

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

2021/F/LGET/13

IN THE MATTER OF: ARTICLE 159(3) OF THE CONSTITUTION OF  
ZAMBIA CAP 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTION 106(1)(a) OF THE ELECTORAL  
PROCESS ACT NO. 35 OF 2016 OF THE  
LAWS OF ZAMBIA

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

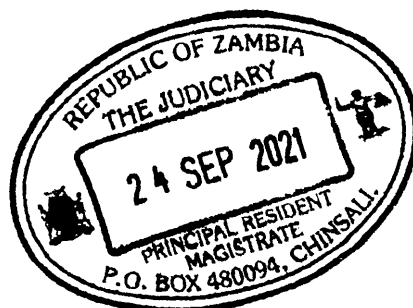
IN THE MATTER OF: LOCAL GOVERNMENT ELECTION PETITION  
FOR NYIMBWE WARD IN SHIWANG'ANDU  
DISTRICT HELD ON TH 12<sup>TH</sup> DAY OF AUGUST  
2021

BETWEEN

NKOLE MWAMBA FRANCIS

AND

CHARLES CHEWE



PETITIONER

RESPONDENT

CORAM: C CHILINGALA, M MWIBA AND G CHIPULU

For the Petitioner: Appearing in Person

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

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### JUDGMENT

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M Mwiba delivered the Judgment of the Tribunal on 24<sup>th</sup>  
September, 2021 at Shiwang'andu

CASES REFERRED TO:

1. Chrispin Siingwa v Stanely Kakubo, CCZ Appeal No.7 of 2017
2. Abiud Kawangu v Elijah Muchima CCZ Appeal No. 8 of 2017
3. Margaret Mwanakatwe v Charlotte Scott & Others, Selected Judgment No. 50 of 2018
4. Mubika Mubika v Poniso Njeulu, SCZ Appeal No. 114 of 2007
5. Mubita Mwangala v Inonge Mutukwa Wina, SCZ Appeal No. 80 of 2007
6. Nkandu Luo and The Electoral Commission of Zambia V. Doreen Sefuke Mwamba and The Attorney General, Selected Judgment No. 51 of 2018
7. Margaret Mwanakatwe V Charlotte Scott' Selected Judgment No. 50 of 2018

LEGISLATION REFERRED TO:

1. Constitution of Zambia (Amendment) Act No. 2 of 2016
2. Electoral Process Act No 35 of 2016
3. The Local Government Elections Tribunals Rules, Statutory Instrument No 60 of 2016

This Petition follows the Local Government Elections for Nyimbe ward of Shiwang'andu district held on 12<sup>th</sup> August, 2021 and is brought before this tribunal in line with the provisions of Article 159 of the Constitution of Zambia (Amendment) Act No. 2 of 2016 and the Local Government Elections Tribunal Rules (Statutory Instrument No. 60) 2016.

It is not in dispute that following the 12<sup>th</sup> August, 2021 elections the Respondent was declared, by the returning officer, as the duly elected Councilor for Nyimbe ward of Shiwang'andu District of Muchinga Province in the Republic of Zambia.

The Petitioner, who had the right to be elected as Councilor at the said elections, on 26<sup>th</sup> August 2021 Petitioned the elections alleging that the declaration of the Respondent as the duly elected Councilor for Nyimbe ward was invalid.

### **FACTS ALLEGED BY THE PETITIONER**

The Petitioner informed the tribunal that the Petition was grounded in Section 97(2)(a) of the Electoral Process Act No. 35 of 2016 since the allegations were that the Respondent was involved in corrupt practices, illegal practice or other misconduct. The specific facts raised by the Petitioner alleging the violation of Section 97(2)(a) of the Act are that:

- i The Patriotic Front (PF) and the Respondent were ferrying voters to polling stations on poll day.
- ii The Patriotic Front and the Respondent were giving out K20 notes to entice voters to vote for them.
- iii The Respondent's campaign team and the Patriotic Front were distributing Mealie Meal with a DMMU (Disaster Management and Mitigation Unit) label, cooking oil and sugar in polling stations.
- iv The Patriotic Front and the Respondent threatened voters that if they did not vote for the PF they would be removed from beneficiaries of Social Cash Transfer.
- v The Respondent and Mr. Stephen Kampyongo commissioned a Rural Health Post at the time when the latter was no longer a government official.

### **Therefore, the Petitioner Prays that the tribunal:**

1. Makes a declaration that the election of the Respondent as the duly elected Councilor for Nyimbe ward was void.

### **ANSWER BY THE RESPONDENT**

The Respondent duly filed the Answer to the Petition on the 30<sup>th</sup> August, 2021. He denied allegations relating to threats and intimidation, and bribery. However, he did not expressly

deny nor admit allegations relating to ferrying voters on the poll day.

#### **THE EVIDENCE AT TRIAL**

The matter came for the scheduling conference on 10<sup>th</sup> September, 2021. The parties informed the tribunal that they were ready to proceed to trial. Therefore, the matter was scheduled for 12<sup>th</sup> September, 2021 at 08:30 hours for trial.

#### **THE PETITIONER'S EVIDENCE**

P.W.1 was the petitioner himself who averred that he contested in the 12<sup>th</sup> August, 2021 elections as councilor for Nyimbe ward of Shiwang'andu District of Muchinga Province. That he petitioned the results because he did not accept the declaration of the Respondent as the duly elected councilor for Nyimbe ward on 14<sup>th</sup> August, 2021. And, that his petition was based on corrupt practices, illegal practices or other misconduct.

It was P.W.1's testimony that on 6<sup>th</sup> August, 2021 the Respondent threatened people at a meeting held at Nkonde village, that if they did not vote for him, he would remove them from the list of beneficiaries under the Social Cash Transfer (SCT) programme. And, that on 11<sup>th</sup> August, 2021 a Mr. Timba went to Thomas Village to disburse Social Cash Transfer and his disbursement of SCT was connected to the Respondent's 6<sup>th</sup> August, 2021 threats to the people in the area.

P.W.1 further testified that on 9<sup>th</sup> August, 2021 the Respondent delivered Mealie Meal, cooking oil and sugar to one Luka Chimfwembe, the Chairperson for Patriotic Front for Polilo Branch, at Thomas village. That the food items delivered were meant for PF voters on the poll day,

P.W.1 also told the tribunal that on the poll day, he met the Respondent with a white Cantre Truck Registration No. AIB 4887 ferrying voters from Kamokamo village to Mutitima polling station. That when approached, the Respondent told him to mind his business. Therefore, the matter was reported to the police officer present at the polling station.

In cross examination P.W.1 admitted that on 6<sup>th</sup> August 2021 he attended a Good Governance Zambia (GOZA) meeting. He also admitted that he did not see the Respondent or his Election or Polling Agent giving food to voters on 12<sup>th</sup> August, 2021 after voting. He also admitted that he didn't know how SCT was administered and whether the Respondent had a role to play in its disbursement. In addition, he admitted that he didn't know whether Mr. Timba was acting on the Respondent's instructions when disbursing SCT.

**P.W.2** was Elvis Chanda Chimfwembe aged 45 years a farmer of Thomas Village in Shiwang'andu district. He averred that during the meeting held in Thomas village, the Respondent threatened people that if they did not vote for him, they were going to suffer for five years, and that the beneficiaries of SCT and Fertiliser Input Support Programme would be deregistered.

P.W.2 also testified that on 9<sup>th</sup> August, 2021 the Respondent acting together with Evelini Kangwa, John Mikaili and other persons unknown delivered Meali Meal, cooking oil and sugar to Luka Chimfwembe of Thomas village for feeding voters on poll day. That on 11<sup>th</sup> August, 2021 CWAC disbursed SCT in the village and P.W.1's wife was a beneficiary. That after voting at Mufushi polling station, on his way to Chibamba Polling station where he was a polling agent for the United Party for

National Development (UPND), he met a group of people who gathered at Mulopa village waiting to be ferried by the Respondent to Chibamba polling station to go and vote. That when the vehicle came he also got on board and that along the way, the Respondent distributed K20 notes to passengers and told them to vote for him. This was reported to a police officer but no action was taken. Later P.W.2 saw people boarding the same vehicle and ferried back. During examination in-chief, P.W.2 informed the tribunal that he also got a K20 from the Respondent on their way to Chibamba polling station.

When cross examined P.W.2 stated that the Respondent was involved in the distribution of fertiliser under FISP and the disbursement of SCT because of threats issued at the 6<sup>th</sup> August, 2021 meeting attended by about 750 people. That he didn't know how FISP and SCT were administered because he was not a beneficiary. That about 20 people were present when Mealie Meal was delivered by the Respondent to Luka Chimfwembe. That he did not hand over the K20 he received from the Respondent to the police officer. That he bought a drink, and that his wife was given SCT by CWAC members and not the Respondent.

There was nothing in re-examination.

**P.W.3** was Andrew Kapolyo a 44 years old farmer of Chuma village in Shiwang'andu district. He averred that during a meeting at Mutitima village early August, 2021 the Respondent threatened all cooperative leaders with removals from their positions if they didn't vote for him. That on 9<sup>th</sup> August, 2021 the Respondent delivered mealie meal, cooking oil and a bale of sugar to John Katumba in Chuma village meant for voters on poll day.

Further, P.W.3 testified that a day before elections, PF were disbursing SCT and instructed recipients to vote for the PF failure to which they would be removed from the list of beneficiaries. That on the same day Mr. Steven Kampyongo accompanied by the Respondent and Mr. Sampa Bwali commissioned a clinic at Mutitima primary school. That Mr. Kampyongo threatened people that those who were not going to vote for PF would not access medicines from the clinic. And, that on 12<sup>th</sup> August, 2021 the Respondent ferried voters to and from Mutitima polling station.

In cross examination P.W.3 admitted that Mr. Siame a civil servant disbursed SCT and not the Respondent. That the Respondent addressed the people who were gathered at Mutitima Primary School, and that John Katumba belonged to the PF.

There was nothing in re-examination.

**P.W.4** was Bwalya Kennedy a 44 years old Businessman of Mutitima village in Shiwan'andu district. He averred that he worked as an election monitor for UPND during the August, 2021 election. That on 12<sup>th</sup> August, 2021 he visited polling stations around, and he saw the Respondent in a white Cantre Truck Registration No. AIB 4887 ferrying voters to Mutitima polling station. That later that day he saw Munthali and Shi Dewani distributing K20 notes to voters at Longe polling station on behalf of the Respondent. That the matter for distribution of K20 notes to voters was reported to the police officer who later stopped them.

During cross examination P.W.4 confirmed that as an election monitor he was oriented by the Electoral Commission of Zambia (ECZ) on the grievance procedures. That if a matter was reported to the police and nothing was done, he needed to

formally lodge a complaint with the ECZ, and that he reported the matter to the presiding officer from ECZ though he didn't know the name of the officer.

There was nothing in re-examination.

**P.W.5** was Joseph Mulenga a 34 years old Businessman of Longe village in Shiwang'andu district. He averred that on 9<sup>th</sup> August, 2021 he saw a Fuso Truck at his neighbor, identified as Bashi Chewe Fele, offloading thirty bags of mealie meal, 1 bucket of cooking oil, and a bale of sugar. That the PF Branch Chairperson confirmed that the consignment was from the Respondent and was intended to feed the voters on poll day. That the Respondent later came over and talked to the people on the consignment before proceeding to Mwika village.

P.W.5 further testified that on 12<sup>th</sup> August, 2021 he saw the Respondent at Longe polling station in a white Cantre Truck with about thirty people waving PF Party symbols. That when approached and requested to stop because their actions were intimidating voters, they did not stop. Therefore, he reported the matter to the police.

In cross examination P.W.5 admitted that he underwent the orientation by ECZ and that he understood the grievance procedure for dealing with electoral malpractice. He admitted that he did not report what he witnessed to the ECZ.

There was nothing in re-examination, and this marked the close of the petitioner's case.

#### **THE RESPONDENT'S EVIDENCE**



At the close of the petitioner's case the Respondent's advocate made an application under Rule 20(3) of the Local Government Elections Tribunal Rules, 2016. The application was for the tribunal to allow the respondent and his witnesses adduce evidence by affidavit. The application was granted. However, when affidavits were filed the Petitioner requested for more time to read through the Affidavits to enable him prepare adequately for cross examining the Respondent and his witnesses. The matter was adjourned to 17<sup>th</sup> September, 2021.

**R.W.1** was Charles Chewe, the respondent herein. He deposed in his affidavits that Mr. Luka Chimfwembe was not the Branch Chairman for Polilo Branch, and that Mr. Peter Mulenga and Peter Katumba were equally not PF Party officials. To evidence this fact he produced as exhibits copies of PF Party Registers and marked them as as "**CC1**" and "**CC2**".

He further deposed that he never went to Luka Chimfwembe's residence or John Katumba's residence on 9<sup>th</sup> August, 2021 as he was in Kalalantekwe attending a party meeting. That he never gave a lift or a K20 to Chanda Elvis Chimfwembe. That he never contracted anyone to distribute K20 notes to people on his behalf on 12<sup>th</sup> August, 2021.

During cross examination, R.W.1 admitted that he did not know when the PF party officials on "**CC1**" and "**CC2**" were appointed and the party officials who appointed them. That the documents exhibited as party registers were not endorsed or signed at the foot. That ferrying and giving money to voters was not allowed. However, he denied having given instructions to Munthali and Shi Dewani to distribute money to voters.

There was nothing in re-examination.

**R.W.2** was Evelini Kangwa 55 years old and District Commissioner for Shiwang'andu District. In her affidavit evidence, she deposed that she never delivered food or any items to a Mr. Luka Chimfwembe of Thomas village. That she never delivered food or any items to a Mr. Peter Mulenga on 9<sup>th</sup> August, 2021.

In cross examination, she maintained that she never delivered food staffs to Luka Chimfwembe and Peter Mulenga on 9<sup>th</sup> August, 2021 for feeding voters on poll day.

This was R.W.1's evidence.

**R.W.3** was John Katumba a 55 years old farmer of Chuma village in Shiwang'andu district. Through his affidavit evidence, he deposed that he was a coordinator for a local non-partisan NGO known as Good Governance Zambia (GOZA) which conducted civic education. That during the August, 2021 elections GOZA identified hunger and long distance to polling stations as factors that contributed to voter apathy. That GOZA initiated a programme for providing food to voters after voting to encourage massive turn out. That he was never with the Respondent on 9<sup>th</sup> August, 2021 and that he was not in any leadership position in the Patriotic Front.

In cross examination R.W.3 admitted that he did not have any identity documents to prove that he was a coordinator for GOZA. That GOZA was in all the wards, and that he didn't know why GOZA documents had PF symbols despite the organization being non-partisan.

There was nothing in re-examination.

**R.W.4** was Peter Mulenga a 59 years old village headman of Mulambata village of Shiwang'andu district. His affidavit evidence filed on 15<sup>th</sup> September, 2021 was that he served as a GOZA polling agent during the August, 2021 elections. That he did not observe any electoral malpractices alleged by the Petitioner and allegedly perpetrated by the Respondent.

During cross examination, he denied that GOZA was supporting the Patriotic Front Party.

This was the end of the Respondent's case.

#### **SUBMISSIONS BY THE PARTIES**

At the close of the Petitioner and Respondent's case, the petitioner informed the tribunal that he wished to rely on his evidence on record and that of his witnesses. The Respondent, through his advocate, informed the tribunal that he wished to make written submissions. We have thoroughly considered the submissions made and we are thankful to counsel.

#### **THE TRIBUNAL'S FINDINGS OF FACT**

1. The following facts are not in dispute:

(i) That the petitioner and the respondent filed in nominations and contested as candidates in the Local Government Elections for Nyimbwe ward of Shiwang'andu district in Muchinga Province which were held on 12<sup>th</sup> August, 2021.

(ii) That the respondent was returned as a duly elected councilor for Nyimbwe ward on 14<sup>th</sup> August, 2021.

#### **THE APPLICABLE LAW**

The petitioner is seeking the nullification of the respondent's election as councilor for Nyimbe ward on the

ground set out in section 97 (2) (a) of the Electoral Process Act, No.35 of 2016. The section reads as follows:

*97. (2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councilor 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 was or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred*

The above provision was interpreted by the Constitutional Court in the case of *Nkandu Luo & The Electoral Commission of Zambia v Doreen Sefuke Mwamba & The Attorney General, Selected Judgment No. 51 of 2018.* The court said:

*"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..."**

From the above authority, the election of a candidate as mayor, council chairperson or councillor can only be nullified if the petitioner in an election petition proves to the satisfaction of the Court 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 another person with the candidate's knowledge and consent or approval or with the knowledge and consent or approval of his election or polling agents.

The meaning of an 'election agent' was considered by the Constitutional Court in the case of **Chrispin Siingwa v Stanely Kakubo, CCZ Appeal No.7 of 2017** and 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 candidate's nomination paper.

The Constitutional Court's holding in the **Chrispin Siingwa case** is in line Section 2 of the Electoral Process Act which 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.

Thorough reading of section 97 (2) (a) of the Electoral Process Act further reveals that in addition to proving that a corrupt practice or illegal practice or other misconduct was committed by a candidate or that it was committed by other

people with his knowledge and consent or approval or with the knowledge and consent or approval of his election or polling agents, the petitioner must further prove that as a result of such corrupt practice, illegal practice or misconduct, the majority of the voters in the constituency, district or ward, as the case may be, were or may have been prevented from electing the candidate of their choice.

In other words, it is not sufficient for a petitioner to prove only that a candidate committed a corrupt practice or illegal practice or other misconduct in relation to the election without proof that the corrupt practice or illegal practice or misconduct was widespread and prevented or may have prevented the majority of the voters from electing a candidate of their choice. This position was settled by the Supreme Court in the case of **Mubika Mubika v Poniso Njeulu, SCZ Appeal No. 114 of 2007**. Their Lordships said;

*"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."*

In another case, Mubita Mwangala v Inonge Mutukwa Wina, SCZ Appeal No. 80 of 2007, 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"*

And in the Nkandu Luo case, the Constitutional Court reiterated 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."*

#### THE STANDARD OF PROOF REQUIRED

In a civil trial, the plaintiff is required to prove his case on the balance of probabilities.

However, the authorities show that the standard of proof in an election petition is higher than that required in an ordinary civil action. The petitioner in an election petition is required to prove his case to a fairly high degree of convincing clarity. This was demonstrated by the

Constitutional Court in the case of Abiud Kawangu v Elijah Muchima CCZ Appeal No. 8 of 2017. The Court said;

*"...election 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 convincing clarity."*

#### **FACTS FOR DETERMINATION**

Below are the issues to be determined by this tribunal:

- (1) Whether or not the respondent personally committed the corrupt practices, illegal practices or other misconduct complained of in this petition;
- (2) If the answer in (1) is not in the affirmative, whether or not such corrupt practices, illegal practices or other misconduct were committed by another person with the knowledge and consent or approval of the respondent or the knowledge and consent or approval of his election or polling agents;
- (3) If the answer in either (1) or (2) above is in the affirmative, whether or not as a result of such corrupt practices, illegal practices or other misconduct, the majority of voters in Nyimbwe Ward were or may have been prevented from electing the candidate of their choice.

#### **TRIBUNAL REASONING AND DECISION**

We have carefully examined the allegations and evidence before us. In our considered view, the issues raised in the petition can be concisely put as (1) ferrying of voters (2) bribery, and (3) threats and intimidation. We therefore wish to address these three issues in order for our decision to be informed by



sound reasoning when determining whether or not to grant the relief sought by the Petitioner.

(1) **FERRYING OF VOTERS**

The Petitioner is relying on his own evidence. He testified that on the poll day he met the Respondent with a white Cantre Truck Registration No. AIB 4887 ferrying voters from Kamokamo village to Mutitima polling station and he reported the matter to the police officer. This fact was also attested to by P.W.4 Bwalya Kennedy who was an election monitor for UPND. Another witness who spoke to this fact was P.W.2 Elvis Chanda Chimfwembe who met and joined a group of people at Mulopa village who were being ferried by the Respondent to Chibamba polling station, and that after voting, the Respondent ferried the voters back. P.W.5 Joseph Mulenga also testified having seen the Respondent ferrying voters. This fact has not been challenged by the Respondent in evidence. On this premise we hold that the ferrying of voters on poll day has been sufficiently proved.

The ferrying of voters is a subject matter that has been covered by our electoral laws. The superior courts in our jurisdiction have had an opportunity to guide on this matter and the interpretation of the law. While the Electoral Code of Conduct forbids the use of Government vehicles to ferry voters on poll day, the prohibition is not extended to ferrying voters using private vehicles. To this extent, it does not fall under the umbrella of electoral misconduct. The tribunal has observed that in the case of **Kalenge v Munshya, The Electoral Commission of Zambia & The Attorney General S.C.Z No. 115 of 2012** which was decided by the Supreme Court, while their Lordships agreed that the use of Government transport to ferry voters is illegal, they however held that the use of private transport to ferry voters is not an offence under our Electoral Laws.

For the foregoing reasons, the fact of ferrying voters in private vehicle(s), despite having been proved, cannot warrant the nullification of an election result by this tribunal.

(2) **BRIBERY**

The Petitioner testified that on 9<sup>th</sup> August, 2021 the Respondent delivered Mealie Meal, cooking oil and sugar to one Luka Chimfwembe of Polilo Branch at Thomas Village and other surrounding areas. It was testified that the food was meant for feeding voters on poll day. However, he admitted during cross examination that he did not personally see the Respondent or his Election or Polling Agent giving food to voters and that he was merely told by some other people. In our considered view, the petitioner's evidence on this fact falls within the realm of inadmissible hearsay.

The distribution of food staffs was also attested to by **P.W.2** Elvis Chanda Chimfwembe. He stated that the Respondent and R.W.2 together with John Mikaili and other persons unknown delivered Meali Meal, cooking oil and sugar to Luka Chimfwembe of Thomas village for feeding voters. To this allegation, the Respondent and R.W.2 gave bare denials. P.W.2 further testified that on 12<sup>th</sup> August, 2021 he saw the Respondent giving K20 notes to voters and that he also received a K20 when they were being ferried to Chibamba polling station. However, he didn't hand over the K20 to the police as evidence.

The tribunal is at pains to accept this evidence because an election monitor was legitimately expected to report all electoral malpractices to law enforcement or ECZ and to hand over the evidence in his possession. Unfortunately, P.W.2 decided to buy a drink using the evidence (i.e K20) he

allegedly received from the Respondent. On this premise we do not believe P.W.2's testimony.

P.W.4 Bwalya Kennedy also testified that he witnessed Munthali and Shi Dewani distributing K20 notes to voters at Longe polling station on behalf of the Respondent, and that he reported the matter to the police. That he did not escalate the complaint to ECZ after police inaction. However, there are no strong reasons for us to disbelieve this testimony. Therefore, we give P.W.4 a benefit of doubt and believe his evidence that bribery took place at longe polling station. It follows that this fact has been proved.

The Electoral Process Act in Section 81(1)(c) proscribes the use of bribery to induce any person to vote or not to vote for any candidate in an election. This being the case, and after agreeing with P.W.4 that bribery took place, we ask a question whether P.W.4 has adduced any evidence showing that the Respondent personally or through his duly appointed agents engaged in bribery or that the bribery was being perpetrated with his knowledge and consent or approval or that of his duly appointed agents? The tribunal has carefully perused the record and found that there is no such evidence. In the absence of evidence, the tribunal cannot proceed to considering whether cogent evidence was adduced showing that the bribery was so widespread that it swayed or may have swayed the majority of the voters from electing the candidate of their choice.

Therefore, the allegation fails.

### **(3) THREATS AND INTIMIDATION**

Section 83 (1) (c) of the Electoral Process Act forbids the use of threats to induce or compel any person to vote or not to vote for any candidate in an election.

To determine that threats and intimidation took place, to warrant the nullification of the election, the tribunal must consider whether there is evidence proving that the respondent personally or through his duly appointed agents engaged in issuing threats and intimidating voters or that such threats and acts of intimidation were committed with his knowledge and consent or approval or that of his duly appointed agents.

There was evidence on this allegation from **P.W.1**. He testified before the tribunal that on 6<sup>th</sup> August, 2021 he heard the Respondent threatening people at a meeting held at Nkonde village, that if they did not vote for him he would remove them from SCT. There was also evidence from **P.W.2** Elvis Chanda Chimfwembe that during the meeting held in Thomas village, the Respondent threatened people that if they did not vote for him, they would be removed from the beneficiaries of SCT and FISP.

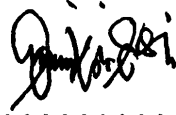
Other allegations of threats and intimidation came from P.W.3 was Andrew Kapolyo that at a meeting held at Mutitima village in early August, 2021 the Respondent threatened leaders of cooperatives with removal from leadership positions if they did not vote. That residents who were not going to vote for him would not receive SCT or access medicines from the clinic which was commissioned by Mr. Stephen Kampyongo and others. The tribunal also noted that the Respondent and R.W.2 denied issuing threats to voters.

It was also clear during cross examination that P.W.1 admitted that he didn't know how SCT was administered and whether the Respondent had a role in its disbursement. The same can be said about P.W.3. Therefore, the tribunal wonders how the alleged threats and intimidation from a person who had no role in the administration of SCT, installation of co-operative

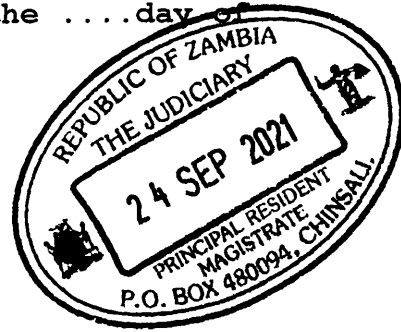
Parties are hereby informed of the right to appeal to the Constitutional Court within 14 days if not satisfied with our decision.

Each Party will bear own costs.

Delivered in open court at Shiwang'andu the ....day of  
September, 2021



.....  
**C. CHILINGALA**  
**CHAIRPERSON**



.....  
**M. MWIBA**  
**MEMBER**



.....  
**G. CHIPULU**  
**MEMBER**