

**IN THE LOCAL GOVERNMENT ELECTIONS TRIBUNAL 2021/QO/LGET/14  
FOR THE MKUSHI DISTRICT  
HOLDEN AT MKUSHI  
(Civil Jurisdiction)**

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

**IN THE MATTER OF:** THE LOCAL GOVERNMENT ELECTIONS FOR  
CHIKANDA WARD COUNCILLOR HELD ON 12<sup>TH</sup>  
AUGUST, 2021

**IN THE MATTER OF** THE ELECTION OF FUNDICHUMA MWANSA AS  
COUNCILLOR CHIKANDA WARD

**B E T W E E N:**

**MABVUTO SIMUKONDA  
AND  
FUNDICHUMA MWANSA  
AND  
ELECTORAL COMMISSION OF ZAMBIA**



**PETITIONER**

**1<sup>ST</sup> RESPONDENT**

**2<sup>ND</sup> RESPONDENT**

**Coram: F. Kaoma, CB. Maimbo, N. Simachela**

For the Petitioner: In Person  
For the 1<sup>st</sup> Respondent: Mr. E. Khosa of Messrs BCM Legal Practitioners  
For the 2<sup>nd</sup> Respondent: N/A

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**J U D G M E N T**

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**Maimbo C.B. delivered the Judgment of the Tribunal**

**Cases Referred to:**

1. Nkandu Luo & Another vs Doreen Sefuke Mwamba & Another, Selected Judgment No 51 of 2018

2. Mubika Mubika vs Poniso Nseulu, Selected Judgment No. 114 of 2017
3. Jonathan Kapaipi vs Newton Samakai Constitutional Court Judgment Number 13 of 2017.
4. Michael Mabenga vs Sikota Wina and 2 Others (2003) ZR p.110
5. Anderson Kambela Mazoka and Others vs. Levy Patrick Mwanawasa, The Electoral Commission of Zambia and The Attorney-General (2005)ZR p.170
6. Steven Masumba vs Elliot Kamondo Selected Judgment No. 53 of 2017)

**Legislation and Other Materials Referred to:**

1. **The Electoral Process Act No. 35 of 2016**
2. **The Local Government Elections Tribunal Rules, SI No. 60 of 2016**

This is the Election Petition of Mabvuto Simukonda who stood as a Councillor, under the United Party for National Development (UPND), for Chikanda ward of Mkushi Constituency election held on 12th August, 2021. The Petitioner is challenging the election of Fundichuma Mwansa, who contested the Chikanda ward Seat under the Patriotic Front (PF) and was declared duly elected by the Electoral Commission of Zambia and is seeking the following reliefs;

1. A declaration that the 1<sup>st</sup> Respondent was not duly elected as Councillor for Chikanda Ward and that his election is null and void
2. Costs to be borne by the 1<sup>st</sup> Respondent
3. Any other relief the Court may deem fit.

The Petition is made pursuant to Sections 97, 98 and 99 of the Electoral Process Act, Number 35 of 2016, and alleges the following:

- a) The election of the 1<sup>st</sup> Respondent to the office of Chikanda Ward was neither free nor fair as the elections were marred by intimidation, vote buying, bribery and abuse of government resources which was the order of the day.
- b) That from 21<sup>st</sup> to 22<sup>nd</sup> July 2021, the 1<sup>st</sup> Respondent was seen dishing out money to marketeers in Chikanda ward and telling them to vote for him in order to continue receiving money.

The 1<sup>st</sup> Respondent took advantage of the fact that he was part of the then ruling party and distributed mealie meal from the Disaster Management and Mitigation Unit (DMMU) at several funerals in Chikanda ward during the campaign period to convince voters in the ward to vote for him.

- d) That on the day before elections on 11<sup>th</sup> August 2021 the 1<sup>st</sup> Respondent with other members of the PF distributed Social Cash Transfer funds to voters who were told to vote for PF candidates or risk losing the funds if UPND won.
- e) That in several areas where polling stations are situated, members of the PF slaughtered cattle the day before the elections, and told the voters to go and feast on the beef meat after voting for the PF. Many people were seen gathered in those places on poll day, feasting on the beef.

The Petitioner testified on his own behalf and called four witnesses.

PW1 was Mabvuto Simukonda, the Petitioner and his testimony was as follows: He decided to contest the elections because they were not free and fair as they were characterised by lies, intimidation, bribery and vote buying which resulted in the Petitioner losing the election to the 1<sup>st</sup> Respondent.

PW1 testified that on 21<sup>st</sup> July 2021, around 14 hours, the 1<sup>st</sup> Respondent went to the market in Masansa in motor vehicle registration number BCC 6567 in the company of other people in PF regalia and the group disbursed money to the marketeers whereupon they urged the marketeers to vote only for the 1<sup>st</sup> Respondent and other candidates on the PF ticket on 12<sup>th</sup> August 2021. PW1 stated that he witnessed this incident as he was in the market at the time. PW1 stated that this was repeated the next day, 22<sup>nd</sup> July 2021 at another market in Sikaonga, Masansa, where the 1<sup>st</sup> Respondent again with a group of people gave out money to marketeers.

W1 further stated that on 13<sup>th</sup> July 2021, the 1<sup>st</sup> Respondent held a meeting at a place called Katengi in Masansa. At the end of the meeting, PW1 averred that the 1<sup>st</sup> Respondent lined up the people attending the meeting, gave them money and told them to vote for the 1<sup>st</sup> Respondent, assuring them that if they did, there would be better things to come than what they got that day. PW1 stated that he came upon the meeting on his way back from the farm and witnessed what happened.

PW1 then stated that, on 11<sup>th</sup> August 2021, at Makolongo Polling Station, in Makolongo area in Chikanda Ward, the 1<sup>st</sup> Respondent accompanied by two women in a Harrier motor vehicle, registration No. BCC 6567 visited some bars near the polling station. He alleged that the women left the 1<sup>st</sup> Respondent in the vehicle, went in to greet the patrons of the bar and urged the patrons to vote for the 1<sup>st</sup> Respondent. The women then went back to the vehicle whereupon; the 1<sup>st</sup> Respondent got out of the vehicle and gave the women money. The ladies then returned to the bars and gave the money to a Mr. Lameck Mumba; a resident of Makolongo who then dished out the money urging people to vote for the 1<sup>st</sup> Respondent. PW1 felt that as a result of the 1<sup>st</sup> respondent giving out money, people did not vote for him as councillor as he didn't have money.

PW1 also stated that he felt oppressed as the 1<sup>st</sup> Respondent and the then ruling party PF used government resources to lure people to their side. To support this allegation, PW1 stated that on 28<sup>th</sup> May 2021 at the funeral of Bright Sanka, the 1<sup>st</sup> respondent in the company of Mr. Evans Bwalya (PF candidate for Council Chairperson) and Christopher Chibuye (PF candidate for Member of Parliament) visited the funeral house where they donated food which included a sack of cabbages and ten 12.5kg bags of mealie-meal meant to be distributed by the Disaster

Management and Mitigation Unit (DMMU) under the office of the Vice President. PW1 was present at the funeral.

PW1 testified that on 4<sup>th</sup> August 2021, at another funeral for a Mr. James Kapema, in the same Chikanda ward, the 1<sup>st</sup> Respondent met members of the family of the deceased and invited them to visit his home to collect a donation for the funeral. PW1 alleged that the family members were given six 12.5kg bags of DMMU mealie meal.

PW1 further testified that at yet another funeral on 26<sup>th</sup> June 2021, for Mr George Musaba, the 1<sup>st</sup> Respondent, Evans Bwalya and Christopher Chibuye donated twelve 12.5 kg of DMMU mealie-meal, three plastic bags of kapenta and three bottles of cooking oil.

As regards the Social Cash Transfer, the Petitioner informed the Tribunal that on 20<sup>th</sup> July 2021, the 1<sup>st</sup> Respondent together with a Mr. Collins Meleki and Mr. Bob Mumba went to Makolongo Primary School where people were receiving money under the same Social Cash Transfer program. The Petitioner informed the Tribunal that the 1<sup>st</sup> Respondent and his two companions told the people at the school that if they wanted to continue receiving money under the program, then they needed to vote for the 1<sup>st</sup> Respondent and his party as a vote for UPND would result in the program being removed. Further, the Tribunal was informed that on 10<sup>th</sup> August 2021 the 1<sup>st</sup> Respondent went to Masansa Primary School where people were collecting their money on the Social Cash Transfer Program. The 1<sup>st</sup> Respondent in the company of his colleagues Loveness Sondashi and Gerald Longwani urged the crowd at the school to vote for all the candidates on the PF ticket, telling them that if they voted for UPND, the, UPND would remove the program. The petitioner averred that this statement made him and the UPND seem like they did not care for the vulnerable. He also stated that as the statement was made two days before the election,

were still fresh in the minds of voters and resulted in the voters not voting for the

The Petitioner further stated that on 11<sup>th</sup> August 2021 at Mukulaulo, the 1<sup>st</sup> Respondent bought a cow which was slaughtered at "Shi Molo's" house and was later brought to Mr Webby Muchinda's house (the PF youth Chairman), where people were gathered and where a goat was also slaughtered and a local drink known as Munkoyo was brewed. PW1 informed the Tribunal that people from the villages gathered at the said house to partake of the meat. He further informed the Tribunal that the 1<sup>st</sup> Respondent told those that were gathered that only those that voted for the PF would partake of the meat. PW1 stated that all the things he had stated are what led to him losing the election.

In cross examination, PW1 stated that Webby Muchinda was a member of the PF, that he had seen the places for cooking as they approached the elections and that he had been present during the slaughter of the cow. He stated that he had followed the UPND calendar for campaigning which was the same as the one for the Electoral Commission of Zambia (ECZ). He could not remember the calendar dates as it had been a while. He denied following the 1<sup>st</sup> Respondent around stating that some of the incidents happened at funerals that he was also attending as they live in the same area.

PW1 said he did not know what government department administered the Social Cash Transfer but agreed that it was a government program and administered by civil servants. He did not know whether the 1<sup>st</sup> Respondent was a civil servant. He was aware that the DMMU mealie meal was under the Vice President's Office.

With respect to the incident in Makolongo, PW1 said he did not know whether Lameck Mumba was the 1<sup>st</sup> Respondent's agent but only knew that Lameck got the money from the 1<sup>st</sup> Respondent.

PW1 also didn't know who organised the meeting in Katengi, he just found the meeting was on as he passed through the area. He said he did not go into the meeting as it was an opponent's meeting.

When questioned about the incidents in the market on 21<sup>st</sup> and 22<sup>nd</sup> July, PW1 said he was present on the 21<sup>st</sup> but not the 22<sup>nd</sup> and he witnessed the 1<sup>st</sup> respondent handing out face masks first before he handed out money

As regards the feeding camps, PW1 said they were different distances away from the polling stations. He said one of the feeding camps at Mr Chipepo's residence was quite close to Ngweu Malokota polling station although he could not estimate the distance.

**PW2 was Regan Mulunga** and his testimony was as follows: that on 21<sup>st</sup> July 2021, the first Respondent visited Masansa market where he proceeded to hand out face masks and twenty kwacha notes to marketeers. It was PW2's testimony that the 1<sup>st</sup> Respondent then urged the marketeers to vote for him as the Petitioner had not given them anything in the market

In cross examination PW2 admitted having received the money, that he was a registered voter and that he voted on 12<sup>th</sup> August 2021. He stated that receiving the money influenced the way he voted. PW2 stated that he bought food with the money. PW2 stated that about one hundred or more people received the money. He denied belonging to a political party but admitted that he was a polling agent for UPND and was monitoring at Masansa polling station. He stated that

Masnsa polling station had two streams which had 751 voters each. He stated that the total votes cast in stream B were 458 but he did not know the figures for stream A.

In re examination PW2 said that he was unsure about the figures.

**PW3 was Victor Chikumba** who testified that on 28<sup>th</sup> May 2021, the 1<sup>st</sup> Respondent and Evans Bwalya attended the funeral of Bright Sanka where they donated 10 bags of DDMU mealie meal and a sack of cabbages. He was present at the funeral.

PW3 further informed the Tribunal that on 3<sup>rd</sup> July 2021, his grandfather Mr. James Kapema died. He stated that he, his young brother and Given Tolo met the 1<sup>st</sup> Respondent and other ward officials around 17:00 hours when they went to buy the coffin and the 1<sup>st</sup> Respondent asked them to collect a donation towards the funeral from his house. They collected six bags of DMMU mealie meal.

PW3 further informed the Tribunal that on 11<sup>th</sup> August 2021 the 1<sup>st</sup> Respondent met them at the PF Youth Chairman's house where the 1<sup>st</sup> Respondent stated that a cow would be slaughtered and brought there. They also slaughtered two goats and brewed a local drink known as munkoyo. He testified that the 1<sup>st</sup> Respondent stated that only those that voted for PF would be allowed to partake of the food. He then urged the people present to vote for the people on the PF ticket for Councillor, Council Chairperson and President. PW3 stated that DMMU mealie meal was used to brew the Munkoyo.

In cross examination PW3 stated that he attended Bright Sanka's funeral and that he was aware that the deceased was a PF member who had held a position in the party. He denied that he was

also a PF member and stated that he was just a mere voter. He stated that he met the 1<sup>st</sup> Respondent and ward officials at Masansa Market around 15:00 hours during the funeral of his grandfather and that it was the 1<sup>st</sup> Respondent who gave them the bags of mealie meal when they went to his house. He said he did not go into the house when collecting the mealie meal but his cousin who went inside told him that the 1<sup>st</sup> Respondent was inside.

PW3 stated that he only knew of the feeding camp at Mr. Muchinda's house as that is where they used to meet. He admitted to partaking of the food cooked. He said he did not know whether the 1<sup>st</sup> Respondent was a government employee.

In re examination PW3 stated that at Mr Webby Muchinda's house, a lot of people were found there although he couldn't say whether they were all PF supporters.

**PW4 was Laban Mwelwa** and he gave evidence that on 13 July 2021, they were at a meeting at "Bana Bonny's place" in Katengi where they were addressed by the 1<sup>st</sup> Defendant. He told the Tribunal that at the end of the meeting, the 1<sup>st</sup> Respondent gave all those present at the meeting Twenty Kwacha (K20) notes each stating that it was something to remember him for the coming Election Day.

He further told the Tribunal that he was a member of the Community Welfare Assistance Committee (CWAC) whose job is to witness people receiving money for Social Cash Transfer. He stated that on 10<sup>th</sup> July 2021 while people were collecting their funds at Masansa Primary School, the 1<sup>st</sup> Respondent came to the school. One of the CWAC members by the name of Gerald Longwani and a recipient of funds Loveness Sondashi who was also on the 1<sup>st</sup>

Respondent's campaign team told people that the Councillor had arrived and that people should vote for PF otherwise they would lose the program as UPND and other parties did not have social cash transfer in the manifestos. He stated that the words were uttered by both the 1<sup>st</sup> Respondent and his colleagues. PW4 stated that he reprimanded Mr Longwani as Social Cash Transfer was a non partisan scheme.

In cross examination, PW4 stated that the meeting in Katengi had less than 50 people due to the covid-19 guidelines and was organised by the PF Ward Chairman. He stated that he was one of the recipients of the Twenty Kwachas. He refused to state whether receipt of the money influenced his vote as that was his secret. He said Social Cash Transfer was administered by the government and that the 1<sup>st</sup> respondent was not a government employee.

In re examination PW4 identified the 1<sup>st</sup> Respondent as the person who gave him the money.

**PW5 was Langson Jose Chibuye** who stated that sometime in June 2021, he was at the funeral of a Mr George Mangi Masaba where the 1<sup>st</sup> Respondent attended and donated food which included three plastic bags of kapenta, two bottles of cooking oil and 12 bags of mealie meal. He said he had wondered about the mealie meal that had been donated but reasoned that since the District Commissioner was family he must have authorised it.

PW5 further informed the Tribunal that between the dates of 20<sup>th</sup> or 21<sup>st</sup> July, he went to collect money from the Social Cash Transfer scheme. While they were waiting the 1<sup>st</sup> Respondent came with a Mr Meleki and encouraged people vote for him because if they didn't they would never see the money again.

PW5 then stated that on 11<sup>th</sup> August 2021 at a bar, the 1<sup>st</sup> Respondent came with two women where they met with Nyambe Milupi, a PF official. They addressed people urging them to vote for the 1<sup>st</sup> respondent and thereafter they gave out money of which the witness got Ten Kwacha.(K10)

In cross examination, PW5 stated that he spoke to the women although he didn't know their names. He said the 1<sup>st</sup> Respondent gave the money to the women who handed over to Nyambe who also handed over to Lameck Mumba who in turn gave it out to the people. He also stated that at the funeral, it was the 1<sup>st</sup> Respondent's vehicle that carried the food that was donated. He stated that the 1<sup>st</sup> Respondent was not the one giving out the Social Cash Transfer funds.

#### **RESPONDENT'S CASE**

**RW1 was Fundichuma Mwansa, 1<sup>st</sup> Respondent** who testified that the elections held on 12<sup>th</sup> August were free and fair as there was no intimidation, vote buying or abuse of government resources. He stated that he filed in an answer to the petition and prayed that the tribunal would admit it as part of the evidence.

RW1 testified that Masansa Market is in two wards namely Matuku and Chikanda wards and the two wards are separated by the road. He stated that he went to the market to sell himself as a candidate and the only things he gave out was face masks and his success in the polls was strictly due to his campaign messages.

As regards to the meeting in Katengi, he denied handing out any money and reiterated that the only explanation he would give for voters once elected and this is what enticed them to vote for him.

He denied being in the places alleged by the Petitioner's witnesses on 11<sup>th</sup> August as he and his team were resting in readiness for polling day. RW1 informed the tribunal that he did not know Lameck Mumba and that Mr Mumba was not his election agent. He stated that he only had two election agents namely Mr Emmanuel Mwape and Mr. Kelvin Kunda.

RW1 told the tribunal that he did not attend Mr. Bright Sanka's funeral as he was in Masensa at the time on a campaign program. RW1 also said that he was not around during the funeral of James Kapema as he had gone with his campaign team to Chinyonya area. As such, he stated that no one went to his house to collect mealie meal and that it was impossible for him to have DMMU mealie meal in his possession as it was a government program and he had never worked for the government and only government officials have authority to deal it.

As regards Social Cash Transfer, RW1 denied ever dealing with the scheme as he had no authority to deal with it as it was also a government program stating that he was not in Makolongo when money from Social Cash Transfer was being given. He denied knowing Bob Mumba and only admitted to knowing Keliias Meleki whom he stated was the vice ward Chairman for Chikanda Ward.

RW1 said that cow that was slaughtered on 11<sup>th</sup> August 2021, was meant for members of the campaign team and was shared between the five camps in Chikanda Ward and those in Matuku Ward. He denied having offered voters meat as it was strictly meant for the campaign team. He averred that the meat was not even enough to feed the campaign team

PW1 in conclusion told the Tribunal that his ward had 31 branches and each branch had 24 people. Further, there were 24 ward officials. All of these totalling 768 people were part of the campaign and he believed these numbers helped him win the election. PW1 stated that in his ward there were five polling stations and he managed to get 1226 votes in these stations while his opponent got 667 votes.

In cross examination RW1 reaffirmed his earlier statement that he only handed out face masks when he went to the market but expressed ignorance of the health guidelines that prohibited politicians from donating masks directly to the public. When questioned as to why they slaughtered a cow and goat the day before elections when campaigns had ended he stated that it was the food they wanted to eat.

Both parties opted to make oral submissions as follows;

### **PETITIONER'S SUBMISSIONS**

The Petitioner submitted that in view of the evidence that he had submitted from events he personally observed the events observed by his witnesses and brought before this Tribunal, he was satisfied that that the 1<sup>st</sup> Respondent's defence was not sufficient because other than himself, the 1<sup>st</sup> Respondent had failed to bring any witness to support his position. The petitioner stated that corruption, lies, buying of voters and giving anything to voters as a way of campaigning in order to induce them to vote for you is an offence.

The Petitioner said that it was for the reasons stated above that he was asking the Tribunal to nullify the election of the 1<sup>st</sup> Respondent as councillor for Chikanda Ward.

**RESPONDENT'S SUBMISSIONS**

Mr. Khosa on the behalf of the 1<sup>st</sup> Respondent submitted that the Petitioner and his witnesses had not sufficiently discharged the burden required to overturn an election in line with the provisions of Section 97 of the Electoral Processes Act No. 35 of 2016. He submitted that the Petitioners witnesses had given contradictory testimony with regards to the specific dates and alleged events which occurred on the said dates.

Mr Khosa submitted that as both parties were candidates for the Chikanda Ward elections, neither one of them were civil servants and thus had no hand or control over the programs of the Government of the Republic of Zambia under the Office of the Vice President's Department of Disaster Management and Mitigation Unit and the Social Cash transfer Scheme under the Ministry of Community Development and Social Services.

Mr Khosa further submitted that during the campaign period, activities were restricted in accordance with the Covid-19 guidelines issued by the Ministry of Health in consultations with the Electoral Commission of Zambia. Thus door to door campaigns were encouraged to avoid overcrowding so as not to create super spreader Covid-19 rallies. This in itself meant that participating political parties created campaigning camps for purposes of the door to door activities.

Counsel then called to his aid the cases of **NKANDU LUO, ELECTORAL COMMISSION OF ZAMBIA V DOREEN SEFUKE MWAMBA AND THE ATTORNEY GENERAL SELECTED JUDGMENT NUMBER 51 OF 2008** , **MUBIKA MUBIKA V PONISO NSEULU SELECTED JUDGMENT NUMBER 114 OF 2007** and **JONATHAN KAPAIFI V NEWTON SAMAKAI CONSTITUTIONAL COURT JUDGMENT NUMBER 13 OF 2017.**

We are grateful to the parties for their submissions and have carefully considered the viva voce evidence of all the witnesses that testified in this election petition.

It is not in dispute that the Petitioner and the Respondent were both Candidates in the Chikanda ward of Mkushi North Constituency Local Government Elections held on 12th August, 2021. It is also not in dispute that the Respondent was declared the duly elected Councilor for the Chikanda ward of Mkushi North Constituency. It is that election that the Petitioner challenges. The allegations levelled against the respondent are those of corrupt and illegal practices.

At this point we feel it prudent to give the grounds upon which an election can be annulled. Section 97 (2) of the Electoral Processes Act No. provides as follows;

***“(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;***

What constitutes illegal and corrupt acts are contained in Part VIII of the same Act in particular sections 81, 83, 84, 85, 86 and 87 as well as The Electoral Code of Conduct. The task at hand for this Tribunal is thus to determine whether the 1<sup>st</sup> Respondent engaged in these acts and whether the said acts would warrant nullification of the election as provided under Section 97(2).

For the sake of clarity we shall tackle the allegations in the sequence presented in the election

In the first instance, the petitioner alleged that from 21<sup>st</sup> to 22<sup>nd</sup> July 2021, the 1<sup>st</sup> Respondent was seen giving out money to marketeers in Chikanda ward and telling them to vote for him in order to continue receiving money.

The Petitioner stated that he was present in the market on 21<sup>st</sup> July 2021 when the 1<sup>st</sup> Respondent allegedly handed out money. Other alleged incidents of the 1<sup>st</sup> Respondent giving out money to induce voters included on 13<sup>th</sup> July 2021 in Katengi where the 1<sup>st</sup> Respondent is said to have dished out twenty Kwacha notes after the meeting and on 11<sup>th</sup> August 2021 at a bar in Makolongo where money was given out to patrons by Lameck Mumba. The incident in Kalengi was supported by the evidence given by PW4 whilst PW5 gave evidence in support of the incident at Makolongo

The 1<sup>st</sup> Respondent on the other hand denied the allegations and stated that the only things that he handed out in the market were face masks and denied any incidents of giving out money to induce voters

Evidence to support the allegations in the market was led by PW2. However, PW2's evidence only supported what transpired on 21<sup>st</sup> and not 22<sup>nd</sup> July 2021. PW1 did not tender a witness to corroborate what transpired on 22<sup>nd</sup> July. Further, as PW1 stated that the information about the 22<sup>nd</sup> was not first hand, the allegation of the 22<sup>nd</sup> July cannot be supported. Further, although

PW2 had stated that he did not belong to a political party he nonetheless agreed that that he was a polling agent for the UPND in the election. In the case of **STEVEN MASUMBA V ELLIOT KAMONDO SELECTED JUDGMENT NO. 53 OF 2017**) the Constitutional Court offered the following guidance on the matter;

*Witnesses from a litigant's own political party are partisan witnesses whose evidence should be treated with caution and require corroboration in order to eliminate the danger of exaggeration and falsehood.*

In this instance whereas PW2 gave evidence in support of PW1 as regards the events, on 21<sup>st</sup> July, they are both witnesses with an interest to serve and their evidence would require corroboration from a more independent source. As regards the other two incidents in Katengi and Makolongo though the witnesses did not belong to any party and seemed credible, acceptance of their evidence alone would not satisfy the standard of proof required.

In the case of **MICHAEL MABENGA V SIKOTA WINA, MAFO WALLACE MAFIYO AND GEORGE SAMULELA**, it was held that:

*“proof of an election petition, although a civil matter is higher than balance of probability, but less than beyond all reasonable doubt”*

This position was further espoused in the case of **Anderson Kambela Mazoka and Others vs. Levy Patrick Mwanawasa, The Electoral Commission of Zambia and The Attorney-General** where it was held that:

*'.....issues raised are required to be established to a fairly high degree of convincing clarity'.*

We thus find that the Petitioner has not proved the allegation to the required standard.

In the second allegation it was alleged that the 1<sup>st</sup> Respondent took advantage of the fact that he was part of the then ruling party and distributed mealie meal from the Disaster Mitigation Management Unit (DMMU) at several funerals in Chikanda ward during the campaign period to convince voters in the ward to vote for him.

The Petitioner stated that the 1<sup>st</sup> Respondent donated mealie meal from DMMU at various funerals during the campaign period. PW1 told the tribunal that he witnessed the 1<sup>st</sup> Respondent donating mealie meal at Bright Sanka's uneral which allegation was supported by PW3. PW3 also testified that the 1<sup>st</sup> Respondent also donated to his grandfather James Kapema's funeral and that PW3 also witnessed the same DMMU mealie meal being used to brew munkoyo at the feeding camp. The donation of the mealie meal was also supported by the evidence of PW5 who also stated that the 1<sup>st</sup> Respondent donated to the funeral of George Mangi Masaba. In his defence, the 1<sup>st</sup> Respondent stated that he was not around during the funerals of Bright Sanka and James Kapema although he did not provide any corroboration for this. The 1<sup>st</sup> Respondent also did not deny donating mealie meal to the funeral of Geroge Mangi Masaba. He further, stated that he could not be in possession of DMMU mealie meal as he was not a government employee. We find it strange that the 1<sup>st</sup> Respondent did not attend the funeral of a fellow PF functionary (Bright Sanka) when wherever it is that he was campaigning was in the same ward. To the contrary we find it highly probable that the 1<sup>st</sup> Respondent attended the said funerals and donated

DMMU bags of mealie meal as alleged by the Petitioner and his witness and we find it to be a fact. G

However, our question at this point is whether these allegations would amount to corrupt acts as envisioned by the Electoral Process Act. The Petitioner's contention is that the donations of the mealie put him at a disadvantage as voters were more likely to vote for those that gave gifts and the Act does prohibit the giving of gifts as an inducement to voters. In particular Section 81 (1) (d) provides the following;

***81. (1) A person shall not, either directly or indirectly, by oneself or with any other person corruptly—***

***upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procure or engage, promise or endeavour to procure, the return of any candidate at any election or the vote of any voter at any election;***

However, the Petitioner failed to demonstrate in his evidence and that of his witnesses that the 1<sup>st</sup> Respondent used the mealie meal to entice voters. According to the Petitioner's evidence, the mealie meal was donated to funerals and no evidence was adduced as to how the 1<sup>st</sup> Respondent might have used it to his advantage, such as campaign speeches urging voters to vote for the 1<sup>st</sup> Respondent due to his generosity.

As such, this allegation does not meet the criteria set out under Section 97(2). This position is well enunciated in **NKANDU LUO AND THE ELECTORAL COMMISSION OF ZAMBIA V. DOREEN SEFUKE MWAMBA AND THE ATTORNEY GENERAL, SELECTED JUDGMENT NO. 51 OF 2018**, the Constitutional Court stated as follows :

**“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...”**

The Court further said that:

**“in addition to proving the electoral malpractice or misconduct alleged, the petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorate from electing the candidate of their choice.”**

For this reason this allegation fails.

As regards the third allegation in the petition that on the day before elections on 11<sup>th</sup> August 2021 the 1<sup>st</sup> Respondent with other members of the PF distributed Social Cash Transfer funds to voters who were told to vote for PF candidates or risk losing the funds if UPND won, the evidence adduced at trial by the Petitioners witnesses was actually that the 1<sup>st</sup> Respondent and his colleagues did not distribute the funds but allegedly went to the payment sites where people were told to vote for PF as a vote for UPND would mean that they lose the program. The 1<sup>st</sup>

Respondent denied the allegations. We find that this act was also not proved to the required standard of proof as the Plaintiff did not produce witnesses to testify whether such words might have influenced their vote nor did he demonstrate that the practice was wide spread nor Accordingly, this allegation fails too.

The last allegation was that in several areas where polling stations are situated, members of the PF slaughtered cattle the day before the elections, and told the voters to go and feast on the beef after voting for the PF. Many people were seen gathered in those places on poll day, feasting on the beef. The Petitioner only produced one witness to testify to this and it was the witness's testimony that he only knew of one feeding camp. And for that reason the allegation fails too.

In conclusion, based on the evidence before this tribunal, and our analysis and evaluation of the evidence on record we find that the petitioner, Mabvuto Simukonda has failed to prove his case against the 1<sup>st</sup> Respondent, in accordance with the required legal standard and we dismiss this Petition.

We declare that the 1<sup>st</sup> Respondent, Fundichuma Mwansa, was duly elected as Councilor for Chikanda Ward.

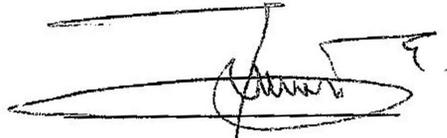
There will be no order to costs

The Petitioner is accordingly informed of his right of appeal to the Constitutional Court within fourteen (14) days of this Judgment.

Dated at Mkushi this

day

2021



HONOURABLE F. KAOMA

**Tribunal Chairperson**



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MRS C.B MAIMBO

**Member**



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MRS. N.M SIMACHELA

**Member**