

IN THE LOCAL GOVERNMENT ELECTIONS TRIBUNAL 2021/EP/LWN/LG/004  
HOLDEN AT LUANGWA  
(Civil Jurisdiction)

IN THE MATTER OF: ARTICLE 47, 153, 159 OF THE CONSTITUTION OF THE  
REPUBLIC OF ZAMBIA (AMENDMENT) NO. 2 OF 2016

IN THE MATTER OF: SECTION 83, 97, 98, AND 99 OF THE ELECTORAL PROCESS  
ACT NO. 35 OF 2016

IN THE MATTER OF: THE LOCAL GOVERNMENT ELECTIONS TRIBUNAL  
RULES, 2016 (STATUTORY INSTRUMENT NO. 60 OF 2016)

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

IN THE MATTER OF: THE ELECTORAL (CODE OF CONDUCT) REGULATIONS  
2011 STATUTORY INSTRUMENT NO. 52 OF 2011

IN THE MATTER OF: THE COUNCILOR ELECTION FOR MPHUKA WARD,  
LUANGWA DISTRICT, HELD ON 12<sup>TH</sup> AUGUST 2021

BETWEEN:

WILLIAM TEMBO

PETITIONER

AND

BORNFACE TEMBO

RESPONDENT

*Before the Honourable Tribunal:*

*Jennipher Bwalya – Chairperson*

*Waicha Ndhlovu – Member*

*Amanda D.A. Theotis – Member*

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*For the Petitioner* : *In Person*  
*For the Respondent* : *Ms. N. Nambao – Messrs Mulungushi Chambers*

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## JUDGMENT

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### CASES REFERRED TO:

1. *Mabenga v Wina and Others* (2003) Z.R. 110
2. *Anderson Mazoka and Others v Mwanawasa and Others* (2005) Z.R. 138
3. *Mubika Mubika v Poniso Njeulu*, SCZ Appeal No. 114 of 2007
4. *Jonathan Kapaipi v Newton Samakayi*, CCZ Appeal No. 13/2017
5. *Mubita Mwangala v Inonge Mutukwa Wina*, SCZ Appeal No. 80 of 2007
6. *Josephat Mlewa v. Eric Wightman* (1995/1997) Z.R. 106
7. *Nkandu Luo and the Electoral Commission of Zambia v. Doreen Sefuke Mwamba and the Attorney General*, Selected Judgment No. 51 of 2018
8. *Munyamba Likando v. Mayeya Mayeya – 2016/LGET/22*

### LEGISLATION AND OTHER WORKS REFERRED TO:

1. The Electoral Process Act No. 35 of 2016
2. The Electoral Process Act No. 35 of 2016
3. The Interpretations and General Provisions Act CAP 2 of the Laws of Zambia
4. The High Court Rules CAP 27 of the Laws of Zambia

1.1. The Petitioner commenced these proceedings by way of petition on the 25<sup>th</sup> of August, 2021. The petition is brought under Articles 47, 154 and 159 of the Constitution of Zambia, Section 83, 97,98 and 99 of the Electoral Process Act No. 35 of 2016, The Local Government Elections Tribunals Rule No. 60 of 2016, The Schedule to the Electoral Process Act and The Electoral (Code of Conduct) Regulations S.I No. 52 of 2011.

1.2. In his petition, the Petitioner made several allegations. It is alleged under paragraph 3 of the petition, that electoral malpractices were committed by the Respondent and his

political cadres, Patriotic Front (PF) during the campaign period and during voting day, that mealie meal and money was distributed by them to the voters and that voters were told to vote for the PF Candidates. It was alleged further that they told Social Cash Transfer beneficiaries that each polling station would be equipped with cameras to monitor those who will not vote for PF candidates and these would be removed from the program or from the list of beneficiaries for the Social Cash Transfer (SCT). It is further alleged that the SCT payments were made two days before voting day as opposed to normal routine of paying beneficiaries at the month end. It was also alleged that Community welfare assistant committee (CWAC) members were threatening SCT beneficiaries against voting for United Party for National Development (UPND).

1.3. The Petitioner prays that she should be granted the following reliefs and declaration:

- (i) A declaration that the election of the Respondent as Councilor for Mphuka Ward Luangwa District is null and void.
- (ii) A Declaration that the illegal practices committed by the Respondent and their respective political cadres so affected the election results that the same ought to be nullified.
- (iii) An order that the costs occasioned by the Petitioner be borne by the Respondent.

1.4. The Respondent filed his answer on the 13<sup>th</sup> of September 2021. In brief, he denied that he or any members of the PF cadres committed any electoral malpractice such as distribution of mealie meal, kapenta and money to voters or engaged in deceit over the social cash transfer program or any form of victimization of voters before or on poll day. He further denied that he had any control over the alleged conduct of the members of the CWAC. He contends that he was validly elected as area Councilor for Mphuka Ward in the Luangwa District.

1.5 The matter first came up for hearing on the 8<sup>th</sup> of September 2021. On that day, the Tribunal gave Orders for Directions, requiring the Petitioner to pay Security for Costs in the sum of Kwacha Five Hundred (ZMW500.00). The matter was adjourned for commencement of trial to the 15<sup>th</sup> day of September 2021.

1.6 At the hearing, the Petitioner informed the Tribunal that he was wished to discontinue the matter against the 2<sup>nd</sup> Respondent, Electoral Commission of Zambia. There being no appearance on behalf of the 2<sup>nd</sup> Respondent and no objection from the 1<sup>st</sup> Respondent, this application was granted and the matter proceeded against Bornface Tembo as sole Respondent.

## 2. **PETITIONER'S EVIDENCE**

2.1 The Petitioner William Tembo and the Respondent Boniface Tembo, were among the candidates contesting the position of Councilor for Mphuka Ward in Luangwa District Faira Constituency on the 12<sup>th</sup> day of August 2021. The Petitioner stood on the United Party for National Development (UPND) ticket, and the Respondent stood on the Patriotic Front (PF) ticket. Following the said elections, the Respondent was declared victorious and duly elected Councilor for the Mphuka Ward, Luangwa District.

2.2 Being dissatisfied with the said election results, the Petitioner commenced these proceedings by way of petition on the 25<sup>th</sup> day of August, 2021. He gave oral evidence and called three (3) witnesses in aid of his testimony. According to the Petitioner, he observed certain things that affected the elections. Firstly, on the 9<sup>th</sup> and 10<sup>th</sup> of August 2021, some people were told that the money they had received as social cash transfer came from the PF as a party and that as a result all people registered for social cash transfer must vote for the PF. He was told that if he voted for the UPND, he will be captured by the cameras placed at polling stations and consequently removed from the list of beneficiaries for social cash transfer. Secondly, the Respondent was giving out mealie meal as he asked people for a vote. Thirdly, the Respondent gave him mealie meal, kapenta and a K20.00 cash before asking the Petitioner to vote for him.

2.3 Under cross examination from Counsel for the Respondent, the Petitioner stated that he knew the Community Welfare Assistant Committee (CWAC) and that its members are chosen by the community but he did not know whether the Respondent is a member of CWAC. He said that what he knew about social cash transfer is that there are people entitled to receive these funds which are managed by CWAC. The money is received by CWAC from Social Welfare and the duty of CWAC Members is to distribute it to the beneficiaries. He stated that he did not know whether the Respondent was part of the Social Welfare Department. He maintained that he was nonetheless sure through his witnesses that the Respondent was in charge of distributing social cash transfer funds and that the Respondent was in control of it but he did

not know whether Respondent had the power to decide who would be entitled to receive the social cash transfer. He said that 2 cameras were said to be at the polling stations but he did not see them. He reiterated that the Respondent gave him kapenta and K20.00 cash and that is why he lost the elections.

2.4 PW2 was Jenala Mphande and her evidence was that the Respondent came to her house and told her that when casting her vote, she should only vote for the PF and if she does not, she will be captured by the camera at the polling station and as such removed from the social cash transfer list of beneficiaries.

2.5 Under cross examination, PW2 stated that she knew the Petitioner but they were not related. She confirmed that she had been on social cash transfer for 3 years and received same from the School. She conceded that in those 3 years, the Respondent was never around as she collected the funds. She stated that it was on 9<sup>th</sup> August that the Respondent went to her house and that she received the cash on 10<sup>th</sup> August 2021. She stated that she did not know whether the Respondent had any control over the social cash transfer. She reiterated that Respondent told her to vote for him and that the Respondent did threaten her with regard the social cash transfer.

2.6 PW3 was William Sakala whose evidence was that the Respondent was giving out items during his campaigns and that he personally received kapenta and money, which he got when the Respondent visited him at his home. The Respondent came alone and asked him to vote for him or risk being beaten by PF cadres.

2.7 When cross examined by Respondent's Counsel, PW3 said that other than his oral evidence, he had the kapenta and K20.00 note to prove that the Respondent gave him some items. He produced these from the pocket of his pants. He confirmed that he had children but maintained that they are not the ones who gave him the said items.

2.8 PW4 was Albert Mphuka whose evidence was that he received a bag of mealie meal from the Respondent who brought it to him while he was at his garden. The Respondent told him that the reason for gifting him the mealie meal was so that he votes for the PF from Councilor position going up. He produced the 12.5kg bag of mealie meal written DMMU and it was marked P1.

2.9 When cross examined by the Respondent's Counsel, PW4 stated that he had no evidence to show that the Respondent gave him the exhibited P1. In re-examination, he clarified that his evidence was the bag of mealie meal itself.

2.10 This is all the evidence that was received from the Petitioner.

### **3. RESPONDENT'S EVIDENCE**

3.1 The Respondent filed an answer and supporting affidavit. His evidence was that he did not know anything about the testimonies given by the Petitioner and his witnesses. As far as he knew, he won the elections. In the 2016 elections, he lost but did not petition. It was true that he visited PW2 whom he has known since childhood, and the reason for the visit was that they were advised by the ECZ to conduct door to door campaigns owing to the COVID-19 pandemic. His campaigns were violence free and the police could attest to that because there was no record or docket of violence opened in his constituency. The ECZ sent voter educators who sensitized the community in depth on the advantages and disadvantages of malpractice. Both the Petitioner and his witnesses attended these meetings, therefore, he did not know why they did not report to ECZ or the police for their intervention, if there were these issues as alleged. He knew very well that if the exhibited items were known by the ECZ then the ECZ would have stopped the perpetrator's campaigns. The reason he won the elections is because he had stood in 2016 and because he started his campaigns quite early.

3.2 Under cross examination from the Petitioner, the Respondent stated indeed relief food came in his ward in the form of the exhibited P1 and before elections. It was offloaded just behind the Childfund building at a Shelter but he did not receive any mealie meal at his place. Concerning the Petitioner's allegation that bags of mealie meal were being carried from his house by people, said that he did not know when that was. He said he did not know anything about social cash transfer as he was not even a beneficiary. He stated that they were campaigning as a party and not as individuals. He stated that it was only PF assisting him in his campaigns and not any other party because they are the ones he was in agreement with as

his party. He stated that he was familiar with the PF regalia and that the PF cadres were working on their own and their work was voluntary according to the way he knew the party.

3.3 This is all the evidence we received in this matter and both parties filed written submissions, for which we are most grateful. We now state our findings.

3.4 Under paragraph 3 of the petition, the Petitioner alleges that electoral malpractices were committed by the Respondent and his political cadres, Patriotic Front (PF) during the campaign period. We further find that mealie meal and money was distributed by them to the voters and that voters were told to vote for the PF Candidates. It was alleged further that they told Social Cash Transfer beneficiaries that each polling station would be equipped with cameras to monitor those who will not vote for PF candidates and these would be removed from the program or from the list of beneficiaries for the Social Cash Transfer (SCT). It is further alleged that the SCT payments were made two days before voting day as opposed to normal routine of paying beneficiaries at the month end. It was also alleged that Community welfare assistant committee (CWAC) members were threatening SCT beneficiaries against voting for United Party for National Development (UPND).

3.5 The Petitioner prays that she should be granted the following reliefs and declaration:

- (iv) A declaration that the election of the Respondent as Councilor for Mphuka Ward Luangwa District is null and void.
- (v) A Declaration that the illegal practices committed by the Respondent and their respective political cadres so affected the election results that the same ought to be nullified.
- (vi) An order that the cost occasioned by the Petition be borne by the Respondent.

3.6 The Respondent filed his answer on the 13<sup>th</sup> of September 2021. In brief, he denied that he or any members of the PF cadres committed any electoral malpractice such as distribution of mealie meal and money to voters or engaged in deceit over the social cash transfer program or any form of victimization of voters before or on poll day. He further denied that she had

any control over the alleged conduct of the members of the CWAC. He contends that he was validly elected as area Councilor for Mphuka Ward in the Luangwa District.

#### **4 SUBMISSIONS**

4.1 The Petitioner relied on his evidence before the Tribunal and Counsel for the Respondent filed in written submissions for which the tribunal is grateful.

#### **5 THE LAW**

5.1 Section 97 (2) of the Electoral Process Act No. 35 of 2016 deals with the grounds upon which the election of a Councilor shall be void if proved to the satisfaction of the trial court. It states that:

**(2) *The election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be, that—***

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

**(i) *by a candidate; or***

**(ii) *with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and***

***the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred;***

**(b) *subject to the provisions of subsection (4), there has been non-compliance with the provisions of this Act relating to the conduct of elections, and it appears to the High Court or tribunal that the election was not conducted in accordance with the principles laid***

*down in such provision and that such non-compliance affected the result of the election; 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 election petition, and the High Court or a tribunal further finds that such candidate has proved that—*

*(a) a corrupt practice or illegal practice was not committed by the candidate personally or by that candidate's election agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent;*

*(b) such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and*

*(c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent;*

*the High Court or a tribunal shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void.*

*(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.*

5.2 The above provision essentially shows that the grounds for nullification of a petition are found under Section 97 (2) (a) and (b) of the Act. Further, the malpractice must be such that

it is capable of influencing the outcome in an election in that the majority of voters in the district or ward will be prevented from voting for a candidate of their choice.

5.3 The law on Undue Influence comes from Section 83 (1) (a) (b) and (c) and (2) of the Electoral Process Act No. 35 of 2016 which states as follows:

- (1) A person shall not directly or indirectly, by oneself or through any other person—**
- (a) make use of or threaten to make use of any force, violence or restraint upon any other person;**
  - (b) inflict or threaten to inflict by oneself or by any other person, or by any supernatural or non-natural means, or pretended supernatural or non-natural means, any physical, psychological, mental or spiritual injury, damage, harm or loss upon or against any person;**
  - (c) do or threaten to do anything to the disadvantage of any person in order to induce or compel any person—**
    - (i) to register or not to register as a voter;**
    - (ii) to vote or not to vote;**
    - (iii) to vote or not to vote for any registered political party or candidate;**
    - (iv) to support or not to support any political registered party or candidate; or**
    - (v) to attend and participate in, or not to attend and participate in, any political meeting, march, demonstration or other political event;**
- (2) Subject to the other provision of this Act, a person shall not prevent another person from exercising a right conferred by this Act.**

## **6 BURDEN AND STANDARD OF PROOF**

6.1 The first question for consideration in this case, therefore, is whether the Petitioner has proved to the required standard that the Respondent or the Respondent's election or polling agent with the consent, knowledge or approval of the Respondent, did commit any one or more of the alleged acts of electoral malpractice. The burden of proof in an election petition generally lies with the Petitioner. This has been emphasized in a plethora of case law.

6.2 In **Mabenga v Wina and others (1)** the Supreme Court stated:

*“an election petition is like any other civil claim that depends on the pleadings and that the burden of proof is on the challenger of 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’.”*

6.3 In the case of **Anderson Mazoka and Others v Mwanawasa and Others (2)** the Supreme Court had this to say:

*“...for the petitioners to succeed..., it is not enough to say that the respondents have completely failed to provide a defence or not call witnesses, but that the evidence adduced establishes the issues raised to a fairly high degree of convincing clarity in that the proven defects and the electoral flaws were such that the majority of voters were prevented from electing the candidate whom they preferred; or that the election was so flawed that the defects seriously affected the result which could no longer reasonably be said to represent the true free choice and free will of the majority of voters.”*

6.4 In the case of **Mubika Mubika v Poniso Njeulu, (3)** which the Constitutional Court cited with approval in **Jonathan Kapaipi v Newton Samakayi(4)**, the Supreme Court stated that:

*“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 the 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.”*

6.5 Further, in **Mubita Mwangala v Inonge Mutukwa Wina (5)**, the Supreme Court said:

*“In order to declare an election void by reason of corrupt practice or illegal practice or any other misconduct, it must be shown that the majority of voters in a constituency were or may have been prevented from electing the candidate in that constituency whom they preferred...”*

6.6 In the earlier case of **Josephat Mlewa v. Eric Wightman (6)**, the Supreme Court held that:

*“The Court must be satisfied about the scale or type of wrong doing. By scale, it is meant widespread as to influence the majority of voters in the constituency not to vote for their preferred candidate.”*

6.7 In **Nkandu Luo and the Electoral Commission of Zambia v. Doreen Sefuke Mwamba and the Attorney General (8)**, the Constitutional Court stated that:

*“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 that such malpractice was committed with the knowledge and consent or approval of the candidate or his or her election or polling agent...”*

6.8 From the above-mentioned authorities, it can be seen that the standard of proof is generally higher than the usual balance of probabilities. This is because the subject matter of a petition is of critical importance to the welfare of the people and their democratic governance. Elections are also a costly venture and it would not be in public interest to have election Petitions voided unless it can be shown that the alleged malpractices were so widespread that it prevented the majority of voters from choosing their preferred candidate.

**6.9** Further it is incumbent upon the Petitioner to produce cogent evidence as they are required to prove their case to a high degree of convincing clarity. Accordingly, for the Petitioner to prove his case in this petition, he not only has to prove malpractice on the part of the Respondent but also that such malpractice was committed by the Respondent in person, or by the Respondents polling or election agent with the consent or approval of the Respondent and thirdly that the said malpractices was so widespread so as to prevent the majority of voters from choosing their preferred candidate.

## **7 ISSUES TO BE DETERMINED**

7.1 From the pleadings and evidence, the issues for determination by this Tribunal are as follows:

- (i) Whether the Respondent engaged in the following malpractices:
  - a. **Distributed foodstuff and money to the voters and told them to vote for PF candidates.** PW1 testified of being given mealie meal, kapenta and K20 while PW3 testified of being given kapenta and money and PW4 testifies of being given mealie meal. According to the testimony, the Respondent did this personally;
  - b. **Misled SCT beneficiaries into believing that each polling station was equipped with cameras to monitor those who will not vote for PF candidates and that if they didn't vote accordingly, their names would be removed from the SCT beneficiary list.** He misled PW2 and did so personally while canvassing for votes;
  - c. **Caused SCT funds to be paid two days before voting day as opposed to month end as was customary.** No cogent evidence was laid to prove this to the required standard; and
  - d. **Caused CWAC members to threaten SCT beneficiaries against voting for UPND.** No cogent evidence was laid to prove this to the required standard.
- (ii) Whether the above was proved to a high degree of convincing clarity so as to warrant nullification of the election of the Respondent.

## **8 OUR FINDINGS**

- 8.1 **PW1** the Petitioner reiterated that the Respondent gave him a K20, mealie meal and kapenta while asking for a vote from the Petitioner. In cross examinations he confirmed this position without flinching.
- 8.2 We find the evidence of **PW1** to be credible but discounted the weight we attach to it, on account of the fact that PW1 is the Petitioner and therefore a witness with an interest to serve. We further did not see why the Petitioner who was very conversant with the rules and regulations against electoral malpractice could not deny the Respondent's offers and chose to be an accessory.
- 8.3 **PW2** informed the Court that she received money from SCT on the 10<sup>th</sup> of August 2021 and that the Respondent visited her on the 9<sup>th</sup> of August and told her that as she received the SCT she should remember to vote for the Respondent and follow suit from the President, MP and Councilor. We agree with the Petitioner that the Respondent intended to sway PW2 into voting for him by purporting that the SCT was money for the PF when in fact not. She was informed that there were cameras at the polling stations which would capture how she voted and if she voted for any party other than the PF, she would be removed from the SCT list as a beneficiary. She further told the Tribunal that she believed the Respondent. She confirmed that the Respondent threatened her regarding SCT.
- 8.4 We found **PW2's** testimony to be credible and are satisfied that she believed that there were cameras at the polling stations and that if she did not vote for all PF candidates she would be removed from the SCT list.
- 8.5 **PW2's** evidence however amounts to an isolated incidence of a malpractice. For an election to be nullified, it is not enough to show malpractice on the part of the Respondent but that the malpractice was so widespread as to prevent the majority of voters from choosing their preferred candidate.
- 8.6 **PW3** evidence is credible in our view given that even during cross examination the said PW3 maintained that it was indeed the Respondent that gave him money and kapenta and further that the Respondent threatened to beat him if he did not vote for PF and the Respondent in particular.

8.7 PW4 brought the K20 and kapenta and insisted that the items were his evidence to prove that the Respondent bribed him into voting for the Respondent and the PF.

8.8 PW5 testified that the Respondent followed him to the garden to give him a bag of mealie meal. He brought the mealie meal as evidence before us and even though he admitted not having any evidence to link the Mealie meal to the Respondent, he insists that the mealie meal was evidence enough.

8.9 The principle question which all witnesses were called upon to answer was whether each of them had brought before court, evidence linking the Respondent cogently to the alleged malpractice and whether the said malpractice once proved had the effect of preventing a majority of the voters from voting for the candidate of their choice. The Petitioner and his witnesses attested to the fact that the thing they brought was evidence and that the Respondent did in fact give the thing to sway them into voting for him.

8.10 Except that we need to mention that the Petitioner has not convinced us as to the scale of the malpractice and the effect that this wide spread malpractice would have on the electorate.

8.11 We now turn to address the issues relating to the alleged electoral malpractice and wish to state that we are convinced that the was during and before the elections, stints of malpractice which have been proved and wish to condemn with the highest degree of contempt the perpetration of misinformation regarding SCT and bribery. We note further and believe that the timing at which the relief food was brought to the District may not have coincided with any particular disaster especially given that instead of being distributed to a selected group of people the food was distributed to many people without following a particular criterion.

8.12 The malpractice which is fed by the giving of mealie meal, kapenta and money to the witnesses by the Respondent does fall into the category of wrongful conduct and yet the Petitioner has failed to convince us to a fairly high degree of convincing clarity that the said wrongful conduct was so wide spread as to have had the effect of altering the preferences of a majority of voters forcing them not to vote for their preferred candidate.

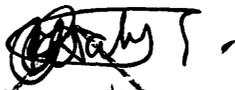
8.13 However, we are not satisfied that the Petitioner has discharged the required standard of proof. We echo the sentiments of our colleagues in the case of **Munyamba Likando v Mayeya Mayeya (8)** where they stated:

***“The candidates or indeed the general citizenry would do well in future to gather sufficient cogent evidence and bring credible witnesses”.***

8.14 We reiterate that it is for the Petitioner to prove his case on a high standard of convincing clarity. From our reading of Section 97 of the Electoral Process Act, it is not enough to show that the Respondent engaged in malpractices but also that it was on such a large scale as to affect the outcome of the election result. We do not believe the Petitioner has succeeded in doing so in this case.

8.15 Accordingly, we dismiss this Petition. We order that each party shall bear their own costs.

8.16 Leave to Appeal is granted.

  
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Hon. J. Bwalya – Chairperson  
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Waicha Ndhlovu – Member  
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A.D.A. Theotis – Member  
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REPUBLIC OF LESOTHO  
MAGISTRATE BUILDING COMPLEX  
4 SEP 2021  
PRINCIPAL RESIDENT  
MAGISTRATE 1  
P O BOX 30202, LUSAKA