

THE REPUBLIC OF ZAMBIA

IN THE LOCAL GOVERNMENT ELECTIONS TRIBUNAL  
AT THE SUBORDINATE COURT REGISTRY  
HOLDEN AT LUSAKA  
(Constitutional Jurisdiction)

2021/ P/LGET/009

IN THE MATTER OF: THE LOCAL GOVERNMENT PETITION RELATING  
TO MPULUNGU WARD 26 ELECTIONS HELD ON  
12<sup>TH</sup> AUGUST, 2021

AND

IN THE MATTER OF: ARTICLE 159 OF THE CONSTITUTION OF ZAMBIA,  
THE CONSTITUTION OF ZAMBIA ACT

AND

IN THE MATTER OF: SECTION 81, 82, 83, 84, 86, 87, 89, 91, 92, 94, 96,  
97, 98, 99, 100 AND 110 OF THE ELECTORAL ACT  
NO. 35 OF 2016

AND

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

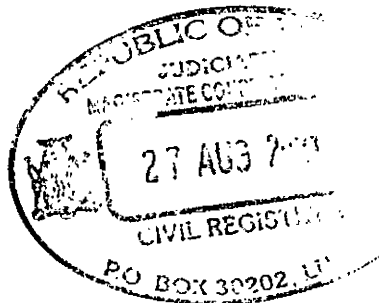
BETWEEN: -

KENSON KAPEMBA

AND

MWANGO CHILESHE

ELECTORAL COMMISSION OF ZAMBIA (ECZ)



PETITIONER

1<sup>ST</sup> RESPONDENT

2<sup>ND</sup> RESPONDENT

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ELECTION PETITION

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The Petition of **KENSON KAPEMBA** of House No. 28/81 Chazanga Compound in the Lusaka District and Province of the Republic of Zambia **SHOWETH** that:

1. Your Petitioner **KENSON KAPEMBA** is a person who was a candidate in the Local Government Election in the **MPULUNGU WARD 26** of Mandevu Constituency

situate in the Lusaka District of the Lusaka Province of the Republic of Zambia having been adopted and sponsored by the **UNITED PARTY FOR NATIONAL DEVELOPMENT (UPND)** and having been validly nomination on the 19<sup>th</sup> day of May, 2021.

2. And your Petitioner states that the Election was held on the 12<sup>th</sup> August, 2021 when the returning officer declared **MWANGO CHILESHE** of **PATRIOTIC FRONT (PF)** as being duly elected.
3. Your Petitioner states that in the Election referred to in paragraph 2 hereof the following were the candidates, namely:
  - i. **PETITIONER UNITED PARTY FOR NATIONAL DEVELOPMENT (UPND)**
  - ii. **RESPONDENT PATRIOTIC FRONT (PF)**
  - iii. **MWANSACHIMWEMWE Z SOCIALIST PARTY (SP)**
  - iv. **MWEWA KAREN PNUP**
  - v. **NKOMA JOSHUA DEMOCRATIC PARTY (DP)**
  - vi. **PHIRI DICKSON NATIONAL DEMOCRATIC CONGRESS (NDC)**
4. Your Petitioner will aver that the said Election was conducted by the 2<sup>nd</sup> Respondent, an independent and autonomous Electoral Management Body created by the Constitution of Zambia Chapter 1 of the Laws of Zambia the 2<sup>nd</sup> Respondent herein.
5. The 2<sup>nd</sup> Respondent through its returning officer **MR. CLIFFORD CHIRWA** declared the results on 16<sup>th</sup> August, 2021 of the said Local Government elections as follows:

i.	<b>MWANGO CHILESHE</b>	<b>6975 Votes</b>
ii.	<b>KENSON KAPEMBA</b>	<b>5201 Votes</b>
iii.	<b>MWANSACHIMWEMWE Z</b>	<b>614 Votes</b>
iv.	<b>MWEWA KAREN</b>	<b>308 Votes</b>
v.	<b>NKOMA JOSHUA</b>	<b>155 Votes</b>
vi.	<b>PHIRI DICKSON</b>	<b>154 Votes</b>

6. Your Petitioner will contend that the declaration of the 1<sup>st</sup> Respondent as duly elected Member of the Lusaka Council for **MPULUNGU WARD 26** was invalid by reasons of the non-compliance with provisions of the Constitution and the non-compliance of the provisions of the Electoral Process Act No. 35 of 2016 and the procedure prescribed and the said Act.

**PARTICULARS OF FAILURE TO COMPLY WITH THE CONSTITUTION OF ZAMBIA AND THE ELECTORAL PROCESS ACT.**

- i. On 15<sup>th</sup> June, 2021 the 2<sup>nd</sup> Respondent suspended all manners of Political campaigns for Patriotic Front (PF) and United Party for National Development (UPND) from 15<sup>th</sup> June to 28<sup>th</sup> June, 2021.
- ii. Despite the aforementioned suspension of all manners of Political Campaigns, the 1<sup>st</sup> Respondent herein and his party Patriotic Front (PF) continued with campaigns activities thereby disadvantaging the petitioner as well as interfering with the independence or impartiality of the Electoral Commission of Zambia.
- iii. During the gazetted campaign period herein, the 1<sup>st</sup> Respondent and his party cadres or agent without lawful authority destroyed, mutilated, defaced or removed all campaign posters, billboards for the petitioner and his party thereby misrepresenting the facts and inducing or procuring in the minds of the voters that the petitioners was not a serious contender and therefore not entitled to votes at the election.
- iv. On different days but during the campaign period, the 1<sup>st</sup> Respondent was seen bribing voters through the distribution of mealie meal and by giving voters money on the voting day in exchange for votes thereby corruptly and fraudulently obstructing voters either at the polling station or on that voter's way thereto from voting for a candidate of his or her.
- v. There was wide spread issuance of fake Gen-20 Forms that contained fake and different figures and the same were swapped with the legitimate Gen-20 Forms during counting. On the polling day the 12<sup>th</sup> August, 2021 or soon thereafter, the 1<sup>st</sup> Respondent and his party cadres or agents were seen changing figures at the Totalling Centres (Olympic Youth Development Centre) for Mandevu Constituency whilst working with some officials from the Electoral Commission of Zambia. This brought about a fracas amongst voters and as a results the Petitioner's Polling Agents were assaulted and

driven out of the Totaling Centres. This left the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Agents at the said Totaling Centre and when the figures were announced, they were totally different from those earlier verified by the Petitioner's Agents.

- vi. There was widespread intimidation and violence by the 1<sup>st</sup> Respondent's cadres or agents during campaigns and as such the Petitioner and his team could not go out to campaign for fear of being attached/assaulted by the 1<sup>st</sup> Respondent's cadres.
  - vii. The 2<sup>nd</sup> Respondent gave directives to all the participating candidates that the campaigns in forms of Political Rallies and Road shows (except on car and loud Speaker) were banned as a measure to minimize the spread of Coronavirus disease (COVID-19). The door to door campaigns was allowed to the extent of two persons per group.
  - viii. with respect to the paragraph vii above, the Zambia Police Service arrested all UPND members who were found conducting campaigns in respect of the above paragraph and UPND could not conduct Road Show through one loud speaker for fear of violence by the 2<sup>nd</sup> Respondent's cadres or agents.
  - ix. The 1<sup>st</sup> Respondent continued with Political rallies, group road shows and group door to door campaigns thereby disadvantaging the other candidates.
  - x. Further, on the voting day 12<sup>th</sup> August, 2021 or soon thereafter, one of the Petitioner's monitors was abducted and taken to the unknown place. The said monitor is still missing up to date.
7. Your Petitioner states that as a consequence of the aforesaid illegal practices committed by the 1<sup>st</sup> Respondent herein and his agents, the majority of the voters' in MPULUNGU WARD 26 and/ or polling stations were prevented from exercising their freedom in electing the candidate in whom they preferred.
8. In the circumstances, the petitioner contends that the 1<sup>st</sup> Respondent was not duly elected in terms of the Constitution and the provisions of the Electoral Process Act.

**THEREFORE, YOUR PETITIONER PRAYS THAT THE COURT MAY GRANT HIM THE FOLLOWING REMEDIES:**

- i. *A declaration that the election of the 1<sup>st</sup> Respondent as a Member of the Lusaka Council for MPULUNGU WARD 26 is null and void.*
- ii. *An Order that the declaration that the winning of the 1<sup>st</sup> Respondent was null and void and must be set aside.*
- iii. *A declaration that the election is invalid by the reason of Non-compliance with the constitution and with the Electoral Process Act and the procedure for the conduct of the election prescribed by the Electoral Commission of Zambia pursuant to the provisions of the Electoral Process Act No. 35 of 2016.*
- iv. *An Order that the 1<sup>st</sup> Respondent be disqualified from being a candidate in the bye-election for not complying with the provisions of the Constitution and the Electoral Process Act.*
- v. *An Order that the 1<sup>st</sup> Respondent bears the Costs in this cause.*
- vi. *Any other relief the Court may deem fit.*

Dated at Lusaka this .....day of ....., 2021.

SIGNED BY:   
**KENSON KAPEMBA**

Per: 

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**LUSAKA**

**ADVOCATES FOR THE PETITIONER**