

**IN THE LOCAL GOVERNMENT TRIBUNAL  
ELECTIONS FOR NSAMA DISTRICT  
HOLDEN AT MPOROKOSO**

**2021/KAP/LATE/010**

**(CIVIL JURISDICTION)**

**TO THE MATTER OF  
AND**

**SECTION 81.87,99 (A)  
AND 100 (1) OF THE  
ELECTORAL PROCESS ACT  
NO 35 OF 2016**

**IN THE MATTER OF  
AND**

**RULES 8 (I) ( C) AND 9 OF  
THE LOCAL GOVERNMENT  
ELECTIONS TRIBUNAL  
RULES OF 2016**

**IN THE MATTER OF**

**THE ELECTIONS OF  
COUNCILLOR FOR CHISHI  
WARD CHIMBAMILONGA  
CONSTITUENCY IN  
NORTHERN PROVINCE OF  
THE REPUBLIC OF ZAMBIA  
HELD ON 12<sup>TH</sup> AUGUST,  
2021**

**BETWEEN:**

**KAPEMBWA PEVIOUS  
AND  
KACHISHA MARTIN**

**PETITIONER  
  
RESPONDENT**

**CORAM: HON-G.MULENGA, MR F. CHIBWE AND MS I. KAKANDA-CHUULA**

**FOR THE PETITIONER:  
FOR THE RESPONDENT:  
PARTNERS**

**IN PERSON  
MR B. MWELWA OF LINUS E. EYAA &**

---

## **JUDGEMENT**

---

**Honourable G. Mulenga delivered the judgment of the tribunal**

**CASES REFERRED TO:**

1. CONSTATINE LINE VS IMPERIAL SMELTING CORPORATION (1942) AC 154.
2. KHALID MOHAMED VS A.G (1982) ZR 49.
3. AKASHAMBATWA MBIKUSITA LEWANIKA AND OTHERS VS FREDRICK JACOB TITUS CHILUBA (1998) ZR 79
4. ABUILD KAWANGU VS ELIJAH MUCHIMA APPEAL NO 8 OF 2017.
5. MUBIKA MUBIKA VS PONISO NJEULU, SCZ APP NO114 OF 2007.
6. JONATHAN KAPAIPi VS NEWTION SAMAKAYI CCZ APP NO. 13 OF (2017)
7. NKANDU LUO AND ECZ VS DOREEN SEFUKE MWAMBA AND A. G  
SELECTED JUDGEMENT NO. 51 OF 2018
8. MARGRET MWANAKATWE VS CHARLOITE SCOTT SC NO. 50 OF 2018
9. CHRIPIN SIINGWA VS STAINLEY KAKUBO CCZ APP NO. 7 OF 2017

**STATUTES REFERED 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 (SI) NO. 60 OF 2016.

This is the petition for Chishi Ward in the Nsama District of the Northern Province of the Republic of Zambia filed at Kaputa subordinate court but heard at Mporokoso pursuant to rule 14 of the Local Government Election tribunal rules of 2016.

The petitioner Pevios Kapembwe presented this petition challenging the election of the respondent Kachusha Martin the duly elected Councilor for Chishi ward in the Nsama District. In his petition filed on 25<sup>th</sup> August, 2021, the petitioner stated that he was a candidate in the said ward on the United Party for National Development whereas the respondent stood on the Patriotic Front party in the elections which took place on the 12<sup>th</sup> August, 2021 in the Chishi ward of Nsama District of the Northern Province of the Republic of Zambia and that the Respondent was declared as duly elected by the returning officer from the Electoral Commissions of Zambia. The petitioner alleged that the Respondent by himself and/or through his agents and officials from the sponsoring party Patriotic Front did engage in electoral malpractices as follows:

- (a) That on the pull day in chishi ward Patriotic Front members were buying off voters cards as an inducement for them to vote for the respondent.
- (b) That the night before poll day, the presiding officers at various polling stations were giving money to the electorates under the guise of social cash transfer and were telling people that if they did not vote for the Patriotic Front and the respondent were not to be given more money and that they were going to know those who were not going to vote for the Patriotic Front because they were going to put cameras to be connected to the computers to know who were not going to vote for the respondent.
- (c) That on the poll day in chishi ward Patriotic Front members were telling the voters that if they do not vote for the respondent they were going to be removed from the (QUAC) Social cash transfer program.
- (d) That they were bribing voters on the poll day in Chishi ward by giving them food as an inducement for them for vote for the respondent.

The petitioner further prayed that the said respondent Kachusha Martin be declared not duly elected and the election be declared void. The respondent in his defense denied all the allegations and contended that he was duly elected Councilor for Chishi ward. We warn ourselves from the outset that the burden of proof in an election petition as in any all civil matters, lies on the petitioner who must establish the electoral offence complained of. The dicta of the English court of appeal in the case of Constantine line vs. Imperial smelting

corporation (1942) AC 154 at page 174 states as follows; Per Lord Maugham when he opined thus.

**"In general, the rule which applies is ei qui affirmat non ei quin agatin cumbit probation (proof rests...on the who affirms not he who denies). It is an ancient rule founded on consideration of good sense and should not be departed from without strong reasons;**

The Zambian higher Courts have given similar guidance on the issue. In 1982 in **Khalid Mohamed vs. A-G (1982) ZE39**, where the Supreme Court said on burden of proof;

**"An unqualified proposition that a plaintiff should succeed automatically wherever a defense has failed is unacceptable to me. A plaintiff must prove his case and if he fails to do so the mere failure of the opponents defense does not accept a proposition that even if a plaintiffs case inaction collapsed or for some reasons other judgments should nevertheless be given to him on the ground that a defense set up by the opponent has also collapsed. Quite clearly a defendant in such circumstances would not even need a defense. We held in that case that a plaintiff cannot automatically succeed when defense failed, he must prove his case.**

In another case of **Akashambatwa Mbukisita Lewanika and other vs. Fredrick Jacob Titus Chiluba (1998) ZR 79** the court observed".

**"The question that occupies my mind in this particular case whose duty is to prove what is asserted, namely that Luka Kafupi Chabala is the father to the respondent without much ado, the burden is upon the petitioners who should satisfy the court that Luka Kafupi Chabala is the father and in doing so they cannot be assisted by the respondent.**

The consequence of the authorities cited above is that a petitioner who has failed to prove his case cannot be entitled to judgment, whatever may be said of the respondent's case. The standard of proof remains higher distinct from the required in in an ordinary civil matters..... elections petitions are required to be proved to a standard higher than on a mere balance of probabilities and issues raised to be established to a fairly high degree of clarity. Thus, the evidence adduced in support of allegations made in an election petition must establish the issues raised to a fairly high degree of convincing clarity. The petitioner gave

testimony and called two witnesses while the respondent also testified and called 3 other witnesses. PW1 was Kapembwa Previous the petitioner who stated that during campaigns, they were threats or UPND voters that if they voted for the UPND were not going to benefit from (QUAC) social cash transfer and that they were going in the removed from fertilizer for both the vulnerable and the cooperatives. He also alleged that when the social cash transfer was paid some UPNDs members like Kapungwe Kelvin, Mulenga Chansa and Mary Mukuka were not paid. Petitioner further alleged that people were threatened that they were going to be phones to know who was not going to vote for the Patriotic Front and that on the poll day Mathews Chansa a Patriotic Front agent and Daniel Chansa with phones in the polling station which they were lifting like photographing thereby threatening voters and that he was able to see because it happened when he was on the line to cast his vote such that he even complained to the presiding officer who told him that he was going to stop them.

The petitioner went on to allege that on 11.08.2021 the Patriotic Front were giving mealie meal and that he only come to know this after meeting a village headman from Kanjili with 2 bags of mealie meal who told him that he was given by Meshach Mulenga of the Patriotic Front what he later confirmed by his grandmother who told him that she was also given mealie meal by Meshach Mulenga. The Petitioner also alleged that Patriotic Front supports started celebrating early before the official announcement of results by the presiding officer which made his agents not to sign on the official results and that on 17<sup>th</sup> August, when called for recount was surprised to be told that respondent had won and was asked to sign the official results which he said he declined to do. In cross examination he admitted results being announced on 16.08.2021 in his presence but that he didn't know if the respondent was also present and confirmed his agents to have refused to sign the official results on 13.08.2021. If wards results are not announced at the ward level he answered in the negative and later said its not only signing of official results by his agents that he wanted the results to nullified but because the results were announced by a wrong person. On the threats he said they were from the patriotic Front and the respondent on social cash transfer being a Patriotic Front program. Petitions maintained the social cash transfer to have been paid on 11.08.2021 and that he even got some for his being paid Mrs. Ngandu whom he said was could not mention earlier because she was being led by the patriotic front. And if Mrs Ngandu was the only pay point manager he answered in the affirmative and further said that Mrs Ngandu was not the presiding officer. He also said that social cash transfer was paid between 15:00 hours and 16:00 hours and not in the night and later stated who qualifies for such social cash transfer. If at all he had any proof to have received social cash transfer for his grandmother,

presiding officers paying social cash transfer or if it was paid on the night of 11.08.2021 he answered if the negative. Petitioner did not re-execrate himself.

PW2 was Chama Martin who stated that in May, 2021 heard the Patriotic Front saying that the beneficiaries in the UPND were not going to be paid social cash transfer which later lead to the wife not to be paid. But when he went to Mrs Ngandu to complain the non-payment of the wife's social cash transfer she told him that it was the committee's decision and that later stage heard the Patriotic Front using the non-payment of the wife to him as an example to the UPND. He also alluded to the threats of UPND being removed from the fertilizer and the issue of the phones in the booths to know those who were going to vote the UPND as well as the refunding of the same for fertilizer through the district commissioner for the cooperatives and that their maize was not going to be weighed at the sidelight for FRA and that he was even assaulted in the process. He said that the matter was reported to the police.

PW2 also echoed that the social cash transfer was paid on the 11.08.2021 the night before elections which according to him affected the votes. He also said that he found the respondent, Nsama Bubenshi and Kandama threatening one UPND member who ran away without voting. PW2 further said that respondent and his party on 11.08.2021 slaughtered goats, chickens and continued threatening voters and that on 12.08.2021 he was told by Dukas father that they were giving cooking oil and bags of meali meal. He also said that on the poll day in the night the Police came and intimidated people after slapping someone and that some people left without voting. PW2 also said that on the poll day he saw respondent giving a certain lady K10.00 while telling her to vote for him but that the said lady ran away without voting.

PW2 lastly said that on the poll day Patriotic Front constituency chairman entered the polling station and later came out with the presiding officer while issuing threats.

But when cross examined, he said he was actively involved and monitoring because he was a party official even if he had not said he was a party official. He further said that the lady who was given K10.00 was Molia Chongo and that voting ended around 02:00 hours and not 03:00 hours as petitioners had said. PW2 also said that Mathews Chansa at Dan were Patriotic Front polling agents who were also using phones like photographing and that the same was reported to the Police and the petitioner was informed but that the never informed the presiding officer. Asked why the petitioner never talked about it if he knew about the photographing with the phone, people being given goats and chickens, he said may be had just forgotten to do. He also denied telling petitioner Jenipher's issue and went on to state

who qualifies for social cash transfer.. If he had seen anyone buying voters cards he said he saw the respondent and that it was from Molia Chongo and that no any other Patriotic Front members brought voters cards. He also denied seeing the presiding officer giving money on the night of 11.08.2021. If he had seen anyone giving out food on the poll day he answered in the negative and later said that it was Abel Munung who was threatening people who were not going to vote for the respondent but that he was not calling him as a witness. PW2 was not re-examined. PW3 was Kapembwa Aaron who stated that when social cash transfer was being paid on 11.08.2021 heard people who was not going to vote for the Patriotic Front were not to be given more cash social transfer and be removed from fertilizer and even those who had paid through comparatives were going to be refunded through the District Commissioner which made people not to vote for the petitioner and that they were to be known through the phones to be in the booths.

PW3 further said that on the poll day he saw Steven Musonda come with the phone who later walked out with the presiding officer. But when cross examined he reiterated respondent giving a K10.00 on the poll day the information he said was passed on to the petitioner and that in person it was given to was Henry Lupupa, but that the same was never reported to the Police. If he had seen anyone buying voters cards he said the same and of giving K10.00 which he never reported to the Police as the presiding officer. PW3 also said that he also saw respondent and his team giving food like mealie meal, chicken to people including Henry Lupupa and that all this was happening in the full view of Electoral Commission of Zambia officials. If he had seen presiding officers on 11.08.2021 giving out money to people while telling them to vote for respondent he answered in the negative and went on to add that he never saw anyone buying voters cards on the poll day but that the social cash transfer was paid on 11.08.2021 by Mrs Ngandu whom he said was not a Patriotic Front member that at no part did she tell people to vote for Patriotic Front. In re-examination he said it was the respondent telling people to vote for him. In defense respondent denied there being any problems during either campaigns or voters cards buying and that the same was never reported anywhere. He also denied presiding officers giving out money on 11.08.2021 while threatening people who were not to vote for the respondent and added that social cash transfer is governments program and not Patriotic Front program. He also said Mrs Ngandu is the pay point manager and was not even the presiding officer.

Respondent also denied voters being given food on the poll day as well as in Kalwilo that at no point did he threaten people over social cash transfers or fertilizer the programs he said

have since continued even under UPND government and that there was no way he could he just gave mealie meal to the same person Daka;s father as if he was the only UPND members in the village. But when cross examined he denied any fertilizer being used and want on to say that it was Patriotic Front in power during campaign period. On who was working with the pay point manager he said not know because he was not in the committee and further said that he knew social cash transfer was not Patriotic Front who paid because he was a resident of that area and that from the time of MMD the money is paid for the School. Respondent further maintained that social cash transfer was paid between 8<sup>th</sup> and 10<sup>th</sup> August, 2021 and that he had no any proof to that effect. He also denied to he have campaigned in Kalwilo on 11/08/2021. He also denied being given anything by anyone for him to also dish out. There was no any re-examination. RW2 was Chansa Mathews who stated that he never saw presiding Officer Chundu Benjamin giving out money on the night on 11/08/2021as that he never witnessed the buying of voter's cards on 12.08.2021 from any person. He also denied respondent giving out food to people on the poll day and that social cash transfer was paid between the 8<sup>th</sup> and 10<sup>th</sup> of August, 2021 and that there was no photographing of voters at Kanjili polling station.

But when cross examined he said Chishi ward has one ward and that it was the presiding officer who announced the respondent as the winner. He also said that the polling station is mutumpike while Kanjili is a district polling station. He also said that shimusasa has one polling station called mutumpike . One who is mandated to pay the social cash transfer he was said only the pay point manager who is drawn from Shimusase village. RW3 was Misheck Mulenga who denied seeing respondent giving mealie meal to people and that he never saw any social cash transfer committee member giving social cash transfer. He also denied seeing respondent giving mealie meal at /the polling station on 12.08.2021. He also getting voters cards from anyone so that they can vote for him.. He also denied seeing anyone using the phone to photograph any person as he was polling agent. He also denied seeing the presiding officer Mr Chundu giving out money to anyone. But when cross examined he denied having any p0sition in the social cash transfer committee but that he knew that no money was paid out because he never received any report to the effect. If the phone he had has a camera he answered it the affirmative and went on to deny any person photographing anyone. There was no re-examination. RW4 was Steven Musonda who said that he was a member of the Conflicts Management Committee for Patriotic Front and that he was also an election agent. He went on to say that in Chishi ward there was no any complaint recorded by the Conflicts Management Committee like voters card buying as he also went on to allude to



the composition of the said committee and the role of he such a committee which he said sat on 4 occasions and that the committee only dealt with 4 issues but nothing came from the UPND. Issues discussed was the torching of Patriotic Front's posters in Lusango ward, the torching of Patriotic Front's boat in Nsambu, the Patriotic Front's boat in Nsama and the attempt to burn the house of the petitioner aunt's House in Chishi ward. RW4 went on to state that with the aforesaid after said it meant that the issue of voters cards buying never arose or the issue of giving food to people on the poll day. He further said the performance and conduct of elections was evaluated on 17.08.2021 where it was agreed that all went on well and as such all the allegations before the tribunal were false as even the minutes of the at the council can show to that effect.

In cross examination he said he came to Chishi ward to do his work and that he entered all the polling stations to resolve issues and to promote peace. On how she knew that the people who wanted to burn the house were from UPND, he said she told him that the aunt was not sleeping and that is how she was able to prevent the house from being burnt. That was the respondent's case. We find that it is not in dispute that the petitioner and the respondent did contest the position of a councilor in chishi ward in the elections held on 12<sup>th</sup> August, 2021 and that the respondent was declared duly elected. What is in dispute is whether the said elections were marred by wide spread electoral malpractices and this is the matter that requires determination by this tribunal. This election petition was filed pursuant to Article 159(3) of the Constitution of Zambia (Amendment) Act No. 2 of 2016 which reads "A person may file an election petition with a local government elections tribunal to challenge the election of a Councilor. It is further anchored on section 97(1) and (2) (a) (i) and (ii) of the electoral process, Act, No. 35 of 2016. The relevant portions of the said section 97 reads:

**"(2) the election of a candidate as Councilor shall be void if on the trial of an election petition, it is proved to the satisfaction of the tribunal that as 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 candidates, election agent or polling agent; and that the majority of voters in a ward were of may have been prevented from election of the candidate in that ward who they preferred;**

The provision of section 97 (2) (as of the election process Act reveals that the election of a candidate as a Councilor can only be nullified if the petitioner challenging the election of the candidate proves to the satisfaction of the tribunal that the candidate in question personally committed a corrupt practice or illegal practice or other misconduct in relation to the election or that the corrupt practice or illegal practice or misconduct was committed by other person with the candidates knowledge, consent or approved or that the candidates election or polling agent. In addition to the above where it is proved that a corrupt practice or illegal practice or other misconduct was committed by a candidate or with the knowledge and consent or approval of the candidate or that of the candidate election or polling agent the petition must further that as a result of that corrupt or illegal practice or misconduct the majority of the voters in the constituency were or may have been prevented from electing the candidate in that ward whom they preferred. In other words, it is not sufficient for a petitioner to prove only that a candidate committed a corrupt practice or illegal practice or engaged in other misconduct in relation to the election without prove that the corrupt practice.

In the case of **Mubika Mubika vs. Poniso Njeulu, SCZ APPEAL No. 114 of 2007** which the constitution Court cited with approval in **Jonathan Kapaipi vs Newton Samakayi, CCZ Appeal No. 13/2017** the Supreme Court stated that:

**“The provision for declaring an election of a members of Parliament void is only where whatever activity is complained of it is proved satisfactorily that as a result of that wrong 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 wide spread 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 greets number of registered voters were prevented or might have been prevented from electing their preferred candidate.**

In **Nkandu Luo and the Electoral Commission of Zambia vs. Doreen Sefuke Mwamba and the Attorney General, Selected Judgment No. 51 of 2018**, the constitution 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 challenging personally or through his duly appointed election agent or polling agent, committed a corrupt practice or illegal practice or other misconduct in connection with the election or that such malpractice was committed with the full knowledge and consent of the candidate or his election polling agent. And further that: “In addition to proving the electoral malpractice or misconduct illegal the petitioner has further task of adducing cogent evidence that the electoral malpractice or misconduct was so wide spread that it swayed or may have swayed the majority of the electorates from electing the candidate of their choice.**

Further, in **Margret Mwanakatwe vs. Charlotte SCOTT, Selected Judgment No 50 of 2018**, the court said that 1st Respondent did not adduce any evidence to prove that the prohibited act was wide spread and affected the result of the election by preventing the majority of the electorates from electing their preferred candidate and so rendered the election a nullity. It should be noted that a candidate is liable only for a corrupt or illegal act or other misconduct that he or she committed in connection with the election and those committed by his election agent or polling agent, or those done with his or her knowledge, approval or consent. In the **Nkandu Luo** case which we cited earlier, the constitution court held that a candidate cannot be held liable for acts of members of candidates’ political party or other persons who are not candidate election or polling agent. It is therefore not sufficient for the petitioner to say that the act complained of was done by the members of the respondent’s political party or his supporters. Section 20 of the **Electoral Process Act** defines an election agent as 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 while a polling agent is defined as an agent appointed by a candidate in respect of a polling station. In the case of **Chrispin Siingwa vs Stanley Kakubo, CCZ Appeal No. 7 of 2017** the court held that regulation 55(1) of the electoral process (General) regulations is clear in its provisions and requires that an election agent must be specifically appointed and named in the candidates nomination papers. We now turn to consider the specific allegations which the petitioner is relying on to impugn the election of the respondent herein. We will consider each allegation, the law and the facts in that regard and dispose of it accordingly.

We will start with the issue of the Patriotic Front members in Chishi ward buying voters cards. We must state that none of the petitioners witnesses talked about the allegation as who was buying the said voters cards and who there were bought from and even the person it was allegedly bought from. This being the case we are of the view that this allegation never took place as it not has not been proved at all. This being the case this allegation has failed to be proved accordingly. Secondly on the issue of the night before he presiding officer at various polling stations giving money to the electorates under the guise of social cash transfer, we will state that they were never alluded to by the petitioner and all his witnesses and as none of them even talked about on this aspect. It was also found that it was not the mentioned presiding officer who use be actually be pay point managers but rather other people and as such this aspect also cannot be proved and therefore is fund not be true sand cannot be said to be relied on.

At this juncture we wish to state that the allegation in (b) was bloated or overloaded and it is necessary that the allegation involved be broken into parts. Suffice to say that the first part has since been alluded to above. Having addressed the issue of presiding officer on night before paying money under the guise f social cash transfer it is clear that the said social cash transfer was not paid by the respondent or any other his agent as the petitioner not has not told this tribunal that it was the respondent who was giving out the said social cash transfer or it was election agent or polling agent as the law provides for the respondent to be found wanting and as such there is nothing or evidence connecting the respondent the respondent to this allegation.

On the aspect of people being told that if they do not vote or the Patriotic Front they were not going to be paid any social cash transfer and them being threatened and that this was done by the respondent and the Patriotic Front members. We must state that the petitioner and his witnesses all said that the respondent was actually involved in this allegation. However the respondent and his witness also denied this to have taken place. We also must state that they were no independent witnesses brought before the tribunal that they were threatened by these sentiments that made them not to vote for their candidate of their own choice. Furthermore it also must state that these threats were not proved to have been widespread so as to influence the electorates in the area and that as a result of these threats made people not to vote for the candidates of their own choice. We have said this because the petitioner because the who is supposed to prove this did not call witnesses to prove this allegation especially that the standard of proof in an election petition is very high and also because it was not even clear at

how many polling stations this issue took place. On the issue of people being threatened with phones we also must state that only two witnesses said that this happened while the respondent witnesses also said this never happened. We also wish to state all polling stations are manned by police officer and presiding officers but none of the petitioners witnesses told the tribunal if the presiding officer were notified about these acts of these people who were lifting the phones like were photographing. We also wish to state that it is also extremely difficult to believe that such a thing happened because none of the people threatened by these acts were brought before the tribunal or even the people who were in the que with the petitioner who might have witnessed these acts. It is also worthy that it was also not demonstrated to what extent this influenced voters or how widespread so as to make voters not to vote for their preferred candidates and what influence it had on the voters and as such this allegation can also not be said to have been proved.

As the allegation of Patriotic Front member in paragraph (c ) telling people that they were going to be removed from the QUAC program. It is clear that this allegation is made against the Patriotic Front as a party and it has nothing to do with the respondent or his election agent or polling agent and it is not clear if it was done with his consent or his blessing and as such we cannot even dwell on that.

Lastly but not the least on the issue of bribery voters on the poll days in Chishi ward by giving them food as an inducement for them to vote for the respondent. It is clear that the Respondent was not singled out to be the one who as giving out the said food as it was clear that the food was prepared from somewhere and people were going to eat from there. It is also not clear how wide spread this act was and how it influenced voters so as not to vote for their candidates of their choice. It is our considered view that the petitioner since has failed to prove these allegations against the respondent as he has also neglected to pin it on the respondent and his agents that they was the ones who were buying the voters with some food. It is also not in dispute that none of the people who are alleged to have also benefited from this food were bought before this tribunal to confirm that indeed they benefited from this fund and that made them or swayed them from voting for their preferred candidate.

With the foregoing, it is our considered view that none of the allegations by the petitioner have been proved that it was him or his agents who committed the alleged illegalities and that they did in fact take place. This being the case we are of the view that the petitioner has not proved to a convincing degree of clarity to warrant the avoidance of Kachusha Martin's election. The petition is accordingly dismissed. Although costs normally abide the event we

order that each party bears their own costs. The petitioner is informed of his right of appeal to the Constitutional Court within fourteen (14) days from the date of this judgment.

Petition dismissed.

  
22 SEP 2022  
HON M MULENGA  
CHAIRPERSON

  
F. CHIBWE  
MEMBER

  
I. KAKANDA CHUULA  
MEMBER