

IN THE LOCAL GOVERNMENT ELECTIONS TRIBUNAL

FOR THE LUNTE DISTRICT

HOLDEN AT MPOROKOSO

(Civil Jurisdiction)

IN THE MATTER OF: Article 159 of the Constitution of the Republic of Zambia

AND

IN THE MATTER OF: Section 96 of the Electoral Process Act No.35 of 2016

AND

IN THE MATTER OF: Lunte Ward of Lunte district Local Government Elections held in Zambia on 12th August, 2021.

B E T W E E N:

JOSEPH M.CHILANDO

PETITIONER

AND

GEORGE CHIKWANDA

1ST RESPONDENT

DISTRICT ELECTORAL OFFICER

2ND RESPONDENT

Coram: G. Mulenga, F.Chibwe, I. Kakanda-Chuula

For the Petitioner: In-person

For the 1st Respondent: Mr Benjamin Mwelwa of messrs Linus.E.Eyaa &Partners

For the 2nd Respondent: In person

RULING

Kakanda-Chuula .I, delivered the ruling of the Tribunal

Legislation and Other Materials Referred to:

1. The Constitution of Zambia (amendment) Act Number 2 of 2016, Chapter 1 of the Laws of Zambia.
2. The Electoral Process Act No. 35 of 2016
3. The Local Government Elections Tribunal Rules, SI No. 60 of 2016

Background

This is the Election Petition of Joseph Chilando M who stood as a Councillor, under the UPND, for Lunte ward of Lunte district Constituency election held on 12th August, 2021. Petitioner is challenging the election of George Chikwanda Kaumba, who contested the Lunte ward Seat under the Patriotic Front and was declared duly elected by the Electoral Commission of Zambia. The Petition is made pursuant to the Electoral Process Act, Number 35 of 2016.

On the 10th day of September 2021, on the date set for hearing, the tribunal made orders for directions in which the petitioner was ordered to pay security for costs in the sum of K500 within 5 days from the date of the order in accordance with Rule 13 (6) of the Local Government Elections Tribunal rules Statutory Instrument Number 60 of 2016 of the Laws of Zambia. The petitioner was however not before the tribunal on the scheduled date. On the same date, the 2nd respondent filed a written application into court to be removed from the proceeding of the petition as he believed he was a wrongful party. The matter was adjourned for trial to the 11th day of September 2021.

On the 11th day of September 2021, when the matter came up for hearing, once again the petitioner did not appear before the tribunal., the 1st respondent through his advocates made an application to dismiss the matter as the petitioner's Affidavit verifying the petition was defective as it had a missing Jurat.

The Tribunal set Monday the 13th day of September 2021 as the date on which they would render both rulings on the two applications made by the 1st

respondent and the then 2nd respondent respectively. The tribunal further set the same date as the date for commencement of hearing.

On the 13th day of September 2021, after both rulings were rendered the Tribunal adjournment the matter to 14th September 2021 to allow the petitioner to file an amended affidavit. However, the petitioner was again absent from court on the scheduled date.

Following the non - appearance of the petitioner on the 14th day of September 2021, and none adherence to the order to pay security for costs the Respondent filed into court an application to dismiss the petition . The petitioner did not file any response to the said application.

It is a fact that the Petitioner and the 1st Respondent were both Candidates for Council chairperson for the Lunte district council elections held on 12th August, 2021. It is also a fact that the Petitioner was not before court on the 10th day of September 2021, 11th day of September 2021 and the 14th day of September 2021 without furnishing any reasons. It is similarly a fact that the petitioner has Failed/ neglected to adhered to any of the orders made by the tribunal namely; to file an amended affidavit and to pay security of costs.

The Respondents made an application to dismiss the petitioners petition filed before the tribunal due to non- attendance by the petitioner as well as non - payment of security for costs. In support of this application the respondent referred the tribunal to the following provisions; Article 159 (3) of the constitutional of Zambia (Amendment) Act No. 2 of 2016, Chapter 1 of the laws of Zambia., Section 102 (2) & (3) of the Electoral Process Act No. 35 of 2016 of the Laws of Zambia, rule 18(1) of the Local Government Elections Tribunal rules Statutory Instrument Number 60 of 2016 of the Laws of Zambia and rules 21 (1) and (2) of the Local Government Elections Tribunal rules Statutory Instrument Number 60 of 2016 of the Laws of Zambia. He also referred the tribunal to the

case of *NFC Mining PLC vs. Techpro Zambia Limited (2009) Z.R.236*. Having taking into consideration the arguments of counsel and our interpretation of the law we find that;

Section 102 of the Electoral Process Act provides that;

(1) Subject to the other provisions of this Act, the Chief Justice may make rules regulating generally the practice and procedure of the High Court and tribunals with respect to the presentation and trial of election petitions, including rules as to the time within which any requirement of the rules is to be complied with and as to the costs of and incidental to the presentation and trial of the election petitions and as to the fees to be charged in respect of proceedings therein, and generally as regard to any other matter relating thereto as the Chief Justice may consider necessary or desirable.

(2) After the presentation of an election petition, a petitioner to it shall give such security for costs, not exceeding in amount the sum of eight thousand fee units, as the High Court or a tribunal may order, and such security shall be given within the time and in the manner and form as the Chief Justice may prescribe by rules under this section or, in the absence of the rules, as the High Court or a tribunal may order.

(3) Where, after the presentation of an election petition, no security for costs is given as required by or under this section, no further proceedings shall be heard on that election petition.

Similarly, rule 13 (6) provides that subject to rule 4, the petitioner shall pay the costs not later than five days of the notification referred to in sub rule 5.

Thus, the aforementioned provisions are mandatory in nature, the petitioner has to pay Security for costs within five days failure to which no further proceedings shall be heard.

Further with regards to none attendance, Article 159 Article of the constitutional of Zambia (Amendment) Act No. 2 of 2016, Chapter 1 of the laws of Zambia provides for the establishment of ad hoc election tribunals by the Chief Justice.

Article 159.(1) provides that ;

The Chief Justice shall establish such number of ad hoc local government elections tribunals as are necessary to hear whether-

(a) a person has been validly elected as a councillor; or

(b) the office of a councillor has become vacant.

The said Article allows a petitioner to present their dispute before a tribunal of competent jurisdiction. The petitioner in this case, despite being the party that moved the tribunal made no attempt to attend before this tribunal notwithstanding several adjournments. The provisions of the Local government elections tribunals rules are clear with regards to none attendance.

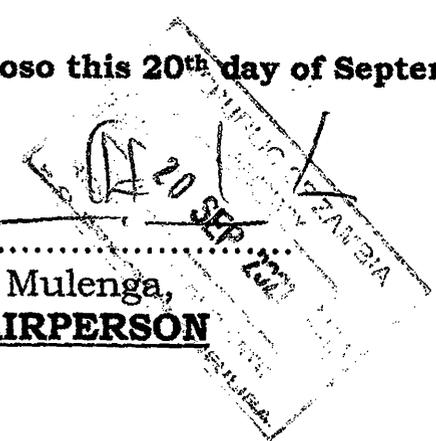
Rule 18 (1) of the Local government elections tribunals rules provides that;

Where the petitioner does not appear at the time and place appointed for the hearing of the election petition, a tribunal may strike off or dismiss the election petition.

For the foregoing we find that the Petitioner has failed/neglected to prosecute this matter. Having stated as above the tribunal hereby dismisses the petition for want of prosecution and for failure to pay security for costs.

Further, considering the nature of election petitions, the tribunal orders that each party bears their own cost.

Delivered in Open Court at Mporokoso this 20th day of September, 2021



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G. Mulenga,
CHAIRPERSON



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F. Chibwe,
MEMBER



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I. Kakanda-Chuula,
MEMBER