

REPUBLIC OF ZAMBIA

IN THE LOCAL GOVERNMENT ELECTIONS TRIBUNAL
HOLDEN AT SHIWANG'ANDU
(Civil Jurisdiction)

2021/F/LGET/15

IN THE MATTER OF: ARTICLE 159 OF THE CONSTITUTION
(AMENDMENT) ACT NO. 2 OF 2016 OF THE
LAWS OF ZAMBIA

IN THE MATTER OF: SECTION 106 OF THE ELECTORAL PROCESS
ACT NO. 35 OF 2016 OF THE LAWS OF
ZAMBIA

IN THE MATTER OF: THE LOCAL GOVERNMENT ELECTIONS FOR
~~CHIMUSENSA~~ WARD HELD ON 12TH AUGUST 2021

BETWEEN:

MOSES MULENGA
AND
ALFRED MUMBA



PETITIONER

RESPONDENT

CORAM: CHILINGALA, MWIBA AND CHIPULU ON 24TH SEPTEMBER, 2021

For the Petitioner: In Person

For the Respondent: Mr. L.C. Lemba of Messrs Mulungushi
Chambers

JUDGMENT

CHILINGALA, delivered the judgment of the tribunal.

CASES REFERRED TO:

1. Nkandu Luo & The Electoral Commission of Zambia v Doreen Sefuke Mwamba & The Attorney General, Selected Judgment No. 51 of 2018

2. Chrispin Siingwa v Stanely Kakubo, CCZ Appeal No.7 of 2017
3. Mubika Mubika v Poniso Njeulu, S.C.Z Appeal No. 114 of 2007
4. Mubita Mwangala v Inonge Mutukwa Wina, S.C.Z Appeal No. 80 of 2007
5. Abiud Kawangu v Elijah Muchima CCZ Appeal No. 8 of 2017
6. Kalenge v Munshya & Others, S.C.Z No. 115 of 2012.
7. Margaret Mwanakatwe v Charlotte Scott & Others, Selected Judgment No. 50 of 2018

LEGISLATION REFERRED TO:

1. The Constitution of Zambia (Amendment) Act No. 2 of 2016
2. The Electoral Process Act, No. 35 of 2016
3. The Local Government Elections Tribunal Rules, 2016 (S.I. No. 60 of 2016)

INTRODUCTION

1. This petition follows the Local Government elections for Chamusenga ward held on 12th August, 2021.
2. The petitioner and the respondent were contestants in the said elections; the petitioner under the United Party for National Development (UPND) ticket, the respondent under the Patriotic Front (PF) ticket.
3. Following the aforesaid elections, the respondent was returned as duly elected councilor for Chamusenga ward on 14th August, 2021.
4. Dissatisfied with the election results, the petitioner filed his petition on 27th August, 2021 challenging the respondent's election as councilor for Chamusenga ward.

FACTS ALLEGED IN THE PETITION AND THE RELIEF SOUGHT

5. Following are the allegations contained in the petition:
- (i) That the respondent and his political party were ferrying voters on the poll day.
 - (ii) That the respondent and his political party engaged in bribery by distributing food and giving money to the electorates.
 - (iii) That the District Commissioner was threatening voters with removal from lists of beneficiaries for Social Cash Transfer and FISP if they do not vote for the respondent and his political party.
6. The petitioner is seeking nullification of the respondent's election as councilor for Chamusenga ward.

RESPONDENT'S ANSWER

7. The respondent filed his answer to the petition on 30th August, 2021. He denied each and every allegation contained in the petition.

THE EVIDENCE AT TRIAL

8. Both the petitioner and the respondent gave evidence at trial. The petitioner called four witnesses while the respondent called three witnesses.

THE PETITIONER'S EVIDENCE

9. **P.W.1** was Moses Mulenga, the petitioner herein. He averred that he contested in the 12th August, 2021 elections as

councilor for Chamusenga ward under the UPND ticket. That the respondent contested under the PF ticket. That the respondent was returned duly elected councilor for Chamusenga ward on 14th August, 2021. That he was not satisfied with the election results, hence this petition. And, that his petition was premised on the ground of corrupt practices, illegal practices or other misconduct set out in section 97 (2) (a) of the Electoral Process Act.

10. He stated that on 6th August, 2021 the District Commissioner for Shiwang'andu District called a meeting for all headmen at Chief Chibesakunda's palace and told them to go and urge their respective subjects to vote for the PF and its candidates and that those who will vote otherwise will stop benefiting from Social Cash Transfer funds and FISP program. He stated that he was not personally present at the meeting and did not disclose the name of the person who gave him the information.
11. **P.W.1** further stated that on 11th August, 2021 the respondent while in the company of a Mr. Fuka and a Mr. Mwaba went to disburse Social Cash Transfer funds at Chabola polling station in Chamusenga ward where they told the people to vote for the respondent and the PF and that those who will not do so will be removed from the list of beneficiaries. Again, the witness said he did not personally witness the incident and did not disclose the source of the information.
12. **P.W.1** went further to state that on 7th August, 2021 he was at the house of a Mr. Charles Sabangwa when the respondent while in the company of other unknown people brought mealie-meal and a bucket of cooking oil. That when he

inquired, the respondent told him that the mealie-meal and cooking oil were meant to feed his people on the poll day.

13. **P.W.1** concluded his testimony by stating that on 12th August, 2021 the respondent while in the company of Shi Bright and Aphet ferried voters to Kalikiti polling station and gave them K20=00 each.
14. During cross-examination, he stated that he did not report the incidents of 6th August, 7th August and 11th August, 2021 to any authority. Concerning the incident of 12th August, 2021 he stated that he reported to a Police officer who was manning the polling station.
15. **P.W.2** was Tennant Chanda of Kabale village who averred that on 7th August, 2021 he was by the shops in Kabale village when the respondent and a Mr. Bywell Siwale arrived in a white Canter Truck and offloaded 14 bags of mealie-meal and a bucket of cooking oil at one of the shops.
16. The witness was not cross-examined.
17. **P.W.3** was Richard Chola of Chabola village. He stated that he was among the beneficiaries who received Social Cash Transfer funds on 11th August, 2021. That the funds were being disbursed by a Mr. Fuka, a Mr. Brian Mwaba and the respondent. That Mr. Fuka urged the beneficiaries who were present to vote for the respondent in the 12th August, 2021 elections. That Mr. Fuka further said that those who will not vote for the respondent and the PF will be removed from the list of beneficiaries. He concluded by stating that because of Mr. Fuka's threats, he voted for the respondent.

18. During cross-examination, **P.W.3** stated that he was not aware whether or not Mr. Fuka was the respondent's duly appointed election or polling agent. He also stated that he received K300=00 on 11th August, 2021 and that he did not know the institution Brian Chola was working for.

19. **P.W.4** was Martin Kashiwa of Chamusenga village. His testimony was that he was a registered voter in the 12th August, 2021 elections and that he voted from Kalikiti polling station in Chamusenga ward. That around 07:00 hours on the poll day and whilst at the polling station, he saw a Toyota Noah which he identified as belonging to a Mr. Kapama. That the motor vehicle was being driven by Aphet. He stated that there were a lot of people on the motor vehicle, among them, the respondent. That he inquired from Aphet who told him that the motor vehicle had been hired by the respondent. That he watched as the respondent gave K20=00 to each passenger. That when he confronted the respondent, the respondent gave him K20=00 and urged him to vote for him. That he informed the petitioner and the matter was reported to the Police.

20. **P.W.5** was Chanda Kabumbu, a headman of Sunga village in Chief Chibesakunda's chiefdom. His testimony was that he was one of the headmen who attended a meeting at Chief Chibesakunda's palace on 6th July, 2021. That also present at the meeting was the respondent and the District Commissioner for the Shiwang'andu District. That when addressing the meeting, the District Commissioner appealed to all headmen who were present to urge their subjects to vote for the respondent and the PF, adding that those who will not do so will stop benefiting from the FISP program.

And, that after the meeting, he went and urged his subjects to vote for the respondent and the PF.

21. This marked the close of the petitioner's case.

THE RESPONDENT'S EVIDENCE

22. At the close of the petitioner's case, we ordered the respondent and his witnesses to adduce evidence by affidavit. This we did in exercise of the powers vested in us under rule 20 (3) of the Local Government Elections Tribunal Rules, 2016. As a consequence, the respondent and his witnesses filed their affidavits on 15th September, 2021. Same are on record.

23. **R.W.1** was Moses Mulenga, the respondent herein. He deposed that he did not attend a meeting held at Chief Chibesakunda's palace on 6th August, 2021 and that he did not participate in the disbursement of Social Cash Transfer funds on 11th August, 2021. He further deposed that he never delivered any food at Charles Sabangwa's residence on 7th August, 2021 and that he never engaged in any electoral malpractices during the campaign period for the 12th August, 2021 elections.

24. Under cross-examination, he denied the allegation that he delivered food at Charles Sabangwa's residence on 7th August, 2021 while in the company of other PF official. He denied talking to the petitioner on 7th August, 2021 and telling him that the food was meant to feed the voters on poll day. He also denied the allegation that he gave K20=00 to **P.W.4** on poll day.