not disclose any number plate for the vehicle and also that he did not have proof although the matter was reported to the Police and were issued with Police Medical Report Forms but they never went to the hospital. PW18 insisted that **ANTHONY** was an Agent for the 1<sup>st</sup> Respondent because of the PF regalia and a car. Even then PW18 confirmed that there was no violence of vote buying on the election day and that UPND won in Chambishi. That he never reported the incidence to the 1<sup>st</sup> Respondent or other candidates and that they still continued with the door to door campaigns and that incident did not prevent him from voting for a candidate of his choice.

142. In his re-examination, PW18 clarified that he was scared because of the number of phone calls he received and wondered how the information had quickly spread. That he informed their candidate the Petitioner and not the PF candidate as the 1<sup>st</sup> Respondent was not their candidate and was not in the motor vehicle. And finally that they continued with the door to door campaigns but was done in fear.

143. **WESLEY SIWILA**, a 64 years old Farmer of 20 Chiunda Ponde, Chambishi Kalulushi testified as **PW19**. He stated that he was the deputy campaign manager for the Petitioner who was responsible for organizing people, bringing people together and making plans and programmes as instructed. His testimony in many respects was as testified by PW18 regarding the events of 22<sup>nd</sup> May 2021 of how they were attacked by the PF cadres who were at the Mango. He narrated that he was pulled out of the car by **ANTHONY LUNGU**, a person well known to him as they stayed together, started beating him and kicking him and was even whipped with a bamboo stick. Afterwards, **ANTHONY** ordered them to leave. It was PW19's view that **ANTHONY** was working for the 1<sup>st</sup> Respondent because he wore PF regalia and was seen together with the 1<sup>st</sup> Respondent in all the campaigns. The matter was reported to the Police and he was issued with a Police Medical Report Form appearing at page 1 of the Petitioner's bundle of documents. However, PW19 did not go to the hospital as there were no medicines and the doctors had knocked off as it was at night. Finally, PW19 stated that he was discouraged by his family from continuing with the campaign and he was living in fear even at the time he testified in Court. That he used to hear of reports of violence between UPND and PF and hence their campaigns were affected.

4. Under cross examination by Mr. Chilenga, PW19 confirmed that he was not the only campaign manager and as such their campaigns continued although they did so in fear, nonetheless their message reached the

electorates. And in his further cross examination by Mr. Musukwa, PW19 confirmed that his medical report was incomplete as it was not signed by any medical personnel because he never went to the hospital. PW19 also confirmed that he never reported the matter to ECZ and neither did he sue **ANTHONY LUNGU**. PW19 also confirmed that he did not inform the 1<sup>st</sup> Respondent and that he did not see the registration number of the car and never bothered to establish who the owner of the said vehicle was. PW19, however, insisted that according to the ECZ calendar it was the Petitioner's turn to be in the area even if she never addressed any rally as they went to look for a place. Finally, PW19 confirmed that there was no violence where he voted from and neither were there anyone buying votes on the queue nor giving out chitenge material, but that he would not know if **ANTHONY** was not the 1<sup>st</sup> Respondent's agent.

145. In re-examination, PW19 clarified that they never held any rallies but they did door to door campaigns as they were directed by ECZ. He also confirmed that their message reached the people except that it lost the force it had started with. Finally, that the beatings and fear had affected the results of the election as they saw an elderly person beaten.
146. **PW20** was **REGINA KABWE**, a 60 years old unemployed widow of House No. 38 Buntungwa Drive, West Chambishi and a beneficiary of Social Cash Transfer which she only started receiving in 2020 although she was registered in 2018. She explained that they used to receive K300.00 per month which they were paid from the school whenever the money was available. Her testimony was that sometime in July 2021, the former President Edgar Chagwa Lungu, had visited Chambishi and the same day the money was available. She received a phone call from **NAMWANZA** who advised her to go to the school to get the money but upon her arrival she found other recipients clad in PF regalia. When she entered a classroom she was asked why she did not wear the PF regalia but responded that she was not a PF supporter.



147. PW20 then complained that she was accused of being a supporter for the Petitioner and that the money belonged to the 1<sup>st</sup> Respondent and was threatened by the worker that she would be removed from the list of beneficiaries. Again when she went outside, she met another elderly lady who complained that if they did not support the 1<sup>st</sup> Respondent they would be removed from the list. Sometime in August 2021, when it was time to receive the money before the elections, the same message was repeated that the money belonged to PF and that they would be removed from the list. That instilled fear in her and other recipients and in Chambishi they were about 30 beneficiaries in the Ward and that the threats affected the outcome of the elections because they were afraid.
148. Under cross-examination by Mr. Musukwa, PW20 confirmed having voted and that there was no violence on the voting day and also that she never saw anyone buying votes on the queues. PW20 admitted that she never mentioned the names of the people who were threatening her but insisted that they were agents for the 1<sup>st</sup> Respondent as they used to be together at campaigns. PW20, however, admitted that she was aware that the Social Cash Transfer was a donor programme and that the money did not belong to the 1<sup>st</sup> Respondent. PW20 insisted that the threats of losing a K300.00 affected the choice of the person they chose. And when further cross examined by Mr. Chilenga, PW20 insisted that at her age she could not allow anyone threaten her or do something against her will and confirmed that according to her knowledge, the Social Cash Transfer did not belong to the 1<sup>st</sup> Respondent.
149. In her re-examination, PW20 explained that she learnt of the money belonging to the donors during the campaign period after she had complained to **NAMWANZA** who had registered her who encouraged her to get the money because it was from the donors. PW20 also explained that she received the cash three times but did not know who an election agent was.

150. **MARY MWANGOLASHI** a 71 year old recipient of Social Cash Transfer of House No. 209, Chibote Remmy Chisupa Ward, Kalulushi testified as **PW21**. Her testimony was that she was a beneficiary of the fund from inception of the programme when they used to receive K180.00 and now they were receiving K300.00 after two (2) months. She explained that there were stewards by the names of **LEWIS KAMPAMBA** and **MR. CHILUNGUSHA** who went into the communities to inform the beneficiaries of the availability of the money.
151. PW21 then testified that during the campaigns there were people who told them not to vote for the Petitioner but for the 1<sup>st</sup> Respondent who was a Minister and used to speak on their behalf on issues of money. Further that if they voted for the Petitioner their names would be removed from the Social Cash Transfer List, and as such they voted for the 1<sup>st</sup> Respondent for fear of being denied the money. That she was told to vote for the 1<sup>st</sup> Respondent by the Steward named **LEWIS KAMPAMBA** and the people who were campaigning who belonged to PF and used to wear PF regalia so a lot of elderly and disabled people were fearing of losing the money.
152. In her cross-examination by Mr. Musukwa, PW21 confirmed that she started receiving social cash transfer long before the 1<sup>st</sup> Respondent was a Minister and she has continued receiving the money. In relation to the 1<sup>st</sup> Respondent, PW21 stated that she only heard that she was the one who was representing them and confirmed that she knew the money came from the donors. Finally that she voted although she did not produce her voter's card. PW21 was not re-examined.
153. **PW22** was **VIOLET BWALYA** a 24 years old unemployed youth of House No. 588 Chibuluma, Kalulushi. She testified of how on the 29<sup>th</sup> July 2021 at around 18.00 hours a group of over 10 people went to her place wearing PF regalia and started beating up her father. PW22 then tried to

separate or stop the fight but about six (6) people among them **CYNTHIA CHELLA, MUZO** and **CHICHI** beat her up and sustained a painful right eye, scars on her back and bruises as she was being dragged on the ground. PW22 explained that her mother **EVELYNE BWALYA** was a Chairlady for the Petitioner in Kalulushi and their neighbour was **CAHTERINE CHELLA**, a Chairlady of the mobilization team of the 1<sup>st</sup> Respondent. PW22 then stated that her father was beaten because her mother was supporting the Petitioner and they wanted her family to support PF. That after being beaten she reported the matter to the Police and was given a Police Medical Report Form appearing at page 2 of the Petitioner's bundle of documents. Unfortunately she had no K50.00 for the doctor to sign it so she just kept the report and the Petitioner used to buy medicines for her. Finally PW22 stated that the Petitioner's campaigns were affected because her mother the Chairlady stopped campaigning for her.

154. In her cross examination by Mr. Musukwa, PW22 confirmed that her medical report form was incomplete and that her father's medical report was not before Court. PW22 also confirmed that the Petitioner still continued with her campaigns but denied ever having any differences with her neighbour whom she did not know was not agents for the 1<sup>st</sup> Respondent. In her further cross examination by Mr. Chilenga, PW22 conceded that she did not see the 1<sup>st</sup> Respondent but denied testifying in Court because she was bought medicines by the Petitioner.
155. In her re-examination PW22 clarified that her assailant had wanted her mother to be on the side of the 1<sup>st</sup> Respondent and also that her father did not go back to the Police for a Medical Report after he was attended to at the clinic.
156. **PW23** was **EVELYN BWALYA**, A 57 years old Business Lady of House No. 588 Chibuluma, Kalulushi. She stated that she used to work as a

Mobilization Chairlady for the Petitioner in Chankalamo, Chibuluma and Kalulushi and her duties involved mobilising the branches, wards and the youths in her campaigns for the Petitioner. She testified of how on the 29<sup>th</sup> July 2021 when coming from a meeting in Kalulushi at around 18.30 hours she found her husband and her daughter (PW22) being beaten by cadres clad in PF regalia. Among them was her neighbour **CATHERINE CHELLA** who was in the mobilization team for the 1<sup>st</sup> Respondent and also **CYNTHIA CHELLA**, **CHICHI** and **MUSONDA**. It was PW23's testimony that each time she met **CATHERINE CHELLA** she used to ask her to join the 1<sup>st</sup> Respondent's team but she used to refuse.

157. PW23 further testified that the assailants had gone to her home because she had refused to campaign on her side. At that point PW23 started separating her husband who was an elderly man while the neighbours were helping her daughter. Her husband suffered from a painful leg while her daughter was injured in the right shoulder and on her right eye. That the matter was reported to the Police and both were issued with medical report forms but had no money for her daughter's form and neither did she have money to buy medicines which were bought by the Petitioner. Her husband was only given panadol and to date he complains of pain in his leg and her daughter still complained of pain in her eye. Finally, PW23 stated that she had stopped campaigning for fear of her life and that of her family which affected the Petitioner's campaigns as the news of their attack was heard in distant places.

158. In her cross examination by Mr. Musukwa, PW23 confirmed that it was only her daughter who was given a medical report form but same was not signed and that she did not know that no payment was required for the said form to be signed. PW23 also confirmed that she did not report the matter to ECZ or to the 1<sup>st</sup> Respondent. PW23 denied ever quarrelling with **CATHERINE CHELLA** and admitted that there was no other person she heard was injured or assaulted and that on voting day there was no

violence and no one was buying votes on the queues. In her re-examination PW23 clarified that she was the only District Chairlady for the Petitioner.

159. **BEVERLY LUCHANGA**, a 38 years old Business Lady of Flat 4, Kariba Flats, Kalulushi testified as **PW24**. She stated that she had participated in the last elections as she was helping to organize and mobilise people for the Petitioner in Kalanga Ward. It was PW24's testimony that on the 30<sup>th</sup> July 2021, they had organized a meeting at Mwambashi Flats which was in a wire fence to be addressed by the Petitioner. After the people had gathered, they then called the Petitioner to go and address them but to their surprise, they saw "**CHELA MOCHE**" with her team in a motor vehicle enter and addressed the people. PW24 was standing outside with others and three (3) young men followed them and grabbed their phone gadgets and a cap with stickers for the Petitioner which they removed. These young men told them to join **CHELA MOCHE** as she would give them money but they refused to join her as they were for the Petitioner. That the Petitioner was called who advised them to leave for their own safety but they just stood at a distance in shock. About 40 people were the ones they had organized in accordance with their schedule but were addressed by the 1<sup>st</sup> Respondent.

160. Under cross-examination by Mr. Musukwa, PW24 confirmed that they had organised about 40 people but only 3 people went to threaten them at the gate. PW24 also confirmed that even if they had phones they did not take photos or video recording of the disruption of the meeting. PW24 also admitted that she did not know the number of people the 1<sup>st</sup> Respondent had come with nor the registration number of the vehicle she had come with. PW24 then conceded that she did not report the incidence to ECZ or the Police and neither did she experience any violence or vote buying on the day of the polls. In her re-examination, PW24 explained that they did not take any photos because they were

shocked and that she only knew the three (3) that had come to the gate but did not know the number of those who were inside with the 1<sup>st</sup> Respondent.

161. **PW25** was **CAROL MUKWEKA**, a 34 years old Housewife of 1 Golf Club, Kariba Flats Kalulushi. She testified of how on the 29<sup>th</sup> July 2021 there was a meeting which was supposed to be held by the Petitioner at Mwambashi Flats, Kalulushi organized by **BEVERLY LUCHANGA** (PW24) and **MUBANGA SHULA**. Whilst waiting for the Petitioner, she saw **CHELA MOCHE** arrive in her Landcruiser with other people whose number she did not know. The 1<sup>st</sup> Respondent then asked the 40 people who were organized to line up and she started giving them K50.00 each and a chitenge material.
162. PW25 then left the place and stood by the roadside and some people from the 1<sup>st</sup> Respondent followed them and grabbed their regalia and removed stickers from their phones and were asked to join the 1<sup>st</sup> Respondent but they left and went home. That she was surprised at the turn of events because the 1<sup>st</sup> Respondent was not the convenor of the meeting but the Petitioner as it was her turn to campaign as per the ECZ calendar.
163. In her cross examination by Mr. Musukwa, PW25 admitted that although they had phones, they never took any photos of the incidence and also that the matter was not reported to ECZ and the Police. Lastly, that she never saw anyone buying votes on the queue or any threatened violence on the voting day. PW25 was not re-examined.
164. **JACK SIMFUKWE**, a 36 years old Business Man of House No. 2, Katabe Street, Chambishi testified as **PW26**. He testified of how in 2018 he together with **PETER CHISALA KOLALA**, **COLLEN KALOBO** and **EVANS CHANDA** had started an empowerment programme in Kalulushi Constituency. When they started, they consulted the 1<sup>st</sup> Respondent as

their MP on their challenges and needs but to no avail. That it was until 2021 when the former Vice President announced a Presidential Empowerment for the youths to work at a copper waste dump site famously known as the "Black Mountain" for NFCA. And in April 2021, a meeting was held with three (3) people namely **EVERISTO MWALILINO**, **DAVID KAPESO** and **KEAGAN CHIBUYE** at **PUNZA** truck parking in Chambishi with the entire executive for the Black Mountain Empowerment as well as "**MAUZU COPPER CREW.**" The said three (3) people told them they were sent by the 1<sup>st</sup> Respondent to convey to them that the Former President had spoken with NFCA Mining at State House and they agreed to give them the Black Mountain.

165. It was then suggested that Kalulushi being bigger than Chambishi which was spearheading, the executive to be dissolved and fuse in people from Kalulushi and Chibuluma. They were also asked to support the former President and the 1<sup>st</sup> Respondent as they were fighting for them. A new executive was formed but the three (3) were not part of it as they were representing PF. Four (4) days later another meeting was held at the same venue but surprisingly during the campaign the "Black Mountain" was hijacked that it would only benefit those supporting the 1<sup>st</sup> Respondent and he was accused of supporting the Petitioner and hence failing to hold meetings.

166. Since they were supporting the Petitioner who was an independent candidate, they were labeled "orphans" and were allocated a muddy portion away from the Black Mountain which portion fortunately was rich in copper ore content and everyone shifted to their area. PW26 then alleged that by a phone call he was informed that the 1<sup>st</sup> Respondent was not happy as he was supporting the Petitioner and threatened to send people from Lusaka to close and stop the operations. PW26 then met **JIVE KALOBO** who was part of the 1<sup>st</sup> Respondent's team from whom he learnt that all those supporting the Petitioner were stopped from

operating from the site. That there were many people who were supporting the petitioner. Then **JIVE** addressed a meeting to that effect and PW26 was forced to go to social media and announce that they had stopped to support the Petitioner but the 1<sup>st</sup> Respondent but he refused. After that PF flags were stuck in the muddy area but unfortunately the buyers of the slug stopped and the activities ended with some people going back to the Black Mountain while others went back into the community. That he took a lot of videos of those meetings and one was played in which the chair and **MR. JIVE** were identified addressing a crowd at the muddy area.

167. Finally PW26 testified that he stopped operating from the Black Mountain and to date he has never gone back because the executive was infutriated by PF leaders without disclosing for which **KEAGAN CHIBUYE** was the Communication Manager, **MASILILINO** was the Community Liason Manager while **DAVID KAPESO** was the Deputy Marketing Manager. That the said **DAVID KAPESO** was the Vice Chairperson for Kalulushi Constituency and the three (3) had been working with the 1<sup>st</sup> Respondent as they were the ones going to Lusaka to meet the 1<sup>st</sup> Respondent over the said empowerment.
168. Under cross examination by Mr. Musukwa, PW26 confirmed that the video he took which had been played in Court, the speaker had not mentioned anything about the people who were supporting the Petitioner. He however confirmed that the people who informed them to start working at the Black Mountain came from the 1<sup>st</sup> Respondent and admitted that the 1<sup>st</sup> Respondent had played a part in the acquisition of the black mountain. PW26 also confirmed that there were companies by the names of **MAUZU COPPER WORKS** and **MAUZU TUBOMBE** operating at the black mountain. PW26 did not know that Isaiah the treasurer belonged to UPND and confirmed that his removal from the site did not affect voting for a candidate of his choice but that it affected the



people who were following him although he did not mention them. Finally, that he knew the Petitioner's husband but he did not know that he was involved in the copper business and that the 1<sup>st</sup> Respondent never went to the Black Mountain to talk to them or introduce anyone as her agents. Even if PW26 insisted that he saw some vote buying on queues, he conceded that he did not report to ECZ and he never mentioned in Court who these people were or whom they worked for. In re-examination PW26 explained that he voted from Pentas Polling Station and explained that he had young men whom he was telling how to vote but these ended up aligning themselves with PF.

169. The last witness the Petitioner called was **STAN MANJATA**, a 37 years old Businessman of House No. 320 Chibuluma who testified as **PW27**. His brief testimony was that on 12<sup>th</sup> August 2021 he had been engaged to distribute water and drinks to Polling Agents for the Petitioner when at around 06.30 hours he found the 1<sup>st</sup> Respondent's bus blocked by a Landcruiser and the driver was being asked why he was ferrying people to the station. That the driver got scared and opened the door and people started disembarking from the bus. At that time he took a video recording which was played and alleged that the people run to Bana Kampamba's place where they used to have meetings from on the side of the 1<sup>st</sup> Respondent. After recording the video PW27 went to the Polling Station where he wanted to enter and tell them what had happened but was stopped by the Police because he had no accreditation card.
170. In his cross-examination by Mr. Musukwa, PW27 insisted that two (2) people had disembarked from the bus but he did not know how many people were on the bus. PW27 also confirmed that the bus was on the road and that he had not informed the Court the name of the Polling Station. PW27 insisted that the bus belonged to the 1<sup>st</sup> Respondent even if he had no documents proving ownership and conceded that he never produced any police report nor did he share the video with any of the

Polling Agents for them to report to ECZ. And in his further cross examination by Ms. Ngobola, PW27 stated that the Police denied him entry into the Polling Station because he had no card and insisted that the bus belonged to the 1<sup>st</sup> Respondent because her driver **CHARLES** was driving it. PW27 was not re-examined and that marked the close of the Petitioner's case.

171. As for the Respondents, the 1<sup>st</sup> Respondent testified in her own right and dispensed with any other witnesses she intended calling. In the case of the 2<sup>nd</sup> Respondent, it dispensed with calling any witnesses and closed its case whereupon its affidavit verifying its Answer was expunged from the record as that evidence was not tested.
172. **RW1** was **KAMPAMBA MULENGA**, the 1<sup>st</sup> Respondent, 45 years of age and also a Politician by occupation residing at House No. 2727, North Kalengwa, Kalulushi. RW1 started her testimony by stating that the August 2021 parliamentary elections were not the first elections she participated in. That her first elections were in 2016 where after the intra party internal adoption processes, she was adopted as the parliamentary candidate for Kalulushi constituency under PF. In those elections the Petitioner was also adopted by the PF as their Mayoral candidate.
173. It was RW1's testimony that at that time when both of them were contesting their respective elections, she introduced the Petitioner to the public as her own sister although they were not blood related. They both campaigned for their 2016 general elections peacefully and in harmony and the Petitioner would spend hours even nights at her place planning things together and they both emerged winners.
174. Regrettably, however, upon assuming their respective offices, the atmosphere from the Petitioner changed completely. RW1 had supported the Petitioner by virtue of her being female so that they could work

together and enhance development for Kalulushi. But that was not to be the case. The events that followed after their elections were disheartening as her once beloved little sister cut off all communication with her and would not take any advice of the running of the Council. That they had a hectic five (5) years as Mayor and MP to an extent that the former President Edgar Chagwa Lungu went to Kalulushi to intervene so that the two of them could work together. Even the Clergy also intervened and she was asked about her intentions of wanting to stand as an MP but the Petitioner denied those intentions. RW1 soldiered on as an MP and she was preferred because she had the experience having worked as a District Commissioner for Kalulushi from 2011 to 2015.

175. RW1 then explained that two (2) years before the 2021 general elections, PF had intra party elections from the ward, branches, sections, constituency, district and provinces. That during those elections the Petitioner emerged as the Constituency Chairlady and everyone who stood on her side won. This meant that the Petitioner had control of the constituency and the District. RW1 then stated that no one was bigger than a party and as such she abided by the Constituency and District officials. However, the Petitioner never attended any meeting she attended and before long the District and Constituency in Kalulushi started crumbling and there were divisions in the party. RW1 then pointed out that she had served in three (3) ministerial portfolios that of Information, Livestock and Community & Social Development and during her stint, she ensured that development trickled down to all corners of Kalulushi.
176. Regarding the allegations contained in the Petition, RW1 expressed surprise that she was hearing the allegations that her nomination was not valid through the petition. She explained that she was adopted as a parliamentary candidate by the party and she filed her nomination papers without any incidence and was not petitioned. That her name was

on the ballot papers because all her papers were in order and wondered why the Petitioner did not petition her nomination as she had someone inside ECZ. In reacting to the video which alleged that she had no complete documents, RW1 stated that she was actually smiling and very happy and did not look like a person who had been denied filing her papers. She explained that confusion had erupted because only 10 supporters were needed but all her supporters from Chambishi and Kalulushi wanted to sign on the document. That she only got up to request only 10 people to remain. She wondered why the person who took the video did not record the events after the confusion. She denied any ECZ official having raised any complaint and was shocked at the interpretation of the video to be of that nature. She insisted that if she was not validly nominated and the video having existed before the ballot papers were printed, the Petitioner would have petitioned her nomination. She also explained that at nomination she filed her two (2) election agents being **MWENYA MULENGA** being the PF District Chairperson and **JOHN LOMBE** of Chambishi the Constituency Vice Chairperson.

177. With regard to the allegations that she gave K5,000.00 at **REGINA CHILESHE's** house and tore posters, RW1 explained that on that particular day they came from Chati at around 17.00 hours and heard that a house was burnt at that farm and decided to visit the family and look at the bore hole which was drilled there. From the said photographs, she identified a lady sitting on the floor wearing a head scarf as being **REGINA CHILESHE** the owner of the farm a person she knew during consultations as to where the bore hole would be drilled. RW1 also pointed out that the said lady was even smiling in the photo and did not look like a person who had been threatened. That she only came to learn that the lady she sat with was her daughter in Court and that they did not take long. RW1 wondered why the person who took the photographs did not capture her giving money. She equally wondered why

photographs of her pulling down the posters were not taken and also wondered why they were never reported to the Police.

178. On the allegation of having made a donation of K14,500.00 to the named church, RW1 denied making any such donation and wondered why no witness from the said Church was called to testify. She also denied giving **KAUSENI** any such money and wondered why such issues were never raised in the conflict management committee during the entire 90 days of campaigning. She insisted that she never engaged herself in acts of bribery and that **KAUSENI**, was not her agent but **MWENYA** and **LOMBE**.

179. RW1 further denied that **FEBBY**, **SUNDAY SILAVWE**, **CHARLES**, **KEAGAN**, **SUFFON** and **PASO** being her agents. She explained that **FEBBY** was a former Councillor in 2016 while **SUNDAY SILAVWE** was one of the Councillors who had lost elections. And in the case of **PRISCA KANTUMOYA**, **ANTHONY LUNGU** and **IGNITIUS MBEULE**, RW1 denied them being her agents as all her agents were signed in. She denied assigning any of those people insisting that she had her own campaign team and none of her campaign team were mentioned.

180. On **KALASA**'s allegation that **IGNITIUS** was her agent and had promised to pay him K5,000.00 RW1 explained that the month of November was very crucial because that was when the budget was debated in Parliament and could not have time to look for voters. She then mentioned that she had 24 Wards and could not go to other districts to look for voters when in Chati alone it took about three days (3) to finish. She denied looking for **KALASA** who alleged that he only saw her for a few minutes who did not mention if he was paid the K5,000.00. RW1 also wondered how **KALASA** could have spent a night at her house without her knowing nor seeing him if indeed he had worked for her and also that she had security guards. Further that **KALASA**'s claims were false

because the Officer in Charge of Mindolo Police Station never mentioned any **KALASA** and that the bus was in transit and her views were that **KALASA** never told the truth.

181. In reacting to the alleged vote buying in the audio recording in **MUSAKASHI**, RW1 denied knowing the people in the recording and stated that the caller admitted pretending to have come from her and could also have pretended that there was such a recording. RW1 insisted that her name was not mentioned as the person who took the money and stated that it was UPND which was mentioned as the ones who intended to cause violence as they heard that Edgar Chagwa Lungu had lost but there was no violence on voting day it was just after the loss.
182. RW1 then explained the K100,000.00 donation made to Chambishi Football Club. Her explanation was that as an area of Member of Parliament it was her role to mobilize the well-being of the supporters as well as the club. RW1 insisted that the money K100,000.00 did not come from her but it came from a consortium of supporters when they heard that Chambishi Football Club was at a blink of being promoted to the premier league and the money was only to be given after the team won. That she further explained that she was chair for both Chambishi and Kalulushi Modern Stars Football Clubs.
183. RW1 then acknowledged that Chambishi Metals was on care and maintenance and was not the sponsor which could have gone to the extreme of supporting a football club when it laid off its workers. That if the Council had provided the money, there would have been no need for the consortium to have raised the money. The money was raised because the Council was not supporting the team. It was her position that the money was even carried by **KEAGAN CHIBUYE** and not herself and also pointed out that three quarters of the players for Chambishi Football Club were Congolese and only four (4) players came from the community.

She then lamented that one of the witnesses from the Club did not even vote and she lost lamentably in Chambishi which was won by the Petitioner and UPND.

184. RW1 then explained on her transport that she used a beige Land Cruiser BBA 174 and the other motor vehicle was for the PF Mayoral aspirant metallic in colour. That it was the Petitioner who had a White Fortuner and a White LandCruiser. She denied knowing a **MR. MWAPE** and explained that **BELL** junction was a dangerous spot to stop and pack cars because the trucks turned there and dismissed the allegation as not making sense.
185. Regarding the allegations of her failing to respect the ECZ calendar in Ichimpe, Zamclay, Kameme and Chibote, RW1 explained that as a party they had allowed the opposition and independents to chose the dates first and during their conflict management committee meetings no such issues were raised. She explained that she had three (3) months of hectic campaigns and never met the Petitioner because their areas of campaign were different. RW1 was of the view that it would have been better for the Petitioner's media team to have captured the alleged interruptions and reported the mater to ECZ and the Police. She also wondered how the Petitioner failed to have documented any alleged violence and bribery and denied participating in any such violence or by her agents.
186. RW1 went on to explain how on the 12<sup>th</sup> August 2021 she spent the day at her home and only went to vote and stayed at home. That although her campaign team had requested her to monitor the voting, she was of the view that the people of Kalulushi will speak in the ballot. RW1 then wondered how dangerous it was to give people money who then could have pocketed it. She explained that ECZ allowed people about 100 meters away from the polling station and had recruited the Zambia Police Service, Zambia Army and the Zambia National Service and

wondered at what point there could have been any vote buying on queues. RW1 was of the view that on 12<sup>th</sup> August 2021 people did not vote for a party but voted for a candidate of their choice and that if at all there was any vote buying then she would have ensured that all the PF Councillors went through as well as the PF President but her Councillors did not make it even the Mayoral Candidate she was with did not go through. Similarly, the Petitioner had her own Councillors and Mayor but none of them went through. Even where the Petitioner went through, her candidates did not go through. She wondered where she could have gotten the sum of about K2 million to pay K100 or K50.00 to about 67,000 registered voters when the election results are only known after voting. She denied allegations of vote buying insisting that she was a very responsible mother who would not risk her future and that of her children over such allegations with the money.

187. RW1 then explained about the video of **MRS. CHIKAYA** that it was during her door to door campaign as ECZ had banned rallies and roadshows that she was doing her campaign like any other person and was explaining to people how to vote. That she had to show people her symbols and then campaigned for her president, mayor and herself and denied giving money and explained that she had fliers in her hands. She pointed out that **MRS. CHIKAYA** was in Court and she denied being given any money but a flier and stated that she would not have risked her candidature by decampaigning herself with a K60.00.

188. On the Social Cash Transfer allegation, RW1 explained that the same did not begin with PF but was more pronounced in the MMD government which was a programme under the Ministry of Community Development. She explained that the identification of beneficiaries was done by CWAQ who were not appointed by the Ministry or herself but were elected by the communities and are only trained by the Ministry to educate members of the community on who qualifies to be a beneficiary and what the money



was meant for. That the social cash transfer covers people with disabilities, old age and orphans and once the beneficiaries were identified, they would be vetted at the Ministry and donors would go into the communities to verify the beneficiaries if indeed they were vulnerable. She further explained that the beneficiaries received money either electronically or where that was not possible through paymasters who were teachers, civil servants. That once a person was put on social cash transfer, their names were captured by the donors and the Ministry and their names could only be removed upon their death. RW1 denied knowing a **MR. KAMPAMBA** and wondered how she could have come in the social cash transfer which was not a political programme and any complaints would have been directed to the Office of Social Welfare. RW1 also wondered the testimony of the other witness who claimed that they received the money when the president was in Chambishi insisting that it would have amounted to insubordination to carry out government programmes when the President was in the area and was not a secure time to pay when there were a lot of people.

189. RW1 then denied the allegation of meeting and giving the Chambishi marketeers any money as all the marketeers had already received the presidential empowerment and could not benefit twice. She denied meeting any marketeers at **FEBBY's** house and as a mother expressed shock and worry as to how a mother would risk the life of her own child and get money as alleged. In the same vein, RW1 denied holding a meeting at the DC's Office and distributing money and mealie meal. That she did not know the said **MR. BANDA** whom she had wished had been called to testify and denied ever distributing mealie meal from her home more so that the Petitioner just stayed in a road before hers and she would have captured people leaving with mealie meal from her home. RW1 insisted that her area was also the Petitioner's area and most of the voters were known to her and explained that DMMU fell under the office of the DC and she did not know what happened there as her contract as

Minister ended on 30<sup>th</sup> May 2021 and had no jurisdiction over the matter as she had vacated the official residence and official vehicles had been grabbed from them. That the DC's office was a public office with other people working there and the alleged event could have been captured and people brought to testify but that did not happen.

190. Regarding the video recording at the Black Mountain, RW1 explained that Chambeshi Metals was requested through her office and then through the Vice President for the youths to work at the dumpsite like in other districts and the witness was one of those people who had approached her. However, after a period of one year, there was no response and Chambeshi Metals was closed and everybody laid off. There was a rise in the crime rate and she then sat with the counsellors to find a solution and the dump site was identified as the only empowerment for the youths. NFCA became very resistant but through the then Minister of Mines and through the Special Advisor to the President for projects, they saw the need to give the youths the dump site. That was how NFCA gave in and requested for an environmental impact assessment to be done and a consortium of companies to be registered.

191. RW1 then explained that all the procedures needed were followed and she helped them and time came for the handover which was done in her absence but she was happy with the empowerment in her constituency. RW1, however, explained that she had never seen the dumpsite as she did not deal in copper and that **MR. JIVE** was not her agent but was part of the consortium together with the witness. RW1 then pointed out that in the said video recording, nowhere was it mentioned that anyone who did not vote for her would be kicked out. Rather the issue was not to allow people from Mufulira, Nkana and Chingola to come and operate from there but for Kalulushi only. That she never went there to campaign and wondered that even if she went people would have voted as the vote was secret. She further pointed out that the witness did not bring a list

of those who were threatened and informed the Court that the Treasurer of the same was infact a UPND member. RW1 further pointed out from the video that nowhere did **MR JIVE** mention that if you vote for the Petitioner you would be evicted and lamented why she was being accused just because she facilitated the acquisition of the same.

192. RW1 denied that the perpetrators of the violence as per the medical reports were her agents. She explained that the incident in Chibuluma at the Bwalya's residence had nothing to do with her as they sold beer at the house and people got drunk from their campaigns. She remarked that **CATHERINE CHELLA** was Mobilization Chair but at that time she needed campaign people. RW1 then wondered why **VIOLET** could not be given a K50.00 to have her medical report signed but the Petitioner opted to buy medicine. Similarly, RW1 wondered as to why **SIWILA's** medical report was also not signed and if they were in the campaign, surely money would have been found for them to go to the hospital. RW1 denied these events ever happened and wondered why photographs were not captured and the Officer In Charge testified that there was no such report. And on the allegations of removing posters, RW1 reacted that it would not have been beneficial to do so because the Petitioner had been Mayor for 5 years and people knew her. Equally that having been such a Mayor, the Petitioner knew the offices for ECZ she would have reported the matter.

193. On **VICTOR KAPUNGWE**, RW1 denied that he was her agent insisting that he was hired by the Petitioner to insult her. She also referred to the evidence of the Officer In Charge who had explained that **VICTOR KAPUNGWE** was working for **GOZA** an NGO and not PF. That from the blogs she saw photos of Kapungwe with the Petitioner and were fighting because the Petitioner did not pay him.

194. RW1 then explained about the road show she held at which Chishimba Kambwili who was not her agent but in the Presidential team passed through Kalulushi. She insisted that she never campaigned at the event and neither any of her campaign managers. That Chishimba Kambwili was punished in his individual capacity but she was not included nor was she mentioned anywhere. And that the suspension of Chishimba Kambwili happened a day after the road show on 30<sup>th</sup> June 2021. She explained that the road shows were still allowed at the time but were only banned later because they were turning into rallies and ECZ finally came up with door to door campaigns.

195. Finally in her examination in Chief, RW1 was asked about the video recording in which she made accusations about the Petitioner. In her response, RW1 admitted making such accusations but insisted that whatever she had said was true and she was campaigning as to why she was a better candidate than her. RW1 pointed out that on several occasions the Petitioner had accused her of not having graded the roads, and in her response she indicated that it was the role of the Council for which the Petitioner was the steward. She then mentioned that land in Twatotela was sold to the Somalians and it was the first time that Kalulushi Municipal Council's ratings dropped and people's lands were grabbed in the rainy season at the expense of the Chinese. That her heart bled when NFCA relocated people for K900.00 and the Petitioner as Mayor, that was the first time Kalulushi Council's agency licence was revoked by Ministry of Lands and the Ministry of Local Government revoked some plots given. Further that it was during the reign of the Petitioner as Constituency Chairlady that the sum of K122,000.00 meant for the constituency went missing. That there was a difference between truth and defamation and insisted that the people of Bwanfwanano were ordered to be given land but the Petitioner did not do so.

196. To that end, RW1 continued that the grading of roads was the responsibility of the Mayor. And that cooperating partners had difficulties working with the local authority under the Petitioner's leadership. She then explained that the streams were revised and now they were 114 polling stations in Kalulushi as per her document produced in her bundles and also insisted that all her election agents and polling agents were registered with ECZ. She ended her testimony by stating that the elections were free and fair and that she never experienced any violence. That the parliamentary elections were a simple majority and denied ever buying any votes or insulting and use of evil language. That she won the elections because the people of Kalulushi made their own choice and she broke the record of being elected twice because she worked very hard.
197. In her cross examination by Ms. Ngobola, RW1 confirmed having filed all her documents which were approved and her name appeared on the ballot paper. That no one challenged her nomination and that she only learnt of the allegation through the Petitioner. RW1 also confirmed that ECZ had sensitized people on the conflict management committee and were holding meetings every fortnight but no such reports were received and neither did she have any difficulties with any official from ECZ. That she was validly declared as a winner after the Petitioner had asked for verification of the results and there was no record of any malpractice at ECZ.
198. And in her further cross examination by Ms. Mulenga, RW1 stated that she had been in active politics since 2001 and had participated in two (2) elections in 2016 and 2021 and had held three (3) ministerial portfolios. She also stated that she served as DC for Kalulushi and insisted that she was validly nominated even if she did not produce her nomination papers. She disputed that PW2 should be believed and confirmed that ECZ had communicated electoral regulations and that vote buying and violence were not allowed but that ferrying voters was allowed. RW1

admitted that pulling down posters was not allowed and neither was defying the campaign calendar.

199. RW1 then stated that she had two (2) election agents and the party had polling agents and also that she had four (4) people in her campaign team who included the Councillor and Ward Chairperson. RW1 also confirmed that she campaigned in Chembe, Musakashi, Dongwe and Kankonshi, Sitwe and Lulamba Wards in Chambishi and that she would go to campaign to the people. She also confirmed that she was one of the sponsors of Chambishi Football Club and that Mr. Smart Banda was just a committee member and not executive member and that was why he never mentioned about her. RW1 denied holding meetings with civil servants.
200. In relation to the **CHILESHESES**, RW1 stated that she met the owner of the farm before that day the photos were taken and confirmed her position in her Answer of not categorically dealing with **ESTHER** and **REGINA**. RW1 also stated that the Petitioner was allowed to contest the intra party adoption process as an MP but denied that the Petitioner was more popular. In reference to the votes the two got in 2016, RW1 admitted that the Petitioner polled more votes than her.
201. RW1 then admitted that she did not produce evidence of the Petitioner stealing land, stealing tyres or selling land to the Somalians. Similarly, RW1 admitted not having produced any evidence of a death certificate, the ratings of Kalulushi Municipal Council and no evidence of abuse of K122,000.00. She however denied denting the image of the Petitioner due to her popularity but confirmed that in the meeting she told people that the Petitioner stole land and did so at other meetings.
202. In relation to **VICTOR KAPUNGWE**, RW1 conceded that she did not produce any videos of insults or the contract to insult nor any evidence

of the relationship between him and the Petitioner. And in relation to the bus RW1 stated that she was not the owner of the bus and only learnt from Court what was alleged happened to the bus. That she did not produce photos of a burnt house nor a bore hole and also that she never attended the conflict management meetings but that they were attended by her campaign manager. RW1 denied that independent candidates did not have representation at the conflict management meetings. RW1 disputed that the Petitioner's campaign manager brought up issues at the conflict management meeting as no evidence was produced in Court. RW1 denied being present at the time the K100,000.00 donation was made to Chambishi Football Club and confirmed that the money was given by **KEAGAN CHIBUYE** during the campaign period.

203. And in her further cross examination by Mr. Phiri, RW1 stated that she was one of the sponsors of Chambishi Football Club even if she did not produce any contract to that effect. RW1 also repeated what acts were banned during the campaigns as being vote buying, violence, no rallies nor road shows etc. and that these acts were reportable to the conflict management committee. RW1 admitted that there was nothing wrong in the Petitioner filing her petition after the elections and explained that ECZ had an on and off rallies in that it was banning and lifting the rallies. RW1 then admitted that Chishimba Kambwili addressed the gathering after the banning by ECZ but denied that he was campaigning for her as that was a roadshow and that there was a crowd Mr. Kambwili was addressing and that the truck was not moving even if it was branded with her names. RW1 confirmed standing up and denied that people were jeering at her as there were other people standing but admitted that Mr. Kambwili had referred to the Petitioner to wait for her time and did not stop him from saying so. And in reference to the write up by ECZ, RW1 confirmed that Mr. Kambwili was punished and that road shows and rallies had been banned although she insisted that there were other candidates standing for Mayor and Councillors.

204. And in her final round of cross examination by Mr. Tafeni, RW1 admitted that Chishimba Kambwili was not a candidate but explained that he was a campaign manager for the President and denied seeing her agents in the video. She explained that the Petitioner was not discouraged from contesting elections but she was merely advised and confirmed that the Petitioner was the Constituency Chairlady until she resigned. She, however, denied sponsoring any candidates to stand against the Petitioner as she was a Member of the Central Committee. That although the Petitioner got more votes in 2016 RW1 denied that the Petitioner was more popular. RW1 then confirmed that during nominations, other candidates do not send their agents and confirmed that she had filed her declaration of assets and liabilities although she did not produce them in Court insisting that the Petitioner did not conduct a search.
205. In relation to her agents, RW1 admitted that **MWENYA** and **LOMBE** were PF members and denied appointing any polling agents insisting that same were appointed by the party but she did not know who the Polling Agent was at Musakashi. RW1 then confirmed that in the audio **PRISCA KANTUMOYA** confirmed being a Polling Agent at Musakashi and also confirmed that money was received at night but that she did not know how much Polling Agents were paid as she was not part of the party structure that was responsible. That also she knew a lot of political players in Kalulushi. RW1 stated that **ESTHER CHILESHE** was merely a member of PF and never held any position in the party. That also **REGINA CHILESHE** was smiling in the photo it was not because she had seen K5,000.00 but because of the borehole. RW1 insisted that she told the truth about the Petitioner having displaced people from their land.
206. RW1 stated further that although she knew **FEBBY** who was a former Councillor for about 15 years, she denied that she was part of her team and explained that **FEBBY** had applied for adoption as a Mayoral candidate but she lost and only started campaigning for the party in the



last two (2) weeks. RW1 confirmed knowing Sunday Silavwe and confirmed contacting him after the petition was filed because he was a Councillor and she contacted **EMELDA** who was the PF Vice Chairperson because RW1 had to bring the Petition to the attention of the party and in that way Sunday was called. RW1 explained that she was part of those who delivered the black mountain which included the Vice President but the Petitioner was not part of the team. RW1 was, however, not sure of the people who were involved as she did not deal in slag because all she did was to move the project and NFCA said it would sit with the members and one of them was a UPND member.

207. RW1 denied knowing **KEAGAN** but stated that she dealt with **JACK** and **JIVE** but did not know the whole grouping. That **KEAGAN** held no position in the party and she did not know if **KEAGAN** was one of her supporters. She then explained that she was called by **MR. CHIPOMA** and denied doubling the sum of K50,000.00 but that the K100,000.00 was a figure they asked and it was an incentive. Nonetheless, RW1 admitted that the money was given to **KEAGAN** cash but she did not know how the money was carried. RW1 then admitted the importance of Chambishi Football Club as she loved football but denied addressing the players because three quarters of the team were Congolese and just congratulated them.

208. RW1 denied knowing **AMOS KALASA** and denied ever meeting him nor worked for her and pointed out that in his testimony he claimed to have only seen her for an hour. RW1 then confirmed that **CHARLES KENNEDY** was one of the bus drivers and denied that the bus would be found at her place because it was not parked there. RW1, however, admitted that she was responsible to pay the drivers as was agreed with the community. Regarding **GOZA**, RW1 denied that the NGO was for PF and also denied addressing the civil servants at the DC's office but that she addressed them at their homes upon their request at Kalulushi

Secondary School Teacher's Compound. She however, denied ever being given K400,000.00 by NFCA to do road rehabilitation and explained that any giving of money was channelled through the DC or Council and never through the MP. She equally denied being given 150 litres of fuel for feeder roads.

209. Finally, RW1 stated that she held stickers in her left hand which had the President, Councillor and the Mayoral candidates. That the official colours for PF were green, white and lime and that she emerged victorious in four (4) out of seven (7) Wards and that the Petitioner won in Chambishi Ward.
210. In her re-examination by Mr. Chilenga, RW1 confirmed that she filed her declaration of assets and liabilities and insisted that it was the responsibility of the Petitioner to go and conduct a search at ECZ. In relation to the 2016 votes, RW1 explained that the Petitioner did not stand against her even if she had more votes than her. RW1 insisted that the Petitioner's popularity should be grouped in the 2021 elections where she stood against her and lost.
211. Regarding her insistence that the Petitioner was dishonesty, RW1 stated that although she never produced any evidence in Court, the information was in public domain that is why she never brought the evidence. It was RW1's further explanation that her sponsorship was verbal and denied that the people in the roadshow video were jeering at her but that they jeered for all who stood. RW1 further explained that ECZ used to ban and lift the rallies and that she did not know **PRISCA KANTUMOYA** and denied recruiting her. RW1 then clarified that she had no relationship with **KEAGAN** as he belonged to the Chambishi Supporters Association and **MR. CHIPOMA** was Secretary but she did not know if they were party officials. Also that **CHARLES KENNEDY** was a bus driver for the bus owned by the Community.

212. Finally, that **EMELDA** and **SUNDAY SILAVWE** were officials in PF and her relationship with them was political and denied issuing any threats to Sunday Silavwe but that she wanted the petition to be brought before the party. That she knew **REGINA CHILESHE** but did not know the witness who testified as a borehole was drilled at her place. And that Mr. Ngosa was a Ward Chairperson in Musakashi Ward but was not her agent and lastly that she held fliers and at their convention the PF colours and logo were rebranded and there was no restriction on the colours. RW1 also confirmed that she was the person referred to as **CHELA MOCHE**. That marked the close of the 1<sup>st</sup> Respondent's case.

213. At the end of the trial, all the parties expressed a desire to file in their written submissions which they did.

214. I note from the Petitioner's submission that the Electoral Process Act has been correctly cited as Act No. 35 of 2016 as opposed to the way it was wrongly cited in the petition as Act No. 36 of 2016. I equally note that the Petitioner has correctly anchored her petition in the said submissions on Section 97 of the said Electoral Process Act unlike in the petition where she cited Section 96 of the said Act.

215. It was submitted on behalf of the Petitioner that she had proved her petition with a fairly high degree of convincing clarity and it was therefore her prayer that I declare the election of the 1<sup>st</sup> Respondent as being *null* and *void* and award the Petitioner costs of this Petition. In making such a submission, the Petitioner was cognizant of the provisions of Section 97(2) to (4) of the Electoral Process Act and was equally cognizant that she needed to prove to the satisfaction of the Court that the 1<sup>st</sup> Respondent, either personally or with her knowledge, consent or approval through her duly appointed election or polling agents, committed a corrupt practice, illegal practice or other misconduct in connection with the election. In the said submissions the Petitioner

intimated that she was alive to the need to also prove that as a result of the conduct complained of, the majority of the voters in a particular constituency were prevented from electing a candidate they preferred. Such guidance was drawn from the cases of **STEPHEN MASUMBA V ELLIOT KAMONDO<sup>(1)</sup>** and that of **MUHALI GEORGE IMBUWA V ENOCK KAYWALA MUNDIA<sup>(2)</sup>**.

216. It was thus submitted on the first allegation that the 1<sup>st</sup> Respondent was not validly nominated and/or was ineligible to contest for the Parliamentary seat as her nomination papers were incomplete and offended the mandatory provisions of Articles 52 (1) and 70 (1) (e) of the Constitution as well as Section 12(3) of the Electoral Process (General) Regulation 2016. This was so allegedly because the 1<sup>st</sup> Respondent did not file a declaration of her assets and liabilities. I was urged to find the testimony of **CHRISTOPHER KOLALA** (PW2) to have corroborated the Petitioner's testimony and discount the 1<sup>st</sup> Respondent's bare denial since there was no legal challenge within seven (7) days of her nomination. However, I was urged to disregard the time frame given in Article 52(4) because the word used is "**may**" which was not a mandatory word, especially that the Petitioner only came to learn of it after the elections.

217. On the second allegation, it was submitted that the 1<sup>st</sup> Respondent was guilty of an illegal act which was widespread as she together with **CHISHIMBA KAMBWILI** held a rally or a roadshow attended by over a thousand voters as a result a greater number of registered voters in the 24 wards of Kalulushi Constituency were prevented or might have been prevented from electing their preferred candidate. It was lamented that despite the 2<sup>nd</sup> Respondent having banned rallies and roadshows, the 1<sup>st</sup> Respondent nonetheless hosted such a rally without any sanction from the 2<sup>nd</sup> Respondent much to the prejudice of the Petitioner. Although the Petitioner acknowledged that the 1<sup>st</sup> Respondent did not address the

crowd, it was still contended that the said rally ought to be attributed to the 1<sup>st</sup> Respondent as she had used her motor vehicle which was branded with PF colours and had posters "vote for Kampamba Mulenga." In addition it was contended that the 1<sup>st</sup> Respondent was introduced as a candidate at the said rally and she stood up and waved to the crowd and neither did she stop the said Chishimba Kambwili from campaigning for her especially when he stated that the Petitioner should wait for her time.

218. On this score it was pointed out that the rally was held after the 2<sup>nd</sup> Respondent had banned such rallies and road shows and hence the said Chishimba Kambwili was banned. It was therefore, the Petitioner's submission that the 1<sup>st</sup> Respondent had breached the provisions of Section 97(2)(a) as she was present and the misconduct was committed in her presence with her consent or knowledge as she did not disprove or disassociate herself from the same. Reliance was placed on the cases of **HERBERT SHABULA V GREYFORD MONDE<sup>(3)</sup>** and that of **MUBIKA MUBIKA V PONISO NJEULU<sup>(4)</sup>** which cases settled the issue when an act of an agent could be attributed to a candidate and on the need of the misconduct complained of to be shown to have been widespread respectively.

219. Regarding the allegation of bribery or corrupt practices as prohibited by Section 81 of the Electoral Process Act, it was alleged that the 1<sup>st</sup> Respondent was guilty of such practices when she donated the sum of K100,000.00 to Chambishi Football Club during the campaign period. It was also contended that the 1<sup>st</sup> Respondent had engaged herself in vote buying and bribery by engaging persons from outside Kalulushi Constituency to register and vote from Kalulushi as per the testimonies of PW3, PW4 and PW5. To underscore this point, I was urged to accept the testimonies of PW3 and PW4 who alleged that they were picked by a blue bus from Kitwe. It was a further contention that the 1<sup>st</sup> Respondent had engaged in bribery and vote buying when she was seen in a video

with **MRS. CHIKAYA** (PW14) whom she had given the sum of K60.00 of K20.00 notes. I was, however, urged to find the denial by the said witness as unbelievable as she may have been intent on lying or intimidated. I was in the same vein urged to find that the 1<sup>st</sup> Respondent held money in her hands from the video. Furthermore, I was urged to find that the 1<sup>st</sup> Respondent had distributed money to **PRISCA KANTUMOYA** which was corroborated by a voice recording as testified by PW6 **ROBBY MULENGA**. I was also urged to take judicial notice of the proceedings in the Local Government Elections Tribunal in the case of **ROBBY MULENGA V BWALYA KABWE & PRISCA KANTUMOYA & THE ECZ<sup>(5)</sup>** where the said **PRISCA KANTUMOYA** was alleged to have had confirmed receiving money and did not deny being a PF Polling Agent.

220. It was equally canvassed that the 1<sup>st</sup> Respondent had given the sum of K5,000.00 as testified by **ESTHER CHILESHE** (PW7) and **JOHN CHOLA** (PW8) in Chembe Ward. That in Lubanga Ward **EDWARD LIBAJI** (PW9) testified receiving money together with other members of his community in exchange for them voting for the 1<sup>st</sup> Respondent. Not only that I was also referred to the testimony of **ROMEO BWEMBYA** (PW10) to the effect that Bana Mpasu, a well-known agent for the 1<sup>st</sup> Respondent was giving out K50.00 to would be voters at Pentecostal Holiness Polling Station which was contrary to Section 89(1) of the Electoral Process Act.

221. The Petitioner and her legal team then contended that the 1<sup>st</sup> Respondent had engaged in bribery and corruption because she was less popular to the Petitioner going by the 2016 voting pattern for Mayoral and Parliamentary Elections. I was urged to find the alleged misconduct as being widespread which had occurred in different wards by the 1<sup>st</sup> Respondent or with her consent and knowledge by individuals acting under her which affected the majority of the electorates in the said constituency. To buttress this submission, reliance was placed on the cases of **WEBSTER CHIPILI V DAVID NYIRENDA<sup>(6)</sup>** and that of **MUBITA**

**MWANGALA V INONGE MUTUKWA WINA<sup>(7)</sup>** in which cases the Supreme Court found that bribery and treating during political campaigns was capable of swaying the electorates away from a candidate of their choice and that the corrupt practice must be shown to have prevented the majority of voters from electing a candidate whom they preferred respectively. It was, however, lamented that the statutory period of 90 days was restrictive on the Petitioner who could not call all of the witnesses to prove a corrupt or illegal practice. It was nonetheless submitted that the witnesses who testified proved that the electoral malpractices and corruption was widespread and may have affected the majority of the electorates as they voted to incline more to the 1<sup>st</sup> Respondent as opposed to the Petitioner.

222. On the allegations of character assassination, disparaging, hate and discriminatory remarks, it was submitted on the basis of Section 15(1)(c) of the Code of Conduct, a schedule to the Electoral Process Act that the Petitioner had proved to the requisite standard by way of a video recording that the 1<sup>st</sup> Respondent uttered defamatory and disparaging remarks of the Petitioner. It was pointed out that this misconduct was wide spread as the 1<sup>st</sup> Respondent campaigned in the entire Kalulushi Constituency. Significantly, it was contended that although the 1<sup>st</sup> Respondent insisted that her remarks were truthful, she never furnished any evidence that the Petitioner had stolen land and displaced people. I was referred to the cases of **BATUKE IMENDA V ALEX CALDMAN LUHILO<sup>(8)</sup>** and that of **SAUL ZULU V VICTOR KALIMA<sup>(9)</sup>**. It was, therefore, submitted that a greater number of registered voters in the 24 Wards of Kalulushi Constituency were prevented or might have been prevented from electing their preferred candidate.

223. Finally, it was submitted on behalf of the Petitioner that the 1<sup>st</sup> Respondent had exerted undue influence contrary to the provisions of Section 83(1) of the Electoral Process Act by herself or through her

election agents, canvasser agent, political association and members of the 1<sup>st</sup> Respondent's campaign team by engaging in acts of violence. That the said had perpetrated violent acts against the Petitioner's supporters by stopping them from wearing her regalia and by removing her posters as per the testimonies of PW24 and PW25. It was also pointed out that **VIOLET BWALYA** (PW22) was assaulted by the 1<sup>st</sup> Respondent's agents and supporters.

224. It was then emphasized that in most of the bribery cases and incidences of violence, officials and members of the Patriotic Front were mentioned and **JOHN LOMBE** the 1<sup>st</sup> Respondent's agent appeared at the Black Mountain. Furthermore that one **PHEBBY** a former Ward Councillor and a well-known member of the PF was mentioned by PW13 **WESLEY KANONGA** that whatever these people were alleged to have done had a bearing on the election of the 1<sup>st</sup> Respondent and disadvantaged the Petitioner. It was on those bases that it was submitted on the authority of the case of **MAZOKA V MWANAWASA**<sup>(10)</sup> that the Petitioner had discharged her burden to prove her petition to a fairly high degree of convincing clarity and urged me to hold and find accordingly.

225. The 1<sup>st</sup> Respondent filed her written submissions on 11<sup>th</sup> November 2021 and it was submitted on her behalf that she was duly elected and returned as winner of the parliamentary elections. I was then urged to dismiss the petition with costs for want of merit and failure to prove the same to the requisite threshold.

226. In terms of structure of the 1<sup>st</sup> Respondent's submissions, it was prefaced by authorities which settle the burden of proof and standard of proof required in election petitions and thereafter responded to specific allegations. Cases like **BELSFORD JAMES GONDWE V CATHERINE NAMUGALA**<sup>(11)</sup>, **ABUID KAWANGU V ELIJAH MUCHIMA**<sup>(12)</sup>, **STEPHEN MASUMBA V ELIOT KAMONDO**<sup>(1)</sup>, **RICHWELL SIAMUNENE V**



**SIALUBALO GIFT<sup>(13)</sup>** and that of **JONATHAN KAPAII V NEWTON SAMAKAYI<sup>(14)</sup>**. The other cases were **NKANDU LUO & ECZ V DOREEN SEFUKE MWAMBA<sup>(15)</sup>** and that of **KHALID MOHAMED V THE ATTORNEY GENERAL<sup>(16)</sup>**. It was further pointed out that in election petitions, there was need for corroborative evidence from neutral and independent sources and also that conduct complained of must have been committed by the candidate or her agents and with her consent. Reliance on this aspect were placed on the Ugandan case of **NABUKEERA HUSSEN HANIKA V KIBULE RONALD & ANOTHER<sup>(17)</sup>**, a copy of which was not provided and that of **LEWANIKA V CHILUBA<sup>(18)</sup>**.

227. In responding to specific allegations of failure to file a declaration of assets and liabilities, at nomination, it was contended that the issue was prescribed as it was not raised within seven (7) days of the close of nominations and that the said issue ought to have been heard within 21 days and concluded at least thirty days before a general election. Reference was made to the provisions of Article 52 of the Constitution as well as Section 115 of the Electoral Process Act to the effect that all voting and election materials remains the property of ECZ and to that effect it was contended that the Petitioner ought to have conducted a search and verify the 1<sup>st</sup> Respondent's nomination. I was urged to disregard this allegation on the ground that it was not brought to the attention of the Court as provided for.

228. I was also urged to disregard the video of the roadshow or campaign by Chishimba Kambwili firstly as confirmed by the Petitioner Chishimba Kambwili did not mention her name nor decampaigned her and also that it was not certain as to whether it was held at the time roadshows were banned since no date and time was indicated. It was then contended that the roadshows at the time were allowed and the punishment metted on Chishimba Kambwili was for him campaigning for PF with hate speech and not for 1<sup>st</sup> Respondent on the roadshow held in Kalulushi. The

complaint was characterized as an afterthought because the video existed before elections and the Petitioner could have complained to the 2<sup>nd</sup> Respondent. I was thus urged to distinguish this case from that of **HERBERT SHABULA V GREYFORD MONDE**<sup>(3)</sup> as the 1<sup>st</sup> Respondent did not approve of the misconduct as the roadshows were still allowed at the time. Furthermore, it was contended that Chishimba Kambwili was not an agent for the 1<sup>st</sup> Respondent, there was no clear evidence of the source of the video as it was not captured by the Petitioner and lastly that there was no independent witness who testified as having attended the purported rally and how it affected their choice of voting and the place where it was held was not proved as to whether it was at the market or elsewhere.

229. On the allegations of bribery and corrupt practices, I was firstly referred to the provisions of Sections 2 and 81 of the Electoral Process Act and then urged to find the donation of K100,000.00 to Chambishi Football Club as being a philanthropic activity which was not prohibited during elections. It was pointed out that the donation was not tied to voting for the 1<sup>st</sup> Respondent but as a way of motivating to players to qualify to the premier league which money was given after the club won and was not handed over by her although she was a sponsor of the club. It was also pointed out that the said donation did not affect the election results as only four (4) players lived in Chambishi and the results of that ward showed that the 1<sup>st</sup> Respondent lost lamentably. The case of **LEWANIKA V CHILUBA**<sup>(18)</sup> was also relied on where it was held that:

***“Public philanthropical activities during election is not prohibited.”***

230. Reference was also made to the Learned authors of Halsbury's Laws of England 4<sup>th</sup> Edition re-issue Vol 15 where they opine at paragraph 689 as follows:

*"The distribution of genuine charitable gifts to voters has always been allowed. If a gift is charitable, it will not become bribery because of the use made out of the gift, it is not possible by any subsequent act to make that which was legal at the time illegal and criminal."*

231. To this end I was urged to disregard the submission made that word moved around that the 1<sup>st</sup> Respondent had made a donation as it amounted to adducing evidence from the bar as none of the witnesses testified as such. To the contrary, PW16 testified that only the players and the executive knew about the donation.

232. With regard to the allegation of vote buying of persons outside Kalulushi, I was again referred to the Learned authors of Halsbury's Laws of the same edition and volume at paragraph 789 where they opine regarding bribery as follows:

*"Clear and unequivocal proof is required before a case of bribery will be held to have been established. Suspicion is not sufficient and the confession of the person alleged to have been bribed is not conclusive."*

233. I was urged to find the testimonies of **AMOS KALASA**, **NORMAN KASUKU** and **PINOT KALASWA** as being inconclusive and that all these witnesses were not credible and were witnesses with their own interest to serve. Specifically it was pointed out that **AMOS KALASA** admitted that he testified in Court because he was not paid the money and regalia promised. Above all, there was no proof that they indeed registered and voted from Kalulushi as no single voter's card was produced and there was no proof that they met the 1<sup>st</sup> Respondent or the people they dealt with were agents of the 1<sup>st</sup> Respondent. Lastly, that the evidence which came out of their cross examination was not challenged as they were not

re-examined and that there was no prohibition of where one wishes to register and vote from.

234. In the case of **MRS. CHIKAYA** (PW14), it was firstly pointed out that in her testimony she stated that she did not want to come and testify because she had nothing to say and did not want to come and lie in Court and only appeared after being subpoenaed. It was then pointed out that she denied receiving any money from the 1<sup>st</sup> Respondent and hence there was no basis laid to hold her to have intended to lie as she did not seem to benefit anything from this matter. To that end, it was emphasized that there was nothing tangible that was adduced to prove that the 1<sup>st</sup> Respondent or her appointed agents were engaged in vote buying.

235. The testimony of **ROBBY MULENGA** (PW6) and the audio recording he made was equally challenged on the basis of its authenticity of the phone numbers and on the basis of his admission that it was not known if the alleged money came from the 1<sup>st</sup> Respondent and the purpose of the said money was not clear. The testimony of PW6 was characterized to be hearsay as he never had any record between him and **ANNIE BWALYA** the alleged person who told him about the money and also that he did not know that the said **KANTUMOYA** was not the appointed agent of the 1<sup>st</sup> Respondent. In addition that the source of the money remained unknown and the voices in the audio was for people who never received the said money. I was thus, urged not to take judicial notice of a Court record that was never mentioned in a trial. Further, I was urged to take into account that at page 100 **PRISCA** did not indicate the party she belonged for and generally, **ROBBIE** was regarded as not being a credible witness as he pretended to be who he was not and committed an offence of impersonation contrary to Section 82 of the Electoral Process Act.

236. And in relation to the allegation of the K5,000.00 as testified by **ESTHER CHILESHE** (PW7) and **JOHN CHILESHE** (PW8), it was submitted that this claim was fictitious as the photographs did not show the 1<sup>st</sup> Respondent giving the alleged money to her, it was wondered as to how they could receive the money which they knew was wrong but failed to report to the Police because of their poverty. It was pointed out that PW17 admitted that there was a borehole sunk at the same place and also that a fire had burnt down a house. In contrast, however, it was doubted as how PW8 did not know about the borehole and the burnt house and lastly it was contended that the alleged payment of money did not stop them from voting for a candidate of their choice.
237. Concerning **EDWARD LIBAJI** (PW9), it was submitted that he never furnished proof that he received money from the 1<sup>st</sup> Respondent at an event which allegedly happened after 18.00 hours and it was dark when his sight was poor and never reported to the Police or ECZ. Even then, it was contended that the same did not stop him from voting for a candidate of his choice and had confirmed that the elections were free and fair as he never witnessed any vote buying or violence.
238. Coming to **ROMEO BWEMBYA** (PW10), it was pointed out that he did not know that Bana Paso was not an Agent for the 1<sup>st</sup> Respondent and also that he never identified the alleged girl who told him about Bana Paso. That he never saw her being given the money or what they talked about and yet he never received any money from her and neither did he report to ECZ. It was therefore submitted that all the witnesses who testified were unbelievable and unreliable and at best were untruthful and failed to prove any bribery committed by the 1<sup>st</sup> Respondent or by her registered election and polling agents. It was then submitted that the Petitioner in her final submissions at page 18 had admitted her failure to prove her case as she failed to call enough witnesses to prove the allegation and therefore contended that the alleged malpractice was not

wide spread. That she cannot now blame the Court or process but herself because she closed her case while she still had enough time to call more witnesses and even had witnesses already lined up and subpoenaed.

239. It was then submitted in relation to character assassination, disparaging, hate and discriminatory remarks that paragraph 15(1)(c) of the Code of Conduct was not breached as the said statements were infact true and correct and reflected what the people in the Constituency already knew about the Petitioner. I was referred yet again to the Learned authors of Halsbury's Laws of England, same edition and same volume at page 705 where they opined as follows:

*"It is an illegal practice if before or during an election any person, for the purpose of affecting the return of any candidate at the election, makes or publishes any false statement of fact in relation to the candidate's personal character or conduct, unless he can show that he had reasonable grounds for believing, and did believe, the statement to be true....The false statement of fact need not be defamatory at common law, so long as it is a statement which is calculated to influence the electors....but it is essential that it should relate to the personal rather than the political character or conduct of the candidate."*

240. On that basis it was pointed out that in cross examination, the Petitioner had confirmed that during her tenure of office as Mayor of Kalulushi District there were a lot of land displacement, procedure impropriety and theft of the municipality properties. That she admitted the withdrawal of the Agency by Ministry of Lands, she also admitted having been suspended from the party and of stolen property recovered from her home. I was urged to consider that the Petitioner never offered any explanation to all these challenges in re-examination as she had nothing to say. On that score I was urged to take into account the 1<sup>st</sup> Respondent's confirmation of the allegations by giving the exact dates

and events which led her concluding that her statements were true as she related same to the reign of the Petitioner as Mayor. Also that these allegations were already in the public domain on various social medial platforms. In any event, it was contended that the words were said in a closed meeting and could not be widespread and no single witness testified as having been affected by the said statements in their choice of candidate. I was then urged to take judicial notice of the case of **THE PEOPLE V LLOYD CHIPALABWE & GEORGE CHIBESA**<sup>(19)</sup> which involved a compactor that was stolen from the Council and was recovered at the Petitioner's home. Lastly it was submitted that the 1<sup>st</sup> Respondent under the circumstances was protected under the doctrine of "*pari delicto*" as per the case of **MBOLOLWA SUBULWA V KALIYE MANDANDI**<sup>(20)</sup>.

241. Finally, on the allegations of undue influence, I was urged to find that same was not proved in the sense that the testimonies of **BEVERLY LUCHANGA** (PW24), **CAROL MUKWEKA** (PW25), **VIOLET BWALYA** (PW22) and **WESLEY KANGONGA** (PW17) were discredited. It was pointed out that both Beverly and Carol admitted in cross examination that the incident alleged was not reported to the Police or ECZ and also that they failed to record the said incidence even when they had devices to do so. Lastly, that in any case the said alleged incident did not change their minds over voting for a candidate of their choice.

242. In relation to **VIOLET BWALYA**, it was contended that the medical report was incomplete and also that her testimony in cross examination was that the 1<sup>st</sup> Respondent was not among the people who attacked her and in any case the campaigns continued although her family had withdrawn. It was the 1<sup>st</sup> Respondent's submission that **VIOLET** only came to testify because the Petitioner bought her medicines also she admitted that there was no other violent incidences or vote buying that she witnessed. Lastly, in relation to **WESLEY KANGONGA** (PW17) it was

pointed out that he did not know that **FEBBY** was not the 1<sup>st</sup> Respondent's agent and he never made a formal complaint and no report was made to ECZ and that he never knew that the 1<sup>st</sup> Respondent did not win in Chambishi. I was also referred to the testimony of PW12 the Officer in Charge who stated that there was no report of electoral malpractice and violence or vote buying or bribery made against the 1<sup>st</sup> Respondent or by her appointed agents.

243. In conclusion, it was submitted on behalf of the 1<sup>st</sup> Respondent that there was no single voter's card or voter's register to prove that the witnesses were registered and voted in Kalulushi and there was no corroborative evidence. I was then urged to disregard the Petitioner's testimony as it amounted to hearsay on the authority of **SUBRAMANIAN V THE PUBLIC PROSECUTOR**<sup>(21)</sup> where it was held as follows:

*"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."*

244. It was therefore contended that the Petitioner intended to prove that the statements made to her were true that the 1<sup>st</sup> Respondent engaged in electoral malpractice and hence that amounted to hearsay and was inadmissible. It was further submitted that all the witnesses who had testified admitted that there was no violence or vote buying or bribery and intimidation of any kind by the 1<sup>st</sup> Respondent or her appointed agents and also that none of them were prevented from voting for a candidate of their choice. That there was no evidence that the Petitioner's posters or banners were destroyed by the 1<sup>st</sup> Respondent or her agents and that the 1<sup>st</sup> Respondent was validly nominated. Also that none of the



alleged ferried witnesses produced any evidence that they actually registered and voted in Kalulushi while being residents outside the town.

245. The 1<sup>st</sup> Respondent characterized all the witnesses as being partisan and subjective and were bias towards the Petitioner whose evidence needed corroboration and that the 1<sup>st</sup> Respondent never violated any election guidelines and held rallies after they were suspended by ECZ. It was also contended that the donation to Chambeshi Football Club was a philanthropic activity and there was no evidence of any vote buying and the allegations about **FEBBY** were not proved as she was not an Agent for the 1<sup>st</sup> Respondent. Similarly, it was submitted that there was no evidence that the 1<sup>st</sup> Respondent and her agents threatened to remove elderly people from the social cash transfer when they knew that the money belonged to the donors and not the 1<sup>st</sup> Respondent and that statements made against the Petitioner were not defamatory as she made no explanation in re-examination.
246. It was submitted on behalf of the 2<sup>nd</sup> Respondent that the 2<sup>nd</sup> Respondent conducted the elections in a free and fair manner in accordance with the provisions of the Electoral Process Act and that it validly declared the 1<sup>st</sup> Respondent as the duly elected Member of Parliament for Kalulushi. It was, therefore, the 2<sup>nd</sup> Respondent's prayer that the Petition be dismissed with costs as it did not prove the allegations to a fairly high degree of convincing clarity.
247. Firstly, it was submitted that the Petitioner did not lead any evidence to prove her allegations that there were more votes cast than ballot papers received at Chibuluma Primary School and it was pointed out that the Petitioner conceded that she had no evidence. It was the position of the 2<sup>nd</sup> Respondent that the elections were free and fair and the results were verified before declaring the winner.

248. It was further submitted that the Petitioner did not discharge her burden to prove to a fairly high degree of convincing clarity that the 1<sup>st</sup> Respondent did not file a declaration of her assets and liabilities. It was contended that the said video did not show that the 1<sup>st</sup> Respondent's nomination papers were rejected but rather that the 1<sup>st</sup> Respondent only stood up to address the crowd of her supporters. I was urged to refer to the provisions of Article 52 (2) of the Constitution in which it expresses as follows:

*"A returning officer shall immediately on the filing of a nomination paper, in accordance with Clause (1), duly reject the nomination paper if the candidate does not meet the qualifications or procedural requirements specified for election to that office."*

249. It was submitted that the 1<sup>st</sup> Respondent's nomination paper was duly completed in accordance with Article 52(1) of the Constitution especially that the Petitioner conceded that she did not conduct a search to verify the papers and contended that the said evidence was hearsay and I was urged not to regard the evidence of PW2 because if there was any electoral malpractice as a cadre of the Petitioner who was watching from a distance, he ought to have brought the same to the attention of the Presiding Officer, Returning Officer or member of the Commission in terms of Section 10(5)(a) of the Code of Conduct which he did not do. Instead that PW2 gave the said video only to the Petitioner's campaign manager which was contrary to the provisions of impartiality espoused in Section 10(5)(b) of the Code of Conduct. Thus as there was no corroborative evidence of PW2, I was urged to disregard his testimony in its totality. Reliance was then placed on the cases of **AUSTIN LIATO V SITWALA SITWALA**<sup>(22)</sup>, **LEWANIKA V CHILUBA**<sup>(18)</sup> and that of **BELSFORD JAMES GONDWE V CATHERINE NAMUGALA**<sup>(11)</sup> which cases asserts the burden and standard of proof required in election petitions.

250. In addition, it was contended in terms of Article 52(4) of the Constitution that a challenge to the nomination of candidates ought to be made within seven days and matter determined within 21 days and the whole process to conclude at least 30 days before the general elections.
251. On the allegations of holding rallies and road shows, it was contended on behalf of the 2<sup>nd</sup> Respondent that the Petitioner did not lodge a complaint with the 2<sup>nd</sup> Respondent if she felt disadvantaged when she was aware of the alleged rallies and equally never reported the matter to the Conflict Management Committees. It was therefore denied that the 2<sup>nd</sup> Respondent was derelict in the discharge of its duties and if it were, it was submitted that such dereliction did not amount to an exercise that favoured the 1<sup>st</sup> Respondent only as was held in the case of **LEWANIKA V CHILUBA**<sup>(18)</sup>. Further it was submitted that the Petitioner did not lead any evidence to show that only her vote was affected as a result and no independent witness testified of how the alleged rally affected their choice of a candidate.
252. Finally, in relation to the allegations of bribery, corruption, character assassination, disparaging, hate and discriminatory remarks and undue influence, I was referred to the functions of the 2<sup>nd</sup> Respondent as spelt out in Section 4 of the Electoral Commission of Zambia Act No. 25 of 2016, the powers of ECZ as per Section 11(10) of the Code of Conduct in terms of the action it can take. I was also referred to Section 113(1) of the Electoral Process Act which empowers the ECZ to constitute a number of conflict management committees. To that extent it was contended that no report was made by the Petitioner or her agents on which the 2<sup>nd</sup> Respondent could have executed its mandate appropriately. It was, therefore, submitted that despite there being avenues for airing grievances, none of those avenues were employed and as such the Petitioner did not show that the 2<sup>nd</sup> Respondent was aware or even responsible for any illegalities, misconduct or unfair practices but that

the elections were conducted substantially in conformity with the law and practice governing elections. Further that none of the witnesses, who were characterized to be subjective as they were inclined either to the Petitioner or UPND, implicated the 2<sup>nd</sup> Respondent in their testimonies.

253. I have carefully considered the Amended Petition, the Answers, the Replies to the Answers, the evidence before me and the arguments and submissions of Counsel. It is always a convenient starting point to remind oneself the sacred principle on which civil law is founded which is that whoever asserts facts which constitute the cause of action bears the burden to prove those issues.

254. This principle is well established and the debate was settled by the Supreme Court in 1982 firstly in the case of **KHALID MOHAMED V THE ATTORNEY GENERAL**<sup>(16)</sup> when Ngulube DCJ, as his Lordship then was, opined at page 51 as follows:

*"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 opponent's defence does not entitle him to judgment. I would not accept a proposition that even if a plaintiff's case has collapsed of its inanity or for some reason or other, judgment should nevertheless be given to him on the ground that a defence set up by the opponent has also collapsed. Quite clearly, a defendant in such circumstances would not even need a defence."*

255. And in the case of **WILSON MASAUSO ZULU V AVONDALE HOUSING PROJECT LIMITED**<sup>(23)</sup>, Ngulube DCJ, again observed and reiterated at page 175 thereof as follows:

*"There is one observation I wish to make before leaving this subject. Mr. Phiri's general approach has been to allege that the*

*respondent had not adduced evidence in support of the allegations in the dismissal letter. I have found that the respondent did in fact adduce such evidence. In the process, however, I have also pointed out the deficiencies in the appellant's own evidence. It appears that the appellant is of the view that the burden of proof lay upon the respondent and it is on this that I would like to say a word. I think that it is accepted that where a plaintiff alleges that he has been wrongfully or unfairly dismissed, as indeed in any other case where he makes any allegations, it is generally for him to prove those allegations. A plaintiff who has failed to prove his case cannot be entitled to judgment, whatever may be said of the opponent's case. As we said in *Khalid Mohamed v The Attorney General*, quite clearly a defendant in such circumstances would not even need a defence."*

256. It follows, therefore, that the Petitioner and not the Respondents, or any one of them, bears the burden to prove her allegations contained in her petition. Although election petitions are civil matters, the yardstick required in proving the same is much higher than the mere balance of probabilities. Here again, I draw from the wisdom of Ngulube CJ, as he then was, when he held on behalf of the full bench of the Supreme Court in the case of **LEWANIKA & OTHERS V CHIBUBA**<sup>(13)</sup> at page 169 as follows:

*"As part of the preliminary remarks which we make in this matter, we wish to assert that it cannot be seriously disputed that parliamentary election petitions have generally long required to be proved to a standard higher than on a mere balance of probability. It follows, therefore, that in this case where the petition has been brought under constitutional provisions and would impact upon the governance of the nation and the deployment of Constitutional power and authority, no less a standard of proof is required. It follows also that the issues raised are required to be established to a fairly high degree of convincing clarity."*

257. Since then, the Supreme Court remained steadfast and consistently asserted both the burden of proof and the standard of proof at every opportunity it had. For example in the case of **MICHAEL MABENGA V SIKOTA WINA & OTHERS**<sup>(24)</sup> the Supreme Court observed as follows:

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

258. And in the case of **MUBIKA MUBIKA V PONISO NJEULU**<sup>(4)</sup>, the Constitutional Court categorically and elaborately guided as follows:

*"The provision for declaring an election of a member of parliament void is only where, whatever activity is complained of, it is proved satisfactorily that as a result of that wrongful conduct, the majority of voters in a constituency were, or might have been prevented from electing a candidate of their choice, it is clear that when facts alleging misconduct are proved and fall into prohibited category of conduct, it must be shown that the prohibited conduct was widespread in the constituency to the level where registered voters in greater numbers were influenced so as to change their selection of a candidate for that particular election in that constituency; only then can it be said that a greater number of registered voters were prevented or might have been prevented from electing their preferred candidate."*

259. Similarly, in the case of **BELSFORD JAMES GONDWE V CATHERINE NAMUGALA**<sup>(11)</sup> the Supreme Court had earlier reiterated as follows:

*"The burden of establishing the grounds lies on the person making the allegations and in election petitions, it is the Petitioner in keeping with the well settled principle of law in civil matters that*

***he who alleges must prove. The grounds must be established to the required standard in election petitions namely a fairly high degree of convincing clarity."***

260. It must be pointed out at the onset that the alleged activities complained of must have been committed by the candidate or by his or her appointed agents or with his or her consent and not just conduct by any other person belonging to the same political party as that of the candidate. This position was emphasized by the Supreme Court in the said **LEWANIKA V CHILUBA<sup>(18)</sup>** case at page 204 as follows:

***"We are also mindful of the provisos in the Electoral Act so 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 under Regulation 67 of the Electoral (General) Regulations, an election agent has to be specifically so appointed."***

261. Granted that some of the above cited cases in relation to the burden and standard of proof required in election petitions were decided under the repealed and replaced law, the principles of law on this subject settled therein, still remain valid today and are relevant to these proceedings under the new legal regime. The current law governing election petitions in Zambia is the Electoral Process Act No. 35 of 2016 which was enacted following the entrenchment of the new electoral systems and process enshrined in Part V of the Constitution of Zambia (Amendment) Act No. 2 of 2016.
262. Under Part IX of the said Electoral Process Act, Section 97 has been enacted to govern election petitions in the following manner:

***"97 (1) An election of a candidate as a Member of Parliament, Mayor, Council Chairperson or Councillor shall not be***

*questioned except by an election petition presented under this part.*

(2) *The election of a candidate as a Member of Parliament, Mayor, Council Chairperson or Councillor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be that-*

(a) *a corrupt practice, illegal practice or other misconduct has been committed in connection with the election-*

(i) *by a candidate; or*

(ii) *with the knowledge and consent or approval of that 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 this Act relating to the conduct of elections and it appears to the High Court or tribunal that the election was not conducted in accordance with the principles laid down in such provision and that such non-compliance affected the result of the election, or*

(c) *the candidate was at the time of the election a person not qualified or a person disqualified for election.*

(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 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 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.*
- (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 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."*

263. Since 2016, the jurisprudence around Section 97 of the Electoral Process Act has been firmly developed and established by the Constitutional Court whereby applicable principles of law settled in earlier cases I referred to above were adopted and Section 97 has now been put in its

proper context. I wish to observe that the 2021 elections were not the first elections to be held under the new Electoral Process Act so are the petitions like this one.

264. It is, therefore, reasonably expected that after five (5) years of the enactment of the Electoral Process Act, the values and ideals of our electoral process contained therein would have been infused into the very fabric of our societal DNA and be part of all facets of our Zambian life with regard to both the conduct of elections as well as the requirements on how and when to petition election processes. I have no doubt in my mind as is evident from the arguments and submissions of all the parties, that indeed our societal DNA has fully embraced and is cognizant of the plain and natural provisions of the Electoral Process Act.
265. All the parties are agreed that the new jurisprudence around Section 97 of the Act is that a parliamentary election shall not be annulled unless it has been proved to a high degree of convincing clarity that a candidate or with his/her knowledge and consent or approval or by his/her registered election or polling agents has committed a corrupt practice, illegal practice or other misconduct in connection with an election and that the majority of voters in a constituency were or may have been prevented from electing the candidate in that constituency whom they preferred. This accords with the decision of the Constitutional Court in the case of **ABUID KAWANGU V ELIJAH MUCHIMA**<sup>(12)</sup> when it held as follows:

*"The standard remains higher and distinct from that required in an ordinary civil matter but lower than the standard of beyond reasonable doubt required in criminal matters. As the Supreme Court opined in the case of LEWANIKA & OTHERS V CHILUBA<sup>(18)</sup> parliamentary election petitions are required to be proved to a standard higher than a mere balance of probabilities and issues*

*raised are to be established to a fairly high degree of convincing clarity."*

266. And in the case of **NKANDU LUO & ANOTHER V DOREEN SEFUKE MWAMBA<sup>(15)</sup>**, the Constitutional Court put the provisions of Section 97(2)(a) in its proper perspective when it held as follows:

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

267. The Constitutional Court held further that:

*"in addition to proving the electoral malpractice or misconduct alleged, the Petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorates from electing the candidate of their choice."*

268. Seeing that an election can only be annulled where it has been proved that a misconduct or malpractice has been committed by the candidate or his or her election or polling agents, who then is an election or polling agent envisaged by the law? The answer lies in Section 2 of the Electoral Process Act which define the two agents as follows:

*"Election agent" means a person appointed as an agent of a candidate for the purpose of an election and*

*who is specified in the candidate's nomination paper.*

**"Polling agent"** *means an agent appointed by a candidate in respect of a polling station.*

269. It is, therefore, important to prove that the alleged agents of the 1<sup>st</sup> Respondent were indeed her appointed agents and not just any person. With regard to the question of who an election agent is, the Constitutional Court held in the case of **CHRISPIN SIINGWA V STANELY KAKUBO**<sup>(25)</sup> as follows:

*"Regulation 55(1) of the Electoral Process (General) Regulations is succinct and is in line with the definition of an "election agent" in Section 2 of the Electoral Process Act. An election agent is one that is specifically appointed and named as such in the candidate's nomination papers. The Legislature was specific in the definition of an election agent to avoid endless permutations of who an agent is in particular situations."*

270. Again in the case of **JONATHAN KAPAIPU V NEWTON SAMAKAYI**<sup>(14)</sup> the Constitutional Court held as follows:

*"Not everyone in a candidate's political party is his or her election agent in terms of the law, an election agent has to be specifically appointed."*

271. In **PONISO NYEULU V MUBIKA MUBIKA**<sup>(4)</sup>, the Constitutional Court reiterated as follows:

*"For a person to be a candidate's election agent, he or she must be specifically named in the candidate's nomination papers...A candidate is only answerable for those things which he has done*

***or which are done by his election agent or with his consent and that not everyone in one's political party is one's election agent."***

272. It follows, therefore, that in order for the Petitioner to succeed in her petition, she has to prove with cogent evidence to a high degree of convincing clarity that the alleged misconduct or malpractice was committed by the 1<sup>st</sup> Respondent or by her registered election or polling agents or with their consent or knowledge.
273. It stands to reason, therefore, that in terms of the provisions of the Electoral Process Act an allegation of misconduct or malpractice or illegality is proved only where it is shown that it was done by the candidate or their election or polling agent or by someone else but with the candidate or their agent's knowledge and consent or approval. And to warrant the nullification of the election, the Court must also find that by virtue of the illegal act, the majority of the voters were prevented or were likely to have been prevented from electing a candidate of their choice. See the case of **SUNDAY CHITUNGU MALUBA V RODGERS MWEWA & THE ATTORNEY GENERAL**<sup>(26)</sup>.
274. It is, however, imperative to prove with cogent evidence that the electoral malpractice or misconduct alleged was so widespread that it swayed or may have swayed the majority of the electorates from electing the candidate of their choice. In the case of **AUSTIN LIATO V SITWALA SITWALA**<sup>(22)</sup>, the Constitution Court emphasized as follows:

***"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."***

275. The Constitutional Court had earlier guided as to what constitutes or how to determine the "majority" when it held in the case of **MUHALI GEORGE IMBUWA V ENOK KAYWALA MUNDIA**<sup>(2)</sup> as follows:

*"That the "Majority" is the greater number of a part. The word is used only with countable nouns. That the numerical sense of "Majority" has been further elaborated through the use of the term "Widespread" which means widely distributed or disseminated.....In the instant case, there was no evidence to show whether "Many" comprised or could have comprised a significant part of the population of the constituency especially the electorates. More so when the Appellant, in the same manner as the Respondent, only got a minority of votes with about two thirds of the voters not voting for him."*

276. And in terms of assessing the credibility of witnesses, I bear in my mental faculties the wise Counsel of the Constitutional Court to deal with partisan witnesses cautiously. In the case of **MBOLOLWA SUBULWA V KALIYE MANDANDI**<sup>(20)</sup> the Constitutional Court cautioned as follows:

*"In terms of the requirement for corroborating evidence in election petitions, witnesses who belong to a candidate's own political party or who are members of the candidate's campaign team must be treated with caution and require corroboration in order to eliminate the danger of exaggeration and falsehood by such witnesses in an effort to tilt the balance of proof in favour of the candidate that they support. Corroborating evidence is independent evidence that strengthens or confirms other evidence."*

277. The above settled principles of law will inform my mind as I proceed to determine this petition. That is to say the Petitioner bears the burden to prove all her allegations in her petition to a fairly high degree of convincing clarity with cogent evidence that the said allegations were committed by the 1<sup>st</sup> Respondent or by her appointed agents or with their

cosent, approval or knowledge by other people. The Petitioner has to prove to the requisite standard that the alleged acts were widespread to an extent that the majority of the voters in Kalulushi were or may have been swayed from electing a candidate of their choice. That is the yardstick the Petitioner has to surmount.

278. From the above guidance, the issues that fall for determination, therefore, is whether or not the Petitioner has proved to a high degree of convincing clarity that the 1<sup>st</sup> Respondent by herself or through her appointed election or polling agents or with her consent or approval committed all or any of the alleged electoral misconduct or malpractice. And also to determine is whether or not the Petitioner proved to the satisfaction of the Court that the alleged misconduct or malpractice was widespread and as a result the majority of the enfranchised voters of Kalulushi Constituency were or may have been robbed of an opportunity to choose a candidate among the six (6) candidates of their choice.

279. It has to be determined also as to whether or not the Petitioner had proved to the requisite standard that the 1<sup>st</sup> Respondent was not validly nominated. And thirdly, it has to be determined whether or not the 2<sup>nd</sup> Respondent breached its duty in the conduct of the election and as a result it affected the outcome of the said election.

280. Before I proceed with my determination of the above issues, I find as a fact and there is no dispute that both the Petitioner and the 1<sup>st</sup> Respondent were Parliamentary Candidates for Kalulushi Constituency in the 12<sup>th</sup> August 2021 general elections conducted by the 2<sup>nd</sup> Respondent. I also find that the 2<sup>nd</sup> Respondent declared the 1<sup>st</sup> Respondent as the duly elected Member of Parliament for Kalulushi after she polled 18,677 votes while the Petitioner came out second with 17,713 votes. I also find as a fact that the said elections were conducted in the midst of the COVID 19 pandemic and as such the 2<sup>nd</sup> Respondent had at

some point banned public rallies and roadshows and instead allowed candidates to mount a door to door campaign as well as the use of other media platforms, fliers and posters/banners.

281. I now proceed to deal with the specific allegations made in the amended petition. I will start with the allegation that the 1<sup>st</sup> Respondent was not validly nominated as she allegedly never submitted a declaration of her assets and liabilities. In support of such allegation, the Petitioner in her affidavit verifying the amended petition deposed and produced a video recording in which she alleged the 2<sup>nd</sup> Respondent's officials had told the 1<sup>st</sup> Respondent that he documents for nomination were not complete. And that was what she had testified as set out above and called **CHRISTOPHER KOLALA** (PW2) the person who took the video as proof of such allegation.

282. The said video recording was played in Court and we saw it for ourselves that nowhere in that video was the 1<sup>st</sup> Respondent ever told that her documents were incomplete or that she had not submitted a declaration of her assets and liabilities. All what the video recording showed was a commotion by the entrance in which officials from the 2<sup>nd</sup> Respondent were trying to calm down and were even removing a group of people whom the 1<sup>st</sup> Respondent described was an excess number of the required supporters. Indeed the 1<sup>st</sup> Respondent had stood up to talk to the supporters but later sat down while smiling but unfortunately the said video was not complete.

283. This allegation was not proved to a high degree of convincing clarity that it depicted what it alleged to have contained. I am a faithful disciple of our civil law as set out above that the Petitioner and not the Respondents, had the onus to prove all her allegations contained in the Petition to the requisite standard. None of the Respondents had that burden and therefore it was up to the Petitioner to have produced the



nomination documents of the 1<sup>st</sup> Respondent. As serious as the allegation were, I refuse to reverse or shift the onus to the Respondents or anyone of them. Am comforted in this regard as was conceded by the Petitioner that she did not care to verify this allegation by conducting a search with the 2<sup>nd</sup> Respondent. The said video is very speculative.

284. Needless to say that by raising the issue that the first 1<sup>st</sup> Respondent was not validly nominated, is an indirect way of the Petitioner and her formidable legal team intended to circumvent the constitutional provision which provides for challenging of nominations. Article 52(4) of the Constitution provides as follows:

***“(4) A person may challenge, before a Court or tribunal, as prescribed, the nomination of a candidate within seven days of the close of nomination and the Court shall hear the case within twenty-one days of its lodgment.”***

285. I note, however, that it has been argued on behalf of the Petitioner that Article 52(4) does not give a time limit by the use of the word “may” which then means it is not mandatory. I refuse to accept the interpretation that the Petitioner wishes to place on Article 52(4) and as such I refuse the temptation by the Petitioner to be drawn in the forbidden turf of constitutional interpretation of Article 52(4) in this Petition which is the preserve of the Constitutional Court. Article 128(1)(a) of the Constitution provides that subject to Article 28, the Constitutional Court has original and final jurisdiction to hear a matter relating to the interpretation of this Constitution.

286. Article 52(4) is very clear in what it means and requires no interpretation in my view that a challenge to the nomination of a candidate must be done within seven (7) days from close of nomination. And for the benefit of the Petitioner and her legal team, in relation to petitions the

Constitution has consistently used the word 'may' both in Article 73(1) dealing with parliamentary election petition and in Article 103(1) in relation to a presidential petition.

287. As rightly submitted by the Respondents, the Petitioner lost her opportunity to challenge the nomination of the 1<sup>st</sup> Respondent the moment PW2 decided to put the said video in his pocket and allowed the seven (7) days after the close of the nomination to lapse. The discovery of the said video only after the elections does not change the constitutional order as time starts running from the date of the close of the nomination.

288. It must be observed that Constitutional time frames are rigid and ought to be strictly complied with as the Courts do not have any discretion to extend such time once it lapses. The Constitutional Court sounded this warning a long time ago in the majority decision of the case of **HAKAINDE HICHILEMA & ANOTHER V EDGAR CHAGWA LUNGU & OTHERS<sup>(27)</sup>** when interpreting the fourteen (14) days of hearing the presidential petition held as follows:

*"Therefore, where the time for hearing the petition is limited by the Constitution, the Court is bound to enforce the time limit....The time frame within which an election petition must be heard is rigid and the Court does not have discretion to enlarge it."*

289. Who am I then to disregard the provisions of Article 52(4) of the Constitution? Rather I am bound by it and my role is to simply enforce it. In fact it is elementary that the framers of the constitution intended that a challenge of the nomination of a candidate be separate and distinct from an election petition and that same be dealt with before the elections. This is self-evident in that a challenge of a nomination of a member of parliament is provided for in Article 52(4) and must be done with seven (7) days of close of the nomination and determined within 21

days which is separate from Article 73 which provides for an election petition of a member of parliament whose determination is done within ninety (90) days.

290. It follows, therefore, that not only was the alleged invalidity of the 1<sup>st</sup> Respondent's nomination not proved but the said challenge is not tenable as the time within which same could be challenged long expired as such the said challenge fails.
291. The Petitioner had alleged in her amended petition that the 1<sup>st</sup> Respondent was not duly elected as Member of Parliament for Kalulushi Constituency because she allegedly violated the provisions and principles of the Electoral Process Act and the Code of Conduct which largely affected the results of the election to the petitioner's detriment. Specifically, the 1<sup>st</sup> Respondent was alleged to have engaged herself or through her agents and with her knowledge in illegalities, misconduct and unfair practices.
292. In this respect, has the Petitioner proved to the requisite standard that the 1<sup>st</sup> Respondent or by her registered election or polling agents hired or recruited people outside Kalulushi to register and vote from Kalulushi? The Petitioner had testified that after elections she learnt from one **MR. KALASA** about the recruitment and ferrying of people from other districts into Kalulushi to register as voters there and to vote from there in exchange for payment or "empowerment."
293. In order to prove such an allegation, the Petitioner summoned to the stand **AMOS KALASA** (PW3), **NORMAN KASUKU** (PW4) and **PINOT KALASWA** (PW5) whose testimonies have been summarized above. The 1<sup>st</sup> Respondent denied this allegation and indicated that her election agents were **MWENYA** and **LOMBE**. I wish to observe on this allegation that it was alleged that they were recruited in November 2020. This was

before the election campaign had started and at that time there were no elections for which the 1<sup>st</sup> Respondent was a candidate. There was no evidence led that as at November 2020, the 1<sup>st</sup> Respondent had been adopted as a candidate for Kalulushi Constituency or that she knew that she was the one to be adopted as a Candidate to begin to recruit people to vote for her in an election it was not known if she would be adopted by the party.

294. More importantly, I find a lot of contradiction in the testimonies of the said witnesses in their insistence that they were recruited by the 1<sup>st</sup> Respondent and yet in their testimonies they mentioned of **IGNITIUS SIAME** and **MWAPE**. As rightly submitted on behalf of the 1<sup>st</sup> Respondent, none of the said witnesses produced his voter's card to prove that he indeed registered and voted in Kalulushi. No voters register was also produced to show the number of the alleged "foreigners". The said witnesses did not just mention about voting but were also talking about empowerment forms especially **KALASA** (PW3) who claimed to have obtained empowerment forms which were never produced. It remains uncertain and doubtful that there was such an enterprise that the 1<sup>st</sup> Respondent had engaged in way back in November 2020.
295. It is even a wonder that the said witnesses continued with the pursuit of the same enterprise even when nothing was paid to them from their recruitment in November 2020 up to August 2021. In the case of **KALASA** he claimed to have been promised K5,000.00 per month and regalia but nothing was paid and yet he still went ahead with such.
296. Similarly, the testimonies of PW3 and PW4 regarding the incident of malicious damage to the bus, were not truthful as testified by the Officer in Charge for Mindolo Police Station that the person who had reported was Charles the driver and not Kalasa. At this point I observe that witnesses who are called by a party come to support the evidence of that

party. But where the said witnesses come and dispute and contradict the evidence of that party, little or no weight is attached to the issue sought to be proved. Thus, the evidence of the Officer in Charge and exhibit P2 an extract of the Occurrence Book which was meant to corroborate the testimonies of PW3 and PW4 only served to prove that the said witnesses were not truthful. And the same goes for PW5 who were suspect witnesses who could not corroborate each other as submitted by Counsel for the Petitioner.

297. And in relation to the testimonies of PW3, PW4 and PW5 that they were told by **IGNITIUS SIAME** and **MWAPE** that they were being recruited by the 1<sup>st</sup> Respondent, that evidence remained hearsay in so far as the Petitioner and her legal team wishes to rely on it to prove that indeed they were recruited by the 1<sup>st</sup> Respondent and hence inadmissible as the said **IGNITIUS SIAME** and **MWAPE** were not called to testify. Not only that the said **SIAME** and **MWAPE** were not the appointed agents for the 1<sup>st</sup> Respondent and hence she cannot be held accountable for their actions if same happened.

298. The 1<sup>st</sup> Respondent was alleged to have had a sack of money with which she bribed people and bought votes during her campaigns and on the day of voting. That during her campaigns, it was alleged that while the 1<sup>st</sup> Respondent was doing her door to door campaign she gave **MRS. CHIKAYA** (PW14) K60.00 in order to vote for her an incident which was alleged to have been captured on video. The said video was played in Court and the said **MRS. CHIKAYA** took a stand and denied ever being given the alleged money. The video also did not show the 1<sup>st</sup> Respondent giving PW14 any money as alleged.

299. Here again I observe an instance where a witness called to prove an allegation actually contradict such an allegation as never having taken place. Yes there was a video which showed the 1<sup>st</sup> Respondent with the

said witness in which she showed her how to identify her symbol and vote for her and PF candidates. Counsel for the Petitioner, however, submitted to me firstly to find that their own witness was lying when she denied receiving the money. I found such a submission startling when during trial the Petitioner and her legal team did not apply for PW14 to be declared either a hostile witness or refractory witness at which instance Counsel would have been allowed to cross examine her and prove she was lying. And if indeed as submitted PW14 was lying, what weight should I attach to her testimony?

300. Secondly, it was their submission that despite PW14 denying receiving the money and the video not showing any such giving, I should nonetheless infer that money was given merely because the 1<sup>st</sup> Respondent had something in her hands. This is a Court of law whose decision are based on proven facts and it is not the business of the Court to engage in speculation and conjure up facts which the Petitioner herself, through her witness and a video recording had failed to prove. This allegation was not proved.
301. Similarly, the allegation that the 1<sup>st</sup> Respondent held a meeting at the District Commissioner's Office and on 30<sup>th</sup> July 2021 gave a **MR. FRANCIS BANDA** the sum of K250.00 and a chitenge in exchange for a vote was not proved and largely remained inadmissible hearsay as the said **MR. BANDA** was not called to testify.
302. In the case of the alleged K5,000.00 given to the residents of both Lubanga and Chembe wards on 31<sup>st</sup> July 2021 as testified by **ESTHER CHILESHE** (PW7) and **JOHN CHOLA** (PW8) was equally not proved as the photographs relied upon did not capture any such money. There was equally no proof adduced that the Petitioner's posters were torn or removed by the 1<sup>st</sup> Respondent. Like the 1<sup>st</sup> Respondent testified, it was not shown what it would have benefited her by tearing or removing

posters as the Petitioner was a well-known person and as claimed was allegedly even more popular than the 1<sup>st</sup> Respondent going by the votes she got in 2016 as a Mayoral Candidate. There was therefore no proof of convincing clarity that indeed the 1<sup>st</sup> Respondent or her election agents had distributed cash in the various wards of Kalulushi Constituency and that such distribution was widespread and affected the majority of voters to change their choice of a candidate.

303. The donation of K100,000.00 made to Chambeshi Football Club was proved to have been made and the 1<sup>st</sup> Respondent admitted doing so. However, the alleged donation of K14,500.00 to Shalom Church was not proved and the issue was not persisted with in the written submissions. The issue to consider is whether the said donation was a bribe as alleged.
304. In proving this allegation, the Petitioner called **MULENGA CHIPOMA** (PW15) the Secretary of Chambishi Football Supporters Club and **SMART BANDA** (PW16) a Committee Member of the Chambishi Football Club. From the testimony of Chipoma (PW15) it is clear that the initiative to approach for the assistance of the 1<sup>st</sup> Respondent came from Keagan Chibuye, the Media Secretary of the Supporters Association after he heard that Mufulira Wanderers were promised K50,000.00 incentive if they won the last match with Chambishi Football Club. Since PW15 had a bereavement he left the matter with **KEAGAN CHIBUYE** and he later learnt that a pledge of K100,000.00 was made if the players won the match and were promoted to the premier league.
305. And the evidence of **SMART BANDA** (PW16) was that he was called for an emergency meeting at which they were informed of the pledge of K100,000.00 if the players won the game. They received that good news and shared it with the players who were jovial and won the match. And after the match was won the pledge was fulfilled and the money was

taken to the Club by **KEAGAN CHIBUYE** whom PW16 knew as a media secretary of the Supporters Club and did not know if there was any relationship with the 1<sup>st</sup> Respondent.

306. The question is, was this money a bribe intended to influence the voting in Chambishi? I do not think so. As rightly submitted on behalf of the 1<sup>st</sup> Respondent the donation was a philanthropic gesture as it was made only if the club won the game and had no conditions to vote for the 1<sup>st</sup> Respondent attached to it.
307. Taking into account all the circumstances of the case as to how the Petitioner's own witnesses initiated the request for a donation, and also that the same was only paid after the club won, I am persuaded to hold that the donation was a philanthropic gesture. This is more so as it was established that on one (1) or two (2) players in the club were residences of Chambishi and in Chambishi ward the 1<sup>st</sup> Respondent lost lamentably and hence the said donation did nothing if any to influence the voting in the said ward and no conditions were attached. I find solace in this regard in the of **SITALI SITALI V NAMUCHANA SEPISO**<sup>(28)</sup> in which the Constitutional Court defined "philanthropy" as follows:

*"Philanthropy means an idea, event or act that is done to better humanity and usually involve some sacrifice as opposed to being done for a profit motive. For an act to qualify as philanthropic in nature, it should not have any attached conditions."*

308. Both PW15 and PW16 denied that the donation was given on condition that they voted for the 1<sup>st</sup> Respondent but that was meant to boost the morale of the players to win the game and get promoted to the premier league. If this was a bribe because it was given during the campaign period, I pause to ask if the Petitioner's act of buying medicine for **VIOLET BWALYA** (PW22) as she testified and as per the testimony of the



mother **EVELYN BWALYA** (PW23) amount to bribery because the medicine was bought during the campaign?

309. It was also alleged that the 1<sup>st</sup> Respondent by herself and her agents had engaged in vote buying on the eve of the elections on 11<sup>th</sup> August 2021 and on the actual voting date. It was the testimony of **ROBBIE MULENGA** (PW6) a UPND losing Councillor for Musakashi Ward that he was informed by **ANNE BWALYA** another UPND member that some people had taken money to Musakashi Ward K20,000.00 and produced an audio recording of his telephone conversation he had with one **PRISCA KANTUMOYA** a purported polling agent for PF. The recording was played in which the witness had pretended to have been calling from the 1<sup>st</sup> Respondent asking about the alleged money. Firstly, it was not confirmed in the said audio that the money came from the 1<sup>st</sup> Respondent. It was equally not established that the said **PRISCA KANTUMOYA** was an agent of the 1<sup>st</sup> Respondent nor that the money came from the agents of the 1<sup>st</sup> Respondent. Similarly, it was not established what the money was for to constitute bribery on the part of the 1<sup>st</sup> Respondent. This allegation was not proved to a fairly high degree of convincing clarity that the money was given by the 1<sup>st</sup> Respondent or her registered agents. The mere fact that from the recording it appears the money to have been K6,000.00 and not K20,000.00 as alleged and was shared by PF members, that did not constitute an act by the 1<sup>st</sup> Respondent's agents as per the cases of **CHRISPIN SIINGWA**<sup>(25)</sup>, **JONATHAN KAPAIPi AND PONSIO NJEULU**<sup>(15)</sup> as to who an election polling agent is.

310. Therefore, to constitute electoral misconduct or a malpractice, the act must be proved to have been done either by a candidate or his or her registered agent. The Constitutional Court in a plethora of cases has consistently held on a repetitive nature that the electoral misconduct

must be committed by the candidate or their registered agents or with their knowledge. There was no such proof in the audio recording.

311. I was, however startled when it was submitted on behalf of the Petitioner that I take judicial notice of the case record of **ROBBY MULENGA V BWALYA KABWE & PRISCA KANTUMOYA & THE ECZ<sup>(29)</sup>** in which the said **PRISCA KANTUMOYA** allegedly admitted receiving the said money. I found that submission very strange as it amounted to adducing evidence at the bar. It is strange firstly that **ROBBIE MULENGA** was in Court and never testified that the said **PRISCA KANTUMOYA** had admitted in a petition he had filed. All he told the Court was that he had a recording. It is trite that a submission from the bar spirited though it may be is not a substitute for sworn evidence. If the Petitioner wished to rely on the Local Government Petition record she would have done so and the Clerk of Court would have produced such record. So far as the totality of the evidence before me is concerned the money allegedly taken to Musakashi Ward was not proved as having been given by the 1<sup>st</sup> Respondent and any member of the PF is not an agent of the 1<sup>st</sup> Respondent except those who were registered as such.
312. There was also an allegation that on the same eve of the elections in Shimakule area the 1<sup>st</sup> Respondent gave various sums of money. **EDWARD LIBAJI (PW9)** did not prove that indeed he had received K100.00 in the evenings from the 1<sup>st</sup> Respondent. Even assuming he had received, his testimony was that he was not influenced in voting for a candidate of his choice.
313. Added to the above allegation was that the 1<sup>st</sup> Respondent was alleged to have had on many occasions invited voters to her residence and other places in Kalulushi and dished out mealie meal and cash. Sadly, this allegation remained unproved.

314. In relation to events that were alleged to have occurred on the voting day 12<sup>th</sup> August 2021, it was alleged that the 1<sup>st</sup> Respondent had hired voters for K200-K300 from Twaiteka Ward and ferried them to Mwambashi Ward as observed by **SUNDAY SILAVWE**. **SUNDAY SILAVWE** was never called to testify and this allegation remained inadmissible hearsay which never proved the said allegation.
315. It was also alleged that on the said polling day, at Kankoshi Secondary School in Kankonshi Ward and at Pentecostal Holiness Church in Dongwe ward, agents of the 1<sup>st</sup> Respondent known as Safron and Bana Mpaso were paying money to voters on the queues which incidences were witnessed by **MARTIN SAKALA** and **ROMEO BWEMBYA** and that the said incidences were captured on video. There was no proof that the said **SAFRON** and **BANA MPASO** were agents of the 1<sup>st</sup> Respondent and it was not proved that such acts happened. In fact no such video which had allegedly captured the incidences was produced in Court. This allegation was not proved.
316. Similarly, the allegations that the 1<sup>st</sup> Respondent's agents were giving out K50.00 on polling day in Sitwe Ward and a Chitenge as witnessed by **MARIA BWEMBYA** was not proved. Equally not proved was the allegation that **FEBBY SIMWANZA** was an agent for the 1<sup>st</sup> Respondent and was seen by **WESLEY KANGOMBA** paying money in Lulamba Ward was not proved. It is important to note that acts of a third party for which a candidate could be held accountable for, are those done by registered agents. In this petition, the persons alleged to have been agents for the 1<sup>st</sup> Respondent, were not the registered agents for her. Merely by the alleged people being PF Members did not qualify them as agents of the party. But what is even more interesting is that none of all the other witnesses for the Petitioner ever testified that they saw incidences of money being given on queues. Not only that, the said allegation was not

proved to have been wide spread in the 114 polling stations in Kalulushi Constituency.

317. I come to the allegation that at Chibuluma Primary School polling station, there were more votes cast than the number of ballot papers. This allegation was not proved and infact the Petitioner had conceded that there was no such discrepancy as alleged.
318. On the allegation of violence, I first note that none of the witnesses called ever testified that there was any violence on the polling day. The allegation was that the 1<sup>st</sup> Respondent was engaged in various acts of violence and intimidation. It was alleged that the Petitioner's campaigners namely **VIOLET BWALYA** and the Petitioner's Assistant Campaign Manager **WESLEY SIWILA** were beaten by the 1<sup>st</sup> Respondent's Agents. I also note that the victims of the alleged violence were partisan witnesses as they belonged to the Petitioner's campaign team. It is therefore important that the said violence is corroborated by independent evidence because of the danger of exaggeration inherent in such witnesses as cautioned by the Constitutional Court in the case of **MULOWA SUBULWA**<sup>(28)</sup> cited above. I will therefore attach little weight to their evidence cspecially that the medical reports produced were incomplete and hence failed to prove that there was such violence and if so was perpetuated by the 1<sup>st</sup> Respondent's registered agents or with her consent, approval or knowledge.
319. The 1<sup>st</sup> Respondent was also alleged to have disrupted the Petitioner's meetings and campaigns in Zamclay, Ichimpe and Kalanga Wards in violation of the electoral calandar given by the 2<sup>nd</sup> Respondent. However, no such calander was produced in Court for me to appreciate if indeed the 1<sup>st</sup> Respondent violated the same as alleged. Other than that, I am left to wonder, if indeed the 2<sup>nd</sup> Respondent had banned all manner of

campaigns and meetings, how come the Petitioner was arranging the said meetings which were banned?

320. At the risk of underrating or overrating them, I would like to believe that both the Petitioner and the 1<sup>st</sup> Respondent were seasoned politicians who did not enter this political contest as novices in the amateur ranks. I am, however, left to wonder as to why the Petitioner and her witnesses tried to paint their naivety that by the mention of the name "Chela Moche" they would scamper and abandon their intended programmes especially as they said the electoral calendar was on their side. Surely, the Petitioner ought to have asserted her rights to address especially the people allegedly organized by **BEVERLY LUCHANGA** and **CAROL MUKWEKA**. I, therefore, attach little weight to their evidence as they were part of the Petitioner's campaign team and therein lies the inherent danger of exaggeration and falsehood. This is more so that the Petitioner herself did not go there but was allegedly called on phone and as usual decided to let go her opportunity.

321. I now come to the allegation that the 1<sup>st</sup> Respondent through her agents **LEWIS KAMPAMBA** and **BANA NYIRENDA** had deceived and/or threatened to remove beneficiaries from the Social Cash Transfer list if they did not vote for her. I find that this allegation was not proved firstly the named agents were not the registered agents of the 1<sup>st</sup> Respondent. Secondly, both PW20 and PW21 knew that the money did not belong to the 1<sup>st</sup> Respondent but to the donors. In fact PW20 testified that at her age she would not be influenced by anyone and on this aspect she was not influenced from voting for a candidate of her own choice. As far as PW21 who had been on Social Cash Transfer for over a decade, her testimony was hard to believe that she was influenced by such alleged threats to vote for the 1<sup>st</sup> Respondent. In any case there was no proof that she had changed her mind and voted for the 1<sup>st</sup> Respondent.

322. But if for a moment, what PW21 is anything to go by, there was no proof that such threats were widespread and the majority of the voters in the Constituency were or may have been prevented from voting for a candidate of their own choice. This is even evident, that of the two people involved, one was not moved at all to change her mind.
323. Finally I wish to address the two (2) events that had occurred being roadshow addressed by **CHISHIMBA KAMBWILI** and the video of a meeting where the 1<sup>st</sup> Respondent alleged that the Petitioner had stolen/sold land and tyres from Kalulushi Municipal Council garage. In the case of the roadshow, it was alleged that the 1<sup>st</sup> Respondent and her party PF continued to hold campaign rallies despite same having been banned by the 2<sup>nd</sup> Respondent. A video of such an alleged rally held on 29<sup>th</sup> June 2021 was produced. In her response the 1<sup>st</sup> Respondent denied holding such a campaign rally but indicated instead that it was a roadshow that was held using her campaign vehicle and at that time such roadshows had not yet been banned.
324. Although this allegation featured prominently in this petition, I find that the banning of Chishimba Kambwili by ECZ merely coincided with the roadshow the 1<sup>st</sup> Respondent held on 29<sup>th</sup> June 2021. An objective and sober reading of the statement issued by the 2<sup>nd</sup> Respondent on 30<sup>th</sup> June 2021, reveals that the offences Chishimba Kambwili had committed were done long before and not the first time on 29<sup>th</sup> June 2021 in Kalulushi.
325. The said statement is very instructive when it reads in paragraph 2 as follows:

*"As you may be aware, we came to you two days ago to speak about among other things, the need for peaceful and civil campaigns...In that briefing, the Commission noted with concern an increase in hate speech by political parties in their campaign*

*messages. This is against the Electoral Code of Conduct and we called upon media houses not to entertain such utterances. As guided by the Electoral Code of Conduct, media houses were further asked to ensure that all adverts and political party programmes were recorded and stored for reference."*

326. The Commission then continued at page 4 of the Petitioner's bundle of documents as follows:

*"The Commission has reviewed some of these cases and today, we would like to address the conduct of Mr. Chishimba Kambwili, a Member of the Patriotic Front. The Commission has noted with serious concern the breach of the Electoral Code of Conduct by Mr. Kambwili, particularly, the use of hate speech and holding of campaign rallies despite the guidance provided."*

327. The Commission then concluded as follows:

*"Additionally, going against commission decision to suspend rallies and roadshows does not only undermine the work of the stakeholders, it also puts the country at risk in as far as the spread of COVID-19 is concerned. Arising from this, the Commission would like to announce that Mr. Kambwili has been suspended indefinitely, subject to review, from participating in any campaign activities in line with paragraph 11(i)(d) of the Electoral Code of Conduct."*

328. It is clear that the banning of Mr. Kambwili was not for the roadshow he held on 29<sup>th</sup> June 2021 but for events that had happened before. Granted that from that statement, the 2<sup>nd</sup> Respondent mentioned that it had banned roadshows as well, it was not shown how the 1<sup>st</sup> Respondent had persistently violated this ban as the evidence on record shows a single roadshow that was held.

329. The mere fact that a lot of people attended the roadshow, does not amount, in my view that this violation was widespread as submitted by

the Petitioner and her legal team. One incidence does not amount to being widespread merely because of the number of people in attendance. The Constitutional Court in the case of **MUHALI GEORGE IMBUWA V ENOCK KAYWALA MUNDIA**<sup>(2)</sup> had occasion to pronounce itself on what would constitute widespread when it held as follows:

*"That the "majority" is the greater number of a part. The word is used only with countable nouns. That the numerical sense of "majority" has been further elaborated through the use of the term "widespread" which means widely distributed or disseminated....In the instant case, there was no evidence to show whether "many" comprised or could have comprised a significant part of the population of the constituency, especially the electorates. More so when the Appellant, in the same manner as the Respondent, only got a minority of votes with about two thirds of the voters not voting for him."*

330. In this case, it was not shown that the 1<sup>st</sup> Respondent held roadshows in the greater part of the Constituency after same were banned. Similarly, there is no evidence, that the people who attended the roadshows complained of constituted the significant number of the registered voters in Kalulushi Constituency over 67,000 people.

331. The same goes for the video in which the 1<sup>st</sup> Respondent alleged that the Petitioner had stolen/sold land. The said video, firstly, is shown in a closed meeting and there was no proof that the same allegations were widespread. In the case of **MBOLOLWA SUBULWA V KALIYE MANDANDI**<sup>(20)</sup>, the Constitutional Court guided as to what qualified to constitute character assassination. In that case it was held as follows:

*"In order for a statement to qualify as character assassination pertaining to a candidate in an election, that statement must be a false statement of the personal character or conduct of a candidate that is calculated to influence the voters in an election. The nature of the statement in question must be one that causes harm to the reputation of the individual and adversely affects how*



*he/she is perceived by its recipients who in an election are the voters."*

332. Although such a statement was made, the Petitioner, never called any single witness to testify as to how the roadshow which was held and how the statement on stolen land affected the way the Petitioner was perceived by the voters. Thus it was not proved to the requisite standard that the said statement was widespread and affected the majority of the voters in Kalulushi Constituency. This is more so that the Petitioner even emerged a winner in three (3) Wards out of the seven Wards. And not forgetting the claim and the submission that the Petitioner was in fact more popular than the 1<sup>st</sup> Respondent going by the 2016 elections results when she stood as a Mayor and won.
333. However, what was not shown was how the 2016 results had a bearing on the 2021 elections were both stood or vied for the same position. It was not proved that throughout from 2016 the Petitioner remained more popular than the 1<sup>st</sup> Respondent. Of paramount interest was the response given by the Petitioner in cross examination that stolen items were found in her yard to which she alleged the 1<sup>st</sup> Respondent had framed her. The Petitioner had also admitted that during her reign as Mayor Council property went missing and that she was suspended by the party and also that during her tenure as Mayor the Land Agency for Municipal Council was terminated by Ministry of Lands following allegations. Regrettably, however, no single explanation was given in re-examination in relation to the said allegations.
334. In relation to this matter, the 1<sup>st</sup> Respondent insisted that the issues she raised were true and were in the public domain and related to her resign as Mayor for Kalulushi.

335. Thus, the alleged character assassination as alleged was not conclusively dealt with by the Petitioner after admitting allegations in cross examination as having been proved to have been false. And if for a moment same was false, it was not proved how widespread it was and how the majority of the voters were affected by the said statement.
336. Coming to the allegation about the Black Mountain, the video did not prove the allegation that those who supported the Petitioner were denied access. Again I deal with the evidence of PW26 with a lot of circumspection as he held himself out as being one who was campaigning for the Petitioner and had people who were following him. The inherent danger of exaggeration and falsehood has not been eliminated as the video tells a story far from what he alleged it contained.
337. Finally in my assessment of the evidence, I proceed to consider whether as a result of the K100,000.00 donation made to Chambishi Football Club, the roadshow held and addressed by Chishimba Kambwili at which event the 1<sup>st</sup> Respondent never campaigned and the video in which the 1<sup>st</sup> Respondent alleged that the Petitioner had stolen/sold land robbed the majority of the voters from electing a candidate of their choice. This is because it is not enough to prove that a malpractice or misconduct was committed but that it must also be shown that the misconduct complained of swayed the majority of the voters from choosing a candidate of their own choice.
338. This position was emphasized by the Constitutional Court on a repetitive basis in a plethora of cases one of which is **NKANDU LUO & ANOTHER V DOREEN SEFUKE MWAMBA**<sup>(15)</sup> where it was held as follows:

*"In order for a Petitioner to successfully have an election annulled pursuant to Section 97(2)(a) there is a threshold to surmount. The first requirement is for the Petitioner to prove to the satisfaction of the Court, that the person whose election is challenged personally*

*or through duly appointed election or polling agents, committed a corrupt practice or illegal practice or other misconduct in connection with the election; or that such malpractice was committed with the knowledge and consent or approval of the candidate or his or her election or polling agent."*

339. The Constitutional Court then went further to hold that:

*"In addition to proving the electoral malpractice or misconduct alleged, the Petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorates from electing the candidate of their choice."*

340. Whether or not the majority of voters were or may have been prevented from electing a candidate of their choice is much a question of fact that must be determined based on the evidence before the Court. There is no shred of evidence led before me proving to the requisite standard of a fairly high degree of convincing clarity that the K100,000.00 donated to Chambishi Football Club affected the majority of the voters in Kalulushi Constituency. Similarly, there is no evidence before me proving to the said standard, that the allegations of the Petitioner having stolen/sold land or the roadshow held had affected the majority in their choice of a candidate.

341. And in assessing whether indeed the majority of the voters in Kalulushi Constituency were prevented from voting for a candidate of their choice, I note from the Declaration of the Result of the Poll appearing at page 7 of the Petitioner's bundle of documents that a total of **49,305** votes were cast including the rejected ballot papers. Out of that number the 1<sup>st</sup> Respondent polled **18,677** votes and emerged the winner, while the Petitioner polled **17,713** and was second, the third **KALETA MULENGA** (UPND) polled **10,785**, another independent candidate **PATRICK MULENGA** polled **733** and the DP candidate and SP candidate got **289** and **267** respectively.

342. When the votes of the other losing candidates are taken into account, it shows that the total of **29,787** voters did not vote for the 1<sup>st</sup> Respondent. Clearly, such a huge number is not an indication that the majority of the voters in Kalulushi were or may have been swayed by the alleged acts of the 1<sup>st</sup> Respondent who was only voted for by a minority of the voters.
343. There is equally no evidence led that the elections of 12<sup>th</sup> August 2021 were not conducted by the 2<sup>nd</sup> Respondent in substantial conformity with the principles and values of the Electoral Process Act. In fact other than just a single letter written by the Petitioner, all her witnesses admitted that the alleged misconduct was never reported to the 2<sup>nd</sup> Respondent.
344. It is trite law that once pleadings have closed, the parties and the Court are bound by those pleadings. This is so because of the useful purpose that pleadings serve which is to define the issues of which the Court will have to adjudicate in order to determine the matters in dispute between the parties. It is equally trite law that where the pleadings are at variance with the evidence intended to prove the issues raised in the pleadings, the case fails.
345. It follows, therefore, that the Petitioner was duty bound to prove with cogent evidence the issues she raised in her amended petition in order for her to succeed. As is evident from the said amended petition, most of her allegations were generally raised without any specific particulars in the style that the alleged misconduct was prevalent in many wards but only a few wards were specifically identified. Coming to the evidence presented, the Petitioner conceded in her cross examination that she had no shred of evidence of vote buying, disruption of campaigns, violence and intimidation or distribution of mealie meal and chitenge materials. Significantly, her evidence did not prove the allegations in the amended petition or was contrary to what was alleged in the amended petition. Like the purported video of vote buying at the residence of **MRS.**

**CHIKAYA**, the Petitioner even conceded that the said video did not show the 1<sup>st</sup> Respondent giving **MRS. CHIKAYA** any money as alleged. And the same goes for the video of the roadshow in which the Petitioner conceded that the 1<sup>st</sup> Respondent did not campaign in that video and neither was the Petitioner's name mentioned.

346. The position was equally the same regarding the video of the Black Mountain by which the Petitioner conceded that **MR. JIVE** did not talk about her supporters and yet the issue was about protecting the interests of the youths in Kalulushi Constituency against any vultures from other districts who may wish to operate from there. Similarly, the Petitioner conceded that she had no evidence of the threats or if at all the said elderly women were visited with threats of removal from the social cash transfer. And for all the allegations made the Petitioner equally conceded that she only wrote one complaint letter to the 2<sup>nd</sup> Respondent and even then never complained about her posters being pulled down or that her campaigns were disrupted.

347. It is, therefore, surprising on what proven factual basis was it courageously submitted that the Petitioner had proved her petition to the requisite fairly high degree of convincing clarity for me to be urged to nullify the election? And if the Petitioner had indeed proved her petition, why then was it being lamented in her submission that the constitutional 90 days limit within which a petition was to be determined did not allow her to bring more credible witnesses?

348. I wish to observe that election results are not to be petitioned merely because one lost the elections and then embark on a quest to find what may have caused that loss as was the case whereby the Petitioner herself testified that the alleged misconduct only came to her attention or knowledge way after the elections and hence did not even have time to sieve the wheat from the chuff.

349. In my humble view, once a vote has been cast, that vote does not become the property of the candidate but rather that vote still remains the expressed sovereign will and choice of the enfranchised citizens. Thus, the stakes in an election petition are very high and the Courts, as the custodian of the sovereign will of the people will not lightly interfere with the expressed will and choice of the people except where it is shown to the satisfaction of the Court that the free will and choice of the people was subverted by the forbidden electoral malpractice or misconduct.
350. At the end of the day when all is said and done, I still remain unmoved in my seat and my mind is undisturbed as I find and hold that the elections in Kalulushi Constituency were free and fair. The Petitioner has failed to discharge the onus of proving her allegations to a fairly high degree of convincing clarity in terms of the mandatory threshold she had to surmount as per the provisions of the Electoral Process Act to warrant the nullification of the election.
351. This Petition is hereby dismissed and I therefore declare that **KAMPAMBA MULENGA** was duly elected Member of Parliament for Kalulushi Constituency.
352. I, however, exercise my discretion as I did not find any vexatiousness in the prosecution of this petition and order that each party shall bear its own legal costs. Leave to appeal to the Constitutional Court is hereby granted.

Delivered at Kitwe this 23<sup>rd</sup> November 2021

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**C. Chanda**  
**JUDGE**

