

SCZ Judgment No. 20 of 2013

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IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

Appeal No. 95/2012
scz/8/127/2012

**IN THE MATTER OF: SECTION 72 (1) (a) OF THE CONSTITUTION OF THE
REPUBLIC OF ZAMBIA**

AND

**IN THE MATTER OF: SECTION 63, 79 to 89 and 93 to 95 OF THE
ELECTORAL ACT NO. 12 OF 2006**

AND

**IN THE MATTER OF: THE ELECTORAL CODE OF CONDUCT, STATUTORY
INSTRUMENT NO. 52 OF 2011.**

IN THE MATTER OF: THE ELECTORAL PETITION RULES NO. 426 OF 1968

**IN THE MATTER OF: PETAUKE CENTRAL PARLIAMENTARY CONSTITUENCY
ELECTIONS HELD IN ZAMBIA ON THE 20TH DAY OF
SEPTEMBER 2011; AND**

IN THE MATTER OF: AN APPLICATION ON BEHALF OF LEONARD BANDA

BETWEEN:

LEONARD BANDA

APPELLANT

AND

DORA SILIYA

RESPONDENT

NEVERS MUMBA

ALLEGED CONTEMNOR

Coram: **Mumba, Actg D.C.J., Mwanamwambwa, Chibomba, Phiri, and Wanki,
J.J.S.**

On the 11th November 2013 and 23rd December 2013

*For the Appellant: Mr. B.C. Mutale, S.C., and with him, Ms
Mukuka both of Messrs Ellis and Company*

For the Respondent: No appearance

*For the Alleged Contemnor: Mrs. I.M. Kunda, of Messrs George Kunda
and Company*

J U D G M E N T

Mwanamwambwa, J.S., delivered the Judgment of the Court.

Cases referred to:

1. Mwiba v The People [1971] Z.R.13.

Legislation referred to:

1. The Supreme Court Rules, 1999. Order 52, Rule 1 and 52/4/1.
2. The Electoral Act, 2003. Section 93 (2) (a) & (c).
3. The Electoral (Code of Conduct) Regulations : Statutory Instrument No. 90 of 2011.

On 13th November 2013, we dismissed the alleged Contemnor's preliminary objection that this contempt-motion is not properly before this Court; because no leave was obtained under **Order 52, Rule 2** of **the Supreme Court Rules 1999**. We said that we would give our reasons later. We now do so.

As correctly argued by Mr. Mutale, State Counsel, on behalf of the Appellant, such leave is required only before a Divisional Court. A Divisional Court in England, is equivalent to a High Court in Zambia. This Motion is before the Supreme Court. **Order 52, Rule 1** does not apply to this Court. In our view, what applies in this case is **Order 52, Rule 4(1)**, which reads as follows:-

**“Application to Court other than Divisional Court
(Order 52**

Rule 4)

4-(1) Where an application for an order of committal may be made to a Court other than a

Divisional Court, the application must be made by motion and be supported by an affidavit.”

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Therefore, we hold that leave was not required before this motion could be filed. We now move on to the main case.

Dr. Nevers Mumba, the alleged Contemnor, stands charged with contempt of Court. The charge is made under Order 52, Rule 1 and 52/4/1 of **the Rules of the Supreme Court** of England, 1999 and the inherent jurisdiction of the Court. The Charge is by motion, at the instance of Mr. Leonard Banda. Mr. Leonard Banda was the Patriotic Front's (PF's) losing Petitioner in an Election Petition, in the High Court, against the Movement of Multiparty Democracy's (M.M.D's), Miss Dora Siliya. The Petition arose from the Parliamentary Elections for the Petauke Central Constituency, held on 20th September 2011. On appeal to this Court, Mr. Leonard Banda won the Petition.

Particulars of the charge are mainly as per the lengthy press statement written, signed and issued by Dr. Nevers Mumba, on 30th June 2013. The press statement was issued following the nullification of the Parliamentary seat held by Miss Dora Siliya. The gist of the press statement reads as follows:-

“STATEMENT ON THE NULLIFICATION OF THE PETAUKE CENTRAL SEAT BY NEVERS MUMBA, PRESIDENT, MMD

On Friday 28th June 2013, the Supreme Court nullified the Petauke Central Seat belonging to the MMD. This follows a string of other nullifications of MMD seats by the Supreme Court.

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The MMD questions the legitimacy and fairness of these Supreme Court Rulings. The Zambian people are all aware that, the scheme to deplete the opposition numbers in Parliament was hatched by the PF in October 2011 after they won the election. The scheme was to increase the tally of their numbers to 106 required to have an absolute majority in Parliament. This status is meant to give the ruling Party unrestrained power to manipulate the Constitution and arrive at their ultimate goal of creating a one party state.....

MMD may have a reason to believe that the PF agenda of depleting the opposition numbers of Parliament is now being aided by the Supreme Court bench.

Earlier in the year, there was a rumour that the PF Government would nominate a Chief Justice who would be sympathetic to the PF agenda of nullifying any opposition appeal made to the Supreme Court. As of today, this fear has now been confirmed, evidenced by a string of nullifications by the Supreme Court. As for Hon. Dora Siliya's seat, we notice that there was no mention of either corruption or rigging, and that is why it was thrown out by the High Court, but today, the Supreme Court is determined to continue with the agenda of nullifications. There is no institution or wing of government which should be exempted from scrutiny. In this case, the credibility of the Supreme Court bench has come under scrutiny. Zambians may soon lose faith and confidence in the Supreme Court.

When the PF proposed Hon. Lombe Chibesakunda for the position of Chief Justice, the select Committee of Parliament, which included PF Members of Parliament rejected the nomination by 100%. The House requested that President Sata sends a new name for consideration. In response, President Sata insisted that, he only wants Hon. Chibesakunda

although she is currently barred by the Constitution on the basis of age and other contract considerations. The insistence to keep Hon. Chibesakunda to act perpetually, even after Parliament's refusal, has confirmed fears that the rumour of nullifications could be based in truth.

In this regard, the MMD demands, that the President should begin to respect the Constitution and the decision of Parliament by immediately removing and replacing the Chief Justice."

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On 2nd July 2013, Dr. Nevers Mumba was interviewed by Radio Phoenix, on a programme entitled: "LET THE PEOPLE TALK". It was a long interview. It is reproduced verbatim, at pages 8-70 of the Appellant's bundle of documents, supporting this motion. In that interview, he repeated the same statements and added more. In so far as relevant, he said this:

"This is where I made a statement two days ago, and I want to repeat that statement. Last year by March we got information that President Sata wanted to bring in a new Chief Justice, in the acting capacity for long period, so that the nullification of elections of the opposition could be effected.....

Shortly thereafter, the name of Justice Lombe Chibesakunda was submitted The select Committee of Member of Parliament rejected that name; not because they didn't like her as a person, but because she did not qualify constitutionally. She was above the Constitutional requirement in terms of age..... I would not have anything against Madam Lombe Chibesakunda, who is my own

relative..... but we have a challenge here at a national level. If the credibility of the Supreme Court is lost and the Zambians lost confidence in the Supreme Court, it takes a long time for Zambians to start to have faith again in the highest institution of justice. Our fight is two ways. I am appealing to Justice Lombe Chibesakunda to use that resilience of character that is within her to go ahead and tender the resignation in order to bring normalcy to the Supreme Court because right now her continued stay there, will continue to diminish the credibility of the Supreme Court because we are aware that she was put there in order to deplete the opposition of their seats. How do we know that? Not too long ago we

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noticed that three (3) nullifications came one after another. Honourable Maxwell Mwale, Malambo Constituency was nullified, shortly after that Honourable Mtolo Phiri of Chipata Central was nullified, shortly after that Honourable Dora Siliya's seat, of Petauke Central was also nullified and that now agreed with what information that we had received that the Supreme Court had been posed there under the leadership of Acting Chief Justice to deplete the opposition. Now am I saying that is exactly how it is? I would say that this is exactly how it looks and confirmed that Supreme Court has to prove to us that this is not true. So far they are proving what we heard before that Mr. President Sata wants to use the Supreme Court as the slaughter house for democracy as an abattoir for democracy and we shall not allow it. Therefore, we appeal to the President to remove the Acting Chief Justice and present to Parliament a new

name that could be considered for Chief Justice. If he refuses to do that, we recommend that Chief Justice Madam Chibesakunda herself uses the morality that she has to step aside to allow the justice system to be respected and continue to operate. She has already made her name in this country. She does not need PF to frustrate her good image she has made over the years. She became what she is by her own hard work. Professionalism, she is one of our greatest pride in this region and why would she destroy her name just for this situation. She has paid a high price to become what she is. My advice to her is that she should step aside so that her legacy could remain and not be soiled by the PF. If that doesn't work if the President doesn't remove her, or if she doesn't resign then us the opposition are now going to use the options that we have, to ensure that this is done; so that justice can be respected once again in our country."

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On 22nd October 2013, in response to the motion for contempt of Court, Dr. Nevers Mumba filed a statement. It has twelve (12) paragraphs. Out of these, only paragraphs 5, 6, 11 and 12 are relevant in this matter. And they read as follows:-

"5. The said statements were issued for and on behalf of the MMD party as a party that was injured by the numerous nullifications and was thus grieving as a party in the face of taunts from the ruling party which included a statement from Hon. Wynter Kabimba that the Ruling Party would 'engage' the Court in relation to this matter.

6. **That following this announcement by Hon. Wynter Kabimba, a press statement was issued purportedly for and on behalf of the Supreme Court affecting the MMD in relation to its candidate Dora Siliya.**
11. **The said statements were not in any way intended to ridicule or bring the much-revered Supreme Court of Zambia into disrepute but merely fair comments on matters of public interest.**
12. **Should the statements in their ordinary sense insinuate or indeed amount to contempt, I unreservedly apologize and do withdraw to the extent of the contempt.”**

At that stage, it became clear that Dr. Mumba was admitting the contempt charge. He wished to purge it. Indeed, on 13th November 2013, he formally purged the contempt, by withdrawing the contemptuous remarks and apologizing.

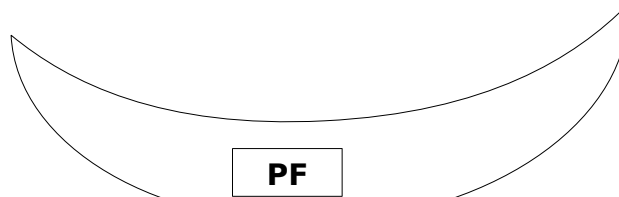
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Accordingly, on his own admission, we find Dr. Nevers Mumba guilty of contempt of this Court and convict him.

However, before we pass sentence, there is an issue we wish to deal with. It relates to the documents recently filed by the Appellant. On 31st March 2013, the Appellant filed a

supplementary bundle of documents. The supplementary bundle shows that on 1st August 2013, the Secretary General of the Patriotic Front wrote a letter to the Party's advocates, over possible disqualification of persons involved in electoral corruption. Attached to that letter is a legal opinion by the Solicitor-General. The letter in question reads as follows:-

“



PATRIOTIC FRONT
FOR LOWER TAXES, MORE JOB AND MORE MONEY IN YOUR POCKETS
THE BOAT

CONFIDENTIAL

1st August 2013

Messrs Ellis & Co
8 Tito Road
Off Church Road
Rhodes Park
LUSAKA

STAMPED RECEIVED
02 AUG 2013
ELLIS & CO., LUSAKA

Attention: Mr. Bonaventure Mutale, S.C.

Dear Sirs

**RE: ELECTION PETITIONS AND FINDINGS OF
CORRUPTION BY THE SUPREME COURT**

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I refer to the above matter and the on-going debate regarding the same.

Please find enclosed herewith a copy of the professional opinion rendered to me by the learned Solicitor-General for your perusal, attention and action.

I am persuaded by the same both in respect of aspiring candidates in the forthcoming by-elections and those who have been elected contrary to **Section 22** of the **Electoral Act No. 12 of 2006**, as read together with **Section 104 (6)**.

I would be obliged for your urgent action in this matter.

Yours faithfully,

Signed
Wynter M. Kabimba, ODS, S.C.
SECRETARY GENERAL

CC : His Excellency the President, State House, LUSAKA.
CC : The Acting Chief Justice, Supreme Court Buildings, LUSAKA.

Luanshya Road, P.o. Box 33965, Lusaka, Zambia

TEL : +260 211 237256. FAX: +260 211 237256."

And the legal opinion attached to the letter reads as follows:-

"The answer to the current debates on the disqualification of persons involved in electoral corruption lies entirely in the provisions of Sections 22 and 104 (6) of the Electoral Act No. 12 of 2006 ("The Act").

Section 22 provides as follows:-

"22. In addition to the persons disqualified by the Constitution:-

*(a) An election officer shall not be qualified for election as a member of the National Assembly;
and*

(b) Any person who is convicted of any corrupt practice or illegal practice or who is reported guilty of any corrupt practice or illegal practice by the High

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Court upon the trial of an election petition under this Act shall not be qualified for election as a member of the National Assembly for a period five years from the date of the conviction or of the report, as the case may be."

The relevant part of the section has been highlighted for emphasis. The very basic interpretation of Section 22 is that a person who is:

- (i) Convicted of any corrupt practice or illegal practice; or
- (ii) Reported guilty of any corrupt practice or illegal practice by the High Court upon the trial of an election petition under the Act is disqualified from election as a Member of the National Assembly.

Section 104(6) of the Act provides as follows:-

“Where it appears to the High Court upon the trial of an election petition that any corrupt practice or illegal practice has been committed by any person in connection with the election to which the election petition relates, the High Court shall, at the conclusion of the proceedings, prepare a report stating-

- (a) The evidence given in the proceedings in respect of the corrupt practice or illegal practice;*
- (b) The names and particulars of any person by whom the corrupt practice or illegal practice was, in the opinion of the Court committed:*

Provided that the Court shall not state the name of any person under this paragraph unless the person has been given an opportunity of appearing before the Court and of showing cause why that person’s name should not be so stated.”

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From the provisions of Section 104 (6) as read with the provisions of Section 22 of the Act, it is clear that what triggers the disqualification of the

candidate who is adjudged, in an election petition, to have been involved in corrupt practices is the report which the High Court is obliged to render to the Electoral Commission upon conclusion of the proceedings. The following is my advice:

1. That the High Court through the office of the Registrar be engaged by the lawyers for the petitions to comply with its duties as provided in Section 104 (6).
2. That the lawyers for the Petitioners consider making an application for the report to urgently ensue; and
3. That, with regards to persons involved in corrupt practices who have already been elected, prospects of challenging the election under Section 93(2)b of the Act be explored.

Section 104(6) specifically mentions the High Court as the Court to make a finding but it can be argued, and successfully so, that the conclusion of proceedings can only occur after the completion of any appeal to the Supreme Court and the High Court is therefore obliged to render the report upon the conclusion of the appeal to the Supreme Court if the Supreme Court makes a finding of corruption.

The proviso to Section 104(6) however, offers a more complicated difficulty as it can be interpreted to require the Court to hold a hearing before the report is rendered. This must be considered by the Petitioners' lawyers and the opportunity to be heard can be instituted in the application for the issuance of the report or it can be argued that a Respondent who appeared in the matter had already been given such an opportunity to be heard."

On 8th August 2013, the Public Relations Officer of the Judiciary, issued a Press Statement on nullified Parliamentary seats. The same reads as follows:-

“PRESS STATEMENT

For immediate Release

REPORTS ON NULLIFIED PARLIAMENTARY SEATS BY THE HIGH COURT

The Judiciary has noted the concerns raised by the Public and Stakeholders in the Electoral process following the Notice on Disqualification of candidates whose seats are nullified on account of corruption issued by the Electoral Commission of Zambia dated 31st July 2013.

The Judiciary wishes to state that it stands by the Law as provided by Section 104(6) and (7) of the Electoral Act of 2006 which states:

Where it appears to the High Court upon trial of an Election Petition that any corrupt practice or illegal practice has been committed by any person in connection with the Elections to which the Election Petition relates, the High Court shall, at the conclusion of the proceedings, prepare a Report stating:-

- a) The evidence given in the proceedings in respect of the corrupt practice or illegal practice;
- b) The names and particulars of any person by whom the corrupt practice or illegal practice was, in the opinion of the Court, committed.

Provided that the Court shall not state the name of any person under this paragraph unless the person has

been given an opportunity of appearing before the Court and of showing cause why that person's name should not be so stated.

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And Section 104 (7) states:

The Registrar shall deliver a copy of every report prepared by the High Court under Sub-Section 96 to.....

- a. The Commission; and
- b. The Director of Public Prosecutions.

As the Provisions of the Law indicate, the mandate to prepare Reports at the conclusion of Proceedings in an election petition lies with the High Court and specifically the Hon. Judges who handled the particular petition. The Registrar of the High Court has no mandate to prepare the said Reports as his/her role is simply to deliver the Reports.

The Judiciary wishes to state however, that where there is an appeal to the Supreme Court as the case was in most of the 2011 Parliamentary Election Petitions, the Judgment of the Supreme Court reigns supreme and the Judiciary is of the considered view that the requirement to render the said Report by the High Court is overtaken.

It should be noted that Section 104(6) and (7) of the Electoral Act No. 12 of 2006 does not extend its application to the Supreme Court. Therefore, there is no requirement by the High Court to render a Report to either the Electoral Commission of Zambia or the Director of Public Prosecutions after pronouncement of a Judgment by the Supreme Court.

It should also be noted that every Judgment of the Supreme Court is binding on all institutions including Electoral Commission of Zambia and the general public. Consequently any person can freely access Supreme Court Judgments.

Signed and issued by:

TERRY MUSONDA
PUBLIC RELATIONS OFFICER
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The Judiciary of Zambia

Dated 8th August 2013".

On 9th August 2013, the Acting Registrar of the High Court sent a letter to the Director of Electoral Commission of Zambia (*hereinafter referred to as "ECZ"*). The letter is headed: "*Reports on nullified seats by the High Court*". The letter reads as follows:

"REPUBLIC OF ZAMBIA
THE JUDICIARY

RHC/2/5

9th August, 2013

AVENUE

CENTRAL ADMINISTRATION

PLOT NO. 438 INDEPENDENCE

P.O. BOX 50067

LUSAKA,ZAMBIA

The Director
Electoral Commission of Zambia
Ndeke Annex
Long Acres
LUSAKA

RE: REPORTS ON NULLIFIED PARLIAMENTARY SEATS BY THE HIGH COURT

The above subject refers.

Find attached a Press Statement released by the Judiciary on the 9th August 2013 for your use.

Enclosed herewith are the Supreme Court Judgments in the Election Petitions for Chipata Central, Petauke Central and Malambo Constituencies.

SIGNED

CHILOMBO MAKAPHIRI (MRS)

ACTING REGISTRAR OF THE HIGH COURT

It is common knowledge that the Press Statement and the Report by the Acting Registrar of the High Court, induced the Electoral Commission of Zambia to bar the losing candidates for Petauke Central, Malambo and Mulobezi Constituencies, from re-contesting the Parliamentary seats. The Electoral Commission of

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Zambia issued a statement that they would not accept nomination-applications from the losing candidates in the three Constituencies because of the statement and report from Judiciary. And as a result, the three affected former Members of Parliament have instituted Court proceedings against the Electoral Commission of Zambia over the issue. And that matter is now before this Court, on appeal.

Further, on 11th October, 2013 the successful Appellant in the Election Petition for the Vubwi Constituency lodged a motion before this Court, for determination inter alia, that the losing Respondent may be barred from contesting a Parliamentary election for five (5) years, from the date he is reported to the Electoral Commission of Zambia by the High Court.

On 17th October, 2013 the successful Appellant in the Election Petition for Zambezi West Constituency, lodged a similar motion against her losing opponent.

At this stage, we wish to comment on the documents in the supplementary bundle of documents. Firstly, given the sequence of events, we are of the view that the statement issued by the Public Relations Officer and the subsequent Report to the Electoral Commission of Zambia; were influenced by the letter of 1st August, 2013 by the Patriotic Front. Secondly, we are uncomfortable and worried that the letter of 1st August, 2013 and the legal opinion attached thereto, was copied to the Hon. Acting Chief Justice. We say so because there were already intended

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moves to file the motions stated above. In our view, it is not in order for an intending litigant, or somebody on his behalf, to send

a letter and legal opinion, related to intended litigation, to a member of the Court. Such a move gives a perception that the Court is siding with a party to the dispute. And it is that kind of perception that caused the contemnor to make the contemptuous statements, for which he is charged. The truth is that this Court does not get directives, from anybody, to decide election petitions in a pre-determined way.

At this stage, we wish to remind the contemnor that when his Party, the M.M.D. was in power, it enacted the current **Electoral Act, 2006**. It also formulated the current strict

Electoral Code of Conduct. We would add that the other political parties, now in Parliament, took part in the enactment of **the Electoral Act** and formulation of **the Electoral Code of Conduct 2011**. We nullify election results, on the basis of the conduct of a Member of Parliament, solely following and guided by the **Electoral Act 2006** and **the Electoral Code of Conduct, 2011**. And very often, such conduct is not in dispute.

At this stage, we wish to pick on just one case, involving Hon. Reuben Mtolo Phiri, Chipata Central Constituency, as an example. Indeed, this is one of the cases the Contemnor lamented over, during the radio interview. In that case, the High Court nullified the election of Hon. Phiri, mainly on two issues. One was the use of boreholes, a Government facility, to enhance

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his election. Second was donation of money to Church, during the campaign period.

We will start with the borehole issue. **Regulation 21(K)** of the **Electoral (Code of Conduct) Regulations**, which is **Statutory Instrument No. 90** of **2011**, prohibits a Parliamentary candidate from using: *“Government or Parastatal transportation or facilities for campaign purposes.”* Boreholes in Chipata Central Constituency were sank by the Government under the office of the District Commissioner. That was done as part of ongoing developmental projects. During

campaigning, Hon. Phiri found the District Commissioner commissioning one borehole. So he took advantage of that; addressed the gathering and asked for votes. At trial, the High Court found that Hon. Phiri had breached **Regulation 21 (k)** and **Section 93(2)(c)** of the **Electoral Act 2006**. Partly on that account, it nullified his election.

On appeal, we held, on the borehole-issue, as follows:

“In paragraph 5 (vii), the Appellant pleaded in his answer that the sinking of boreholes was an ongoing government developmental project, in conjunction with various community based organizations, which started when the Respondent was still a Member of Parliament for Chipata Central Constituency. It was the Appellant’s contention in the Court below that on the authority of Lewanika & Others v Chiluba (1998) Z.R. 79, the project was a philanthropic activity and hence, not a ground on which to nullify an election. The learned trial Judge found as a fact the

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boreholes were sank by the Government, under the District Commissioner’s office. But we note, as correctly argued by Counsel for the Appellant, the learned trial Judge did not consider whether the boreholes issue was a philanthropic activity. Philanthropic activities is the practice of helping the poor and those in need, especially by giving money and services: See- Oxford Advanced Learner’s Dictionary (7th Edition), page 1089. In Zambia, philanthropic activities include developmental projects. As the electoral law stands

now, philanthropic activities, even when they had some influence on voters, do not constitute corruption or illegal practice, and hence not petitionable: See Lewanika & Others v Chiluba (1998) Z.R.79.

For the foregoing reasons, we hereby reverse and set aside the learned trial Judge's holding on the borehole-issue. Accordingly, we allow ground 3 of the appeal.

Ground four (4) directly emanates from the boreholes. And it is inter-related to ground three (3). Having allowed ground 3; and for the reasons we have given above for doing so, we do not find it necessary to consider ground 4."

Next, we move on to Church donations. Hon. Reuben Mtolo Phiri made two donations, totaling K1,500,000 (old currency). And in the process he made a request for a vote, when he was introduced to the Church congregation, as a candidate for the Chipata Central Parliamentary Seat. He argued, through his lawyers, that the donations were made to the church and choir, as a group. That

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they were not made to individuals or directed to them as voters. Therefore, they fell under the definition of "*philanthropic activity*", which as the law and regulations stand now, is not an electoral malpractice and not petitionable. He relied on the case of **Lewanika & Others v Chiluba**.

On the church donations, we did not accept Hon. Phiri's defence and arguments. We said and held as follows and we quote:

"We have considered the submissions on both sides and have looked at S.79(1)(c) of the Electoral Act, 2006 and the cases cited. Section 79(1)(c) reads as follows:

"79.(1) Any person who corruptly either directly or indirectly, by oneself or any other person-

(c) makes any gift, loan, offer, promise, procurement or agreement to or for any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election:.....

Shall be guilty of the offence of bribery."

We have already dealt with philanthropic activity above.

In Mabenga v Wina & Others this Court held that the Appellant's conduct and activities went beyond philanthropic activities. That they constituted misconduct and hence upheld nullification of his election. The activities and conduct in question involved:

(1) Him requisitioning drugs from Medical Stores, for the Rural Health Centres and Community Health Centres in Mulobezi Constituency;

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(2) Him using his transport to transport the drugs, as a Minister; and

(3) Him causing the collected drugs to be stored at a house at Sichili Basic School, from where they were distributed, to the various places, up to polling day.

On the authority of the Mabenga case and on the evidence on record, we hold that the Appellant's conduct in donating the money to the church congregation, when he was introduced as a Parliamentary candidate and expressly asking for votes, went beyond philanthropic activity. We uphold the holding by the learned trial Judge that the Appellant's conduct amounted to a corrupt or illegal practice, under Section 79(1)(c) and 93(2)(c) of the Electoral Act, 2006. It warranted nullification of his election to the National Assembly."

Hon. Phiri did not dispute the conduct in question. What was in issue was whether his conduct breached the electoral law. And his case, like others, was decided on his conduct in relation to the law. It is a combination of the proven conduct of a given Member of Parliament and the law, which determines the nullification of his or her election. The determining factor is not Acting Chief Justice Chibesakunda or the Supreme Court.

Even assuming Hon. Phiri was a PF Member of Parliament and somebody petitioned against him, on the said conduct, the High Court and this Court would have nullified his election. Judge Chibesakunda, or no Judge Chibesakunda, in the post of Acting Chief Justice, this Court would have upheld the nullification of the election of Hon. Reuben Phiri. Contrary to

the assertions of the Contemnor, the nullification of the election of Hon. Reuben Phiri and Mr. Maxwell Mwale, were not first made

by the Supreme Court. They were first nullified by the High Court. The two appealed to this Court. And we upheld the High Court nullifications.

In his Radio interview, the Contemnor challenged us to prove that it is not true that the Supreme Court, under the leadership of the Acting Chief Justice, is used by the Patriotic Front to deplete the opposition. What we have said above answers that challenge. It proves that the allegation is not true.

And here is a caution to all political candidates: control and watch your conduct, when you campaign. Observe **the Electoral Act of 2006** and the **Electoral (Code of Conduct) Regulations 2011**, both of which you made for yourselves. Courts would be very happy if nobody petitioned against election results. It would mean no litigation on elections and less insinuations against us.

Finally, we move on to the sentence. **Mwiba v the People** ⁽¹⁾ is an authority on the sentencing of people who plead guilty. It decided that while sentencing, due allowance should be given to an accused person who pleads guilty and shows contrition.

In the present case, the Contemnor has admitted the charge of contempt of Court. He has withdrawn the contemptuous remarks and has apologized. We have also considered the mitigation by Mrs. Kunda on his behalf. Additionally, the

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document at pages 1-7 and 9 of the Appellant's bundle of documents, as set out above, came into existence, after the Contemnor made the contemptuous statements. However, we are of the view that the documents provide strong mitigation in favour of the Contemnor. We say so because they relate to issues that the Contemnor was complaining about, when he made the contemptuous statements. Given the foregoing, we hereby give the Contemnor an absolute discharge.

F.N.M. MUMBA

ACTING DEPUTY CHIEF JUSTICE

M.S. MWANAMWAMBWA

SUPREME COURT JUDGE

H. CHIBOMBA

SUPREME COURT JUDGE

G.S. PHIRI

SUPREME COURT JUDGE

M.E. WANKI

SUPREME COURT JUDGE