

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

(CONSTITUTIONAL JURISDICTION)

2016/HP/EP/021

**IN THE MATTER OF: ARTICLE 47(2) 51,54,72(2) (C) AND 73(1)
OF THE CONSTITUTION OF ZAMBIA
AMMENDMENT, ACT NO. 2 OF 2016.**

AND

**IN THE MATTER OF: SECTIONS 81, 89, 97(1), 98(C), 99 AND
100(2) OF THE ELECTORAL PROCESS,
ACT NO. 35 OF THE LAWS OF ZAMBIA.**

**IN THE MATTER OF: RULES 12 AND 15(A) (H) AND (K) OF
THE ELECTORAL CODE OF CONDUCT
RULES**

**IN THE MATTER OF: THE MUNALI CONSTITUENCY
ELECTIONS HELD IN ZAMBIA ON THE
11TH AUGUST, 2016.**

BETWEEN:

DOREEN SEFUKE MWAMBA: PETITIONER

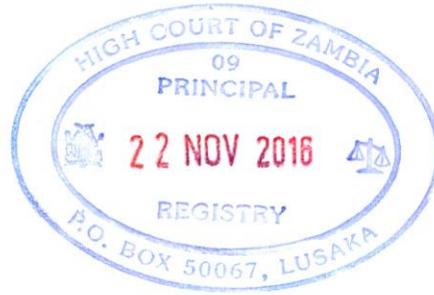
AND

NKANDU LUO (PROF): 1ST RESPONDENT

**ELECTORAL COMMISSION OF
ZAMBIA: 2ND RESPONDENT**

THE ATTORNEY GENERAL: 3RD RESPONDENT

J2



BEFORE:

HON. MR. JUSTICE E.L. MUSONA

FOR THE PETITIONER:

**Dr. HENRY MBUSHI OF
MESSRS HBM ADVOCATES.**

FOR THE 1ST RESPONDENTS:

1. MR. B. MUTALE SC
2. MS M. MUKUKA
3. MR. M. BWALYA

**ALL OF MESSRS ELLIS AND
CO.**

FOR THE 2ND RESPONDENT:

1. MRS N.B. BWALYA
2. MR. K. WISHIMANGA
BOTH OF MESSRS A.M.
WOOD AND CO.

FOR THE 3RD RESPONDENT:

1. MR. S. CHOMBA SAKALA
2. MS D. SHAMABOBO
BOTH OF THE
ATTORNEY GENERAL'S
CHAMBERS.

JUDGMENT

Date: 22nd November, 2016

Legislation referred to:

1. S. 97 (2)(a)(b) of the Electoral Process, Act No. 35 of 2016

Cases referred to:

1. Kafuka Kafuka v Ndalamei Mundia Appeal No. 80 of 2012
2. Robert Chiseke v Simbula Appeal No. 223 of 2012.
3. L Mumba V P, Daka SCZ No. 38 of 2003
4. Saul Zulu V Victoria Kalima SCZ No. Judgment No. 2 of 2014
5. Michael Mabenga V Sikota Wina SCJ No.15 of 2003
6. Brelsford James Gondwe V Catherine Namugara, Appeal No. 175/2012
7. Anderson Mazoka V Levy Mwanawasa 2005 ZR. 138
8. Steven Katuka (suing as Secretary General of the United Party for National Development – UPND) and the Attorney General and Ngosa Simbyakula and 63 others, 2016/CC/0010/2016/CC/0011

This is a Judgment on the Election Petition filed by F/Doreen Sefuke Mwamba.

The history of this petition is that the Electoral Commission of Zambia conducted elections on 11th August, 2016 in various constituencies in Zambia.

F/Doreen Sefuke Mwamba was a Parliamentary Candidate for the Munali Constituency on the ticket of the United Party for National Development (UPND).

F/Nkandu Luo was a Parliamentary Candidate for the same Munali Constituency on the ticket of the Patriotic Front (PF).

F/Nkandu Luo who was a Parliamentary Candidate on the Patriotic Front (PF) ticket was declared winner.

Dissatisfied with those election results, F/Doreen Sefuke Mwamba who was a candidate on the United Party for National Development (UPND) ticket filed this petition.

There were other candidates who participated in those elections in the said Munali Constituency on the tickets of their various political parties but are not parties to this petition.

I shall, therefore, refer to F/Doreen Sefuke Mwamba as the Petitioner and to F/Nkandu Luo, Electoral Commission of Zambia (ECZ), and the Attorney General as 1st, 2nd and 3rd Respondents respectively, which is what the parties to this petition actually are.

The Petitioner prayed for the following relief:

1. A Declaration that the election of the 1st Respondent as a Member of Parliament for Munali Constituency is null and void.
2. A Declaration that the illegal practices committed by the 1st Respondent and/or her agents affected the election result that the same ought to be nullified.

3. An order that the costs occasioned by the Petition be borne by the Respondents.

My duty is to ascertain whether or not the allegations contained in the petition have been proved.

The evidence by the Petitioner who is PW1 in this case was that she has been a member of the United Party for National Development (UPND) from 2001, and that she was a senior member of the Party holding the position of Trustee in National Management.

In May 2016, the United Party for National Development (UPND) adopted the Petitioner to contest the Parliamentary seat in Munali Constituency in Lusaka.

Among other candidates from other political parties who were also contesting the Munali Constituency Parliamentary seat was the 1st Respondent from the Patriotic Front (PF).

The Petitioner told this court that she stood against a serving Minister and that campaigns in Munali Constituency were full of violence.

The Petitioner further told this court that the 1st Respondent who was a serving Minister continued to campaign as a Minister inspecting Government on-going projects using Government

transport, Government driver and other Government resources. This was after Parliament was dissolved.

Among the on-going Government projects which the 1st Respondent is alleged to have inspected during campaigns after Parliament was dissolved are water projects in Kaunda Square Ward, Mtendere Ward and Chainda Ward, and there were also slogans such as “sontapo epowabomba”, which literally means show us where you have worked. The 1st Respondent also held rallies without the police stopping her because she was a serving Minister, this the Petitioner alleges that it worked to the advantage of the 1st Respondent and unfortunately to the disadvantage of the Petitioner. The Petitioner alleged that she was not allowed to hold public meetings (rallies) as the 1st Respondent did.

During fighting the 1st Respondent's party would shout a slogan saying “Boma ni Boma.” What the Petitioner understood by this slogan, and going by what she experienced during those campaigns was to mean that the party for the 1st Respondent was above the law because it was the Political Party in government. The Petitioner's campaign posters were also destroyed.

On 8th August, 2016 the Petitioner picked their double decker National Campaign bus from their campaign centre in Woodlands, Lusaka. This is a sightseeing double decker bus with a roofless upper deck. The Petitioner was with five (5) aspiring counsellors

for different wards in Munali Constituency, four (4) members of the National Campaign Team, a photographer, about ten (10) women from the Party's Women's League, the driver of that bus and ten (10) other males.

They started off for a road show starting with Lubu Ward in Lusaka Central Constituency and entered Kalingalinga. They left Kalingalinga and went to Mtendere Ward. Ahead of that bus there were about four (4) other vehicles of UPND members. There were also other vehicles of UPND members behind that bus. On that campaign bus the UPND had their campaign materials such as chitenge materials, parliamentary 'T' shirts, presidential 'T' shirts, key holders and fliers.

The Petitioner was on the upper deck of that double decker UPND campaign bus and was able to see clearly ahead of the bus. As they were approaching Mtendere Market, the Petitioner, who was on the upper deck of that double decker campaign bus saw a group of PF Members running towards that UPND campaign bus. Fear gripped the UPND team. The UPND motor vehicles that were driving ahead of that UPND campaign bus scampered on the side roads. Some male members of the UPND team and other UPND motor vehicles tried to block the PF members from advancing towards the rest of the UPND campaign team but according to the Petitioner the UPND male members "were no match" to the PF members who advanced armed with stones, picks and pangas. In no time the UPND members aboard the UPND campaign bus fled

and that bus was deserted. The Petitioner remained on the upper deck of that UPND double decker campaign bus only with two (2) ladies and one (1) man. So only four (4) people remained on that upper deck. Stones showered those four (4) on the upper deck. The Petitioner tried to protect her face from the raining stones using her left hand but to no avail. The windscreen and doors were shattered. Anything glass on the bus was shattered.

Some PF members moved on to that bus and eventually reached the upper deck. They kicked the Petitioner. The PF members started telling each other in Nyanja language, "muchite chabe, muchite chabe". The Petitioner understood this to mean, "just rape her, just rape her".

Fearing to be raped, the Petitioner who was then lying down on that upper deck of the double decker bus turned face down to block the would be rapists from raping her. PF members then started stepping on the Petitioner's back and in the process the Petitioner fainted. That was on the upper deck of that bus. When the Petitioner regained conscious she was no longer on that bus. She found herself on a taxi surrounded by female residents of that area. In the meantime, PF members mobilized themselves again and came to the taxi driver. Seeing that he was under seize by PF members that taxi driver abandoned the Petitioner at a house about one hundred metres (100) from the scene of the UPND campaign bus attack.

A few minutes later a Police Officer from Mtendere Police Post went to that house and picked the Petitioner in a black surf, a motor vehicle belonging to one of the residents of Mtendere. They headed for Woodlands Police Station but on the way they met about two (2) to three (3) motor vehicles with about twenty (20) to thirty (30) Police Officers from Woodlands Police Station in riot gear. The Petitioner narrated her ordeal to them. When the riot police officers left to go to the scene of the attack, the Police Officer who had come from Mtendere Police Post rescinded the idea of going to Woodlands Police Station because, according to him he had handed the case to those riot police officers from Woodlands Police Station. He then asked to be taken back to his base at Mtendere Police Post. When they reached Mtendere Police Post the Petitioner saw Police Officers surrounded by PF members. The Petitioner heard PF members shouting at the Police Officers the utterances; "officer boma ni boma". No arrests were made. The Petitioner then ended up at Levy Mwanawasa General Hospital.

According to the Petitioner, from that moment, all the five (5) UPND campaign centres in the five (5) wards in Munali constituency were deserted. That incident marked the end of campaign in Munali Constituency by UPND, because UPND members realized that it was dangerous to be associated with UPND. That was on 8th August 2016.

Two (2) days later, on 10th August, 2016 the UPND National Campaign Team went to hold a rally in Mtendere on Mahatma Gandhi grounds. That rally flopped because news of the incident of 8th August, 2016 had spread and people in Munali Constituency feared to attend that UPND rally because they had proved that Zambia Police would not protect them.

On 11th August, 2016 which was the polling day, the Petitioner discovered that in Munali Constituency the Electoral Commission of Zambia (2nd Respondent) did not provide adequate election materials such as Form Gen. 12 and ink. The petitioner made several photo copies of Form Gen. 12 and distributed them to Chainda Ward, Chakunkula Ward, Mtendere Ward and in Kalingalinga Ward including the University of Zambia (UNZA) which is in Kalingalinga Ward.

It was discovered that the Presiding Officer at Chainda Catholic Church was not disclosing serial numbers of ballot booklets to be used during voting. They also ran out of ink.

PF members were also seen campaigning openly inside the polling station and when UPND members made an attempt to take photographs of those PF members, they were blocked from doing so by state police officers.

The Petitioner went to Vera Chiluba Polling station in Mtendere at about 20.20 hrs. That was on the polling day. Prof. Nkandu Luo

who is 1st Respondent in this case and who was the PF Candidate in those elections was allowed to enter the polling station in the company of Kaiser Zulu who is Special Assistant to the Republican President. When the Petitioner too who also was a candidate on the UPND ticket in those elections attempted to enter the polling station she was denied entry into the same polling station by a state police officer.

Between 13.00 hrs and 14.00 hrs on Friday 12th August, 2016 the Petitioner went to Kalikiliki Polling Station. At that time counting of votes at Kalikiliki Polling Station had ended. The Petitioner discovered that there was only one (1) Form Gen. 12 at Kalikiliki Polling Station. That Form Gen. 12 was with the Presiding Officer. There was also a dispute regarding the figures to be written on that Form Gen. 12. According to the Petitioner, she was briefed by the 2nd Respondents prior to elections the role of Form Gen. 12. The Petitioner told this court that Form Gen. 12 is a document for the Electoral Commission of Zambia, the Second Respondent herein which is used in an election at Polling Stations to record election results both in figures and in words. All Polling Agents should append their names in full and signature to form Gen. 12.

There was also one PF member who insisted that his figures should be the ones recorded but a recount was done. After the recount the ballots were transferred to Munali Secondary School which was the totaling centre. The Petitioner then saw other

ballot boxes arriving at Munali Secondary School totaling Centre already opened.

The Petitioner called five witnesses. This made the number of persons who testified in support of this petition rise to six (6) which include the Petitioner herself.

PW2 was M/Christopher Hamonga a marketeer and resident of Mtendere East in Munali Constituency.

The evidence of PW2 was that he was part of the UPND team which was on a road show on 8th August, 2016. They started from their National Campaign Centre in Woodlands where they picked their double decker UPND campaign bus. He with the rest of the team travelled on that bus passing through Burma Road, University Teaching Hospital (UTH), Longacres and Kalingalinga. They then drove towards Mtendere. PW2 was on the upper deck of that double decker bus. When they entered Mtendere at the junction of Mahatma Gandhi School, PW2 saw ahead of the UPND bus a group of people clad in PF regalia. Those people were running towards the UPND campaign bus. Those PF cadres threw stones at the UPND team and the bus stopped. Some of those PF cadres had machetes, pick handles and stones. When PW2 saw this he jumped off the bus. He told this court that he was lucky because he did not wear UPND Party regalia. That enabled him to remain disguised and stand incognito in the group of onlookers and watched the attack on UPND members by PF

cadres. When some PF cadres identified PW2 and tried to attack PW2, PW2 denied being one of the UPND members and was left, but a short while later some PF cadres returned to PW2 wishing to attack PW2 and insisted that surely PW2 was a UPND member and part of the UPND team under attack, but again PW2 strongly denied being one of those UPND members.

Later after the beating of UPND members and the damage to the UPND campaign bus were done, a supposedly PF gang leader raised his hands and ordered the PF cadres to halt the attack on the UPND members. PW2 identified that man as Mwape who is known by a nick name of Great Carry who is a PF cadre and works at Mtendere market. The PF cadres then left the UPND members and retreated to Mtendere market.

The third prosecution witness was M/Joseph Chilekwa a photographer and graphic designer.

The evidence for PW3 was that he was employed by the Petitioner at the commencement of the 2016 election campaigns to document videos and photos.

On 8th August, 2016 the UPND Campaign Team picked PW3 from Kalingalinga and proceeded to Mtendere on a UPND campaign double decker bus. PW3 sat with the Petitioner on the upper deck of that bus from where he was taking photos and filming the procession while the UPND Campaign Team was singing.

When they reached Mtendere PW3 saw people in PF regalia advancing towards them from the direction of Mtendere market. PW3 continued taking photos and filming the events. Those PF cadres were not only advancing towards the UPND members but were also throwing stones at the UPND Campaign Team. PW3 then ran off that bus and stood outside where he continued filming the event. After filming the event, PW3 hid behind a nearby shop.

The fourth prosecution witness was F/Gertrude Mundia Munalula Phiri a Gemstone Miner.

PW4 told this court that she was accredited by the Electoral commission of Zambia (ECZ) who are the Second Respondents herein as an election monitor under the Association of Zambian Women in Mining. Regarding the election in casu, PW4 was non-aligned and her duties were to monitor the 2016 elections, look for irregularities which may arise and to resolve conflicts in a peaceful and democratic manner in order to build public confidence in the electoral process. She also told this court that she was not involved in the campaigns but that her duties commenced on 11th August, 2016 at 05.00 hrs. I have taken judicial notice that 11th August, 2016 is the date when the elections were held in Zambia.

First, PW4 cast her vote at Vera Chiluba School polling station and then commenced monitoring there. The following day PW4

was at Munali Secondary School, that was 12th August, 2016. Munali Secondary School was the totaling centre for Munali Constituency. Results were still being awaited from various polling stations. In the afternoon of 12th August, 2016 while awaiting election results PW4 left the hall where election results were being totaled up to answer a phone call. While she was outside PW4 noticed that there were some ballot boxes which were being brought to the totaling centre from polling stations already open. PW4 expressed shock to a Police Officer who stood by those boxes and asked if the ballot boxes were safe. In response the Police Officer told PW4 that, that was the way those ballot boxes arrived at the totaling centre and that the official for Electoral Commission of Zambia who had accompanied the ballot boxes to Munali Secondary School totaling centre had gone inside the totaling hall leaving those open ballot boxes outside. PW4 then took photos of those ballot boxes. This matter was reported to Electoral Commission of Zambia (ECZ) but when PW4 sought audience with the Presiding Officer at the totaling centre she was denied that audience on ground that the Presiding Officer was busy.

The fifth prosecution witness was F/Wendy Lwendo Michelo.

PW5 told this court that she was a Polling Agent for UPND in the 2016 elections and was based at Kaunda Square Community Hall which is in Munali Ward 33.

On the polling day PW5 reported to the polling station at 05.45 hrs but the polling station did not open because according to the Presiding Officer wrong documents were delivered to Munali Ward 33. When voting finally commenced, there were various voting streams. Voting streams are tables allocated in alphabetical order and voters lined up according to those streams in the alphabetical order of their names.

PW5 then noticed that the official for Electoral Commission of Zambia who are the Second Respondents herein who was assigned to stream three (3) was not calling out the full details of voters such as;

1. National Registration Card Number.
2. Full name of voter.
3. Voter's card number.

When confronted by PW5 why that official was not calling out full details, the reason which was given to PW5 by that official from Electoral commission of Zambia was that she was tired. PW5 did not recall the name of that official for the Electoral Commission of Zambia (ECZ).

PW5 also noticed that one official for the Electoral commission of Zambia kept escorting voters to the voting booth and giving them instructions on how to vote. The name of that official is Milimo. PW5 confronted Milimo and also reported the matter to the

Presiding Officer, that is when Milimo allegedly stopped the alleged malpractice. There was also one man called Chibamba who had a phone inside the polling station. Chibamba kept phoning PF cadres who were outside saying, "Natukolopa, iseni tuchite cerebrate" meaning that they had won. This happened during the whole process of voting and counting of votes.

At the conclusion of voting, counting of votes commenced. During counting, PW5 noticed that an official of the Electoral commission of Zambia (ECZ) was not showing the ballot papers to all the agents in the manner they were supposed to be shown.

When counting of ballot papers was completed PW5 requested to count the ballot books which were used in the voting but this was met with stiff resistance from Electoral Commission of Zambia (ECZ) officials. After much insistence, the officials from Electoral commission of Zambia gave in and the ballot books were counted. The count of the ballot books revealed that full five (5) ballot books were used completely and a sixth one was not finished. When they calculated the number of ballot books it was discovered that the number of ballot books was not tallying with the number of ballot papers. An argument then ensued between PW5 and officials from the Electoral Commission of Zambia, at the end of which they resolved to recheck the ballot papers. After rechecking the ballot papers what was discovered is that 15 ballot papers which were in favour of the UPND candidate had been given to the PF

candidate. Officials from the electoral commission of Zambia (ECZ) justified this anomaly on ground that they were tired.

At around 05.00 hrs on 12th August, 2016 PF cadres stormed the polling station. These PF cadres caused confusion because UPND Agents demanded Form Gen. 12. State Police Officers who were present at the Polling Station calmed the situation and requested the PF cadres to leave the polling station.

At around 11.00 hrs on 12th August, 2016, M/Sylvester Mulenga who was a PF aspiring Councillor stormed the polling station accompanied by eighteen (18) PF cadres with some armed with guns. They also had disposable sprite and cocacola drinks. There were four (4) state police officers present. Those PF cadres offered drinks to the four state police officers. Three (3) of those state police officers drunk those drinks and immediately fell into deep sleep. Only one of those police officers who had not yet drunk the drinks remained awake. At that time the counting of votes at the Polling Station had ended and ballot boxes were already sealed in readiness for transportation to the totaling centre. PF cadres opened the sealed ballot boxes, they unpacked the ballot papers and then started repacking. Confusion ensued. When PW5 and other monitors rose and confronted those PF cadres, one of those PF cadres wielded a gun and said, "if you love your life sit". PW5 and other monitors had no choice but to sit while they watched PF cadres engage in the process of unpacking and repacking ballot papers.

After the PF cadres sealed the ballot boxes PW5 demanded from the officials of the Electoral Commission of Zambia to be given serial numbers but this was denied as well.

PW5 further told this court that she was also involved in the campaigns. During the campaigns she once saw Prof. Nkandu Luo who is the 1st Respondent herein and who was a PF Parliamentary Candidate for Munali constituency being driven in a white government motor vehicle with a Zambian flag on it. There was a Noah bus following that government motor vehicle. The Noah bus was branded in PF colors with the portrait of the 1st Respondent on it. PW5 described the scene of this incident as Kaunda Square Stage 2, off Tom stone Road, first turn to your left the first house on your right. The 1st Respondent was distributing PF 'T' shirts and PF chitenge materials at that house.

The sixth prosecution witness was M/Kelvin Pinati Hamwete a charcoal trader.

The evidence for PW6 was that on 8th August, 2016 he was at the station which is at Mtendere market awaiting to be picked by a UPND campaign bus. There was no PF rally at Mtendere market then except for PF youths who were sharing PF 'T' shirts.

Whilst there, PW6 saw a UPND motor vehicle canter arrive at the market. UPND campaign songs were being played on that motor

vehicle. What followed is that PW6 saw PF youths run to that UPND motor vehicle canter throwing stones and axe handles at it. Eventually, the PF youths got away a battery from the gen set which was used to play UPND campaign songs and that motor vehicle canter fled the scene.

PW6 emphasized that at that time, there was no PF rally in Mtendere and that Mtendere East is in Chainda Ward which is far from Mtendere.

I must emphasize that the above named are the only six petitioner's witnesses who testified in this petition. I did not receive evidence from Auto Mulinda and Wendy Lwendo Mziwetu as the Petitioner alleges in her submissions. Of course, there was F/Wendy Lwendo Michelo who was PW 5, but not Wendy Lwendo Mziwetu. I have mentioned this in order to make the record straight and free from any possible distortions. Parties must be factual when discussing evidence in their submissions because these partly form the basis of judgment. If parties distort parts of court proceedings in their submissions the danger is that the court may be swayed in its decision. However, I am alive to the need for accuracy and no amount of distortion will sway my decision.

At the close of the Petitioner's evidence the 1st Respondent called eight (8) witnesses. The second Respondents called four (4) witnesses. The third Respondent called no witness. This means

that in total the Respondents called twelve (12) witnesses. RW1 to RW8 were called by the 1st Respondent while RW9 to RW12 were called by the 2nd Respondents.

I shall refer to these witnesses just as RW1 to RW12 respectively.

RW1 was M/Stephen Chanda a businessman who told this court that he was a campaign strategist for the 1st Respondent in Munali constituency from date of her nomination up to Election Day in the 2016 Elections. His duties were to strategize on how they would reach the electorate in Munali constituency within the campaign period in order to deliver the message for PF and to popularize the 1st Respondent who then was a PF Parliamentary Candidate for Munali Constituency.

As a strategist, RW1 interacted with the 1st Respondent closely on a daily basis and was aware of all the movements for the 1st Respondent because he had her program. RW1 further stated that during the campaigns the 1st Respondent did not use a public vehicle, government driver or any government resources. The 1st Respondent had personal motor vehicles which were assigned for campaigns, these were a Noah and a Regius. There were also other motor vehicles provided by volunteers for use during those campaigns. In emphasizing that the 1st Respondent did not use a government driver during those campaigns, RW1 told this court that a Mr. Tembo who is not a government employee used to drive the 1st Respondent and in the absence of Tembo RW1 would drive.

Referring to the violence which rocked Munali Constituency particularly in Mtendere during campaigns RW1 stated that UPND cadres attacked and caused damage to the PF campaign motor vehicle for the 1st Respondent and also attacked and caused damage to the home of Watson Mtonga who then was aspiring Councillor on the PF ticket. He denied assertions that the 1st Respondent attacked nor sponsored any group to attack a UPND campaign bus or a Parliamentary aspiring candidate for Munali Constituency. At the time of the attack on the UPND campaign bus in Mtendere the 1st Respondent was not in Mtendere but in Mtendere East also known as Kalikiliki about 5 km or more away although she was scheduled to meet marketeers at Mtendere market later in the day.

RW1 further told this court that the intention to meet marketeers at Mtendere market by the 1st Respondent was abandoned because the UPND bus drove to where the 1st Respondent was supposed to meet the marketeers who were waiting for the 1st Respondent.

He further told this court that on 11th and 12th of August, 2016 he moved with the 1st Respondent together with Martin Mwanza, Mrs Nyangu, Mrs Kawana, Mr. Mtonga, Mr. Chifwaya Fobes, Mr. Monta, Mr. Kaluba Nyirenda and many others but that Kaizer Zulu was not with the 1st Respondent on 11th and 12th August, 2016 because he never worked with the campaign team for the 1st Respondent. Further evidence by RW1 was that there was a

logistics team for the 1st Respondent which was charged with the responsibility of distributing food to polling agents. One of the members of that logistics team was Chanda Luo who is young sister to the 1st Respondent, and, that this team provided food to polling agents on 11th and 12th August, 2016 but that the team did not distribute drinks or anything to police officers and that it was, therefore, not true that anybody from that team gave police officers drinks who later fell into deep sleep after allegedly consuming the drinks.

During cross examination by the Petitioner's counsel, RW1 admitted that the 1st Respondent visited some projects in Munali constituency during campaigns but that she visited those projects firstly, as a Zambian and secondly as an aspiring member of Parliament for Munali Constituency. He further admitted that at the time of the attack on the UPND campaign bus the 1st Respondent was holding a meeting in Mtendere East about 5 km away from Mtendere market, and that there was no meeting at Mtendere market. He further told this court that there was nothing wrong for another party to pass through an area 5 km away from an area where the 1st Respondent was having her meeting.

The second Respondents' witness was M/Humphrey Tembo.

RW2 told this court that he was a driver in the campaign team driving the 1st Respondent. He stated that the campaign team

used a Noah motor vehicle and a Regius motor vehicle both of which were owned by the 1st Respondent.

The third Respondents' witness was M/Martin Mwanza. RW3 told this court that he was in charge of planning during campaigns. He stated that he worked closely with the 1st Respondent and that the 1st Respondent used two (2) motor vehicles, a Noah and a Regius and added that there was no GRZ motor vehicle. He further told this court that on 8th August, 2016 he was campaigning in Mtendere East and not planning to attack anybody but that whilst in Mtendere East there was a report that UPND cadres were in Mtendere and beating people.

During cross examination RW3 denied that there were inspections by the 1st Respondent of government projects such as schools, clinics and water works during the campaign period. This contradicted the evidence of RW1 who stated that during the campaign period the 1st Respondent visited government projects as a Zambian and as an aspiring Member of Parliament for Munali Constituency.

RW4 was M/Watson Mtonga the current PF Councillor for ward 30 in Mtendere of Munali constituency.

RW4 told this court that it ^{is} impossible for him to campaign on the voting day because he knew the Electoral Code of Conduct and that campaigns closed a day before the voting day. He also stated

that he could not dress in PF regalia in a polling station. He also denied that the 1st Respondent used public resources during her campaigns. He told this court that the 1st Respondent had two (2) motor vehicles a Noah and a Regius.

He also stated that UPND cadres attacked the house of RW4 together with his family and two (2) motor vehicles which were parked at the house of RW4.

RW4 denied that the 1st Respondent ever sponsored violent cadres to damage a UPND campaign bus, but that on the material day he was at Mtendere market awaiting the 1st Respondent who was in Mtendere East and was scheduled to visit Mtendere market to greet women in the vegetable shade as a way of lobbying for their support. At about 14.30 hrs RW4 received a phone call from Mrs Racheal Nyangu informing him that there were some UPND cadres causing violence near Kobil Filling Station which is at cross roads between Hellen Kaunda Compound, Mtendere Compound and Kabulonga residential area. That is 2 km away from Mtendere market. What followed is that he saw marketeers hurriedly close their shops and scampering in all directions and RW4 was also whisked away by his campaign team.

RW5 was M/Sylvester Mulenga a current PF Counsellor for Munali Ward 33 in Munali Constituency. RW5 denied threatening election monitors while armed with a gun. He admitted going to Mikomfwa Polling Station in Kaunda Square Stage 2 where PF agents had complained of hunger. Activities for both Mikomfwa

Polling Station and Masasa Polling Station were in one hall. RW5 gave one hundred Kwacha (K100=) to his agents to buy food for themselves. He vehemently denied giving any state police officer any drink laced with drugs to induce sleeping.

RW6 was F/Racheal Phiri Nyangu. RW6 told this court that she was a member of the campaign team for the 1st Respondent assisting the 1st Respondent in her campaigns. On 8th August, 2016 whilst seated in her Restaurant in Mtendere near Kobil filling Station which is at the junction of Mtendere and Kabulonga roads she heard some loud music. Curiously, she stood up to locate the source of that loud music. She then saw a double-decker bus. That double decker bus stopped and RW6 saw three (3) people dressed in UPND regalia come out of that bus carrying stones. They started throwing stones to people who were along the road and then everyone ran to safety. RW6 ran and locked herself in her shop. RW6 phoned M/Mtonga, M/Chanda and the 1st Respondent and reported to them the incident.

RW7 was F/Nkandu Luo who is the ^{1st} Respondent herein.

RW7 told this court that she was elected Member of Parliament for Munali Constituency on 11th August, 2016 which elections were announced on 12th August, 2016. RW7 denied being involved in any illegality concerning the 11th August, 2016 Munali Constituency Parliamentary elections. She also denied using any government motor vehicle and a government driver. She told this

court that she could not use government resources because she was standing for a Parliamentary seat for a third time and, therefore, was conversant with the rules. She stated that when one declares to stand for a parliamentary seat, has to prepare in advance. She further stated that the elections in casu were the most expensive elections she had ever faced adding that as a Minister, her monthly salary of Twelve Thousand Kwacha (K12,000) was too meagre to finance her campaigns, so, she funded her campaigns using the eighty-eight Thousand Kwacha (K88,000) which she was paid by Parliament as gratuity and raised a further one hundred thousand Kwacha (K100,000=) from well-wishers.

Her further evidence was that when she knocked off from work she would go home, and if she was going for campaigns she had two (2) personal motor vehicles, namely, a Noah and a Regius which were lined up for her campaigns, and almost all times she had Humphrey Tembo who offered to drive her in her personal motor vehicle during her campaigns. In the absence of Humphrey Tembo, she was driven by Stephen Chanda who was her campaign strategist. She also denied sponsoring PF' cadres to attack a UPND campaign bus because the attack on the UPND bus was in Mtendere while at the time of that attack she was not in Mtendere but in Mtendere East about 5 km away. The 1st Respondent further denied knowledge of a PF' aspiring counsellor dressed in PF' regalia campaigning at a Polling Station. She denied both going to Vera Chiluba School in the company of Kaiser Zulu and

closing the gate to deny the Petitioner entry into the Polling Station.

She further told this court that even independent aspiring Members of Parliament were distributing PF regalia and she, therefore, would not know who distributed the PF regalia which the people who attacked the UPND bus were clad in. She claimed that even her motor vehicle was damaged by UPND cadres and the incident was reported to state police.

The eighth Respondents' witness was F/Levan Ngoi Kakompe a General Manager for Inzy Media.

The evidence for RW8 was that Inzy was a media organization dealing in photography, advertising and media buying. She stated that Inzy does not train people and denied having trained Joseph Chilekwa who was the third Petitioner's witness (PW3) herein. She also denied ever hearing of ^{Joseph}~~Joseph~~ Chilekwa from 2013 when she joined Inzy Media. She narrated that Inzy Media was given a mandate to do media buying by and for PF from May 2016 to August, 2016. They did media buying on Zambia National Broadcasting Co-operation (ZNBC) space on radio and television. They also did photography for some aspiring Members of Parliament and aspiring counsellors. They also did motor vehicle branding designs but without printing. She denied doing anything for UPND.

RW9 was M/Chimwasu Njapau ^a ~~of~~ photographer and videographer working for Inzy Media where he is Head of Photography. He told this court that he was employed by Inzy Media in April 2009. He named the cameras used at Inzy Media as a Canon 5 D Mark II, Canon 5 D Mark III, Canon IDX, Canon 7 D Mark I and a Canon 60 D all of which are professional cameras which can take still pictures and video. He further stated that they do not train people at Inzy Media and that they have never had anyone by the name of Joseph Chilekwa either as an employee or as an intern.

The tenth Respondents' witness was M/Chrispin Nasilele Akufuna, a Public Relations Manager for the Electoral Commission of Zambia (ECZ) who are the second Respondents herein. He stated his duties as dissemination of information about the Electoral Commission of Zambia and the Electoral Process, liaising with stake holders by way of passing information and communicating decisions of the Electoral Commission of Zambia (ECZ).

He told this court that during elections the role of the Electoral Commission of Zambia was to communicate with stake holders particularly, political parties, to provide guidelines to political parties how they should conduct themselves, ensure that there is a level playing field and that political party candidates and their supporters abide by the Provisions of the Electoral Code of Conduct. Where a candidate violates provisions of the code of conduct a complaint can be made to the Conflict Management

Committee at the district level which are provided in all districts at the District Council Offices, and the District Electoral Officer who is a Town Clerk or Council Secretary provides secretarial services. The Electoral commission of Zambia brings to the attention of political parties the existence of these committees in every district, and reminds them of the need to subscribe to and abide by the Electoral Code of Conduct. Where an aggrieved party was not satisfied with the decision of the District Conflict Management Committee, the Electoral Commission of Zambia allows such a party to present the matter before the National Conflict Management Committee and if not resolved by the National Conflict Management Committee the matter can then be taken to the Electoral Commission of Zambia itself.

He stated that the Electoral commission of Zambia condemned in very strong terms the violence which occurred specifically in Mtendere through a national address and cited both the UPND and the PF to ensure that they followed provisions of the code of conduct and remind their supporters not to engage in violence.

The eleventh Respondents' witness was M/Dany Silwamba a Senior Committee Clerk at Lusaka City Council.

The evidence for RW11 was that he was on the secretariat for Lusaka District Conflict Management Committee and that he never received a complaint from the Petitioner regarding elections in Munali Constituency.

The twelfth Respondents' witness was M/Emmanuel Makulila an Accountant at Lusaka City Council.

The evidence for RW12 was that he was engaged as Returning Officer for Munali constituency and his duties were to receive nominations, co-ordinate and declare the Parliamentary and Local Government Elections in Munali Constituency. He told this court that he did not receive any report to the effect that people were wearing party regalia in the polling station.

He further narrated that on polling day the gazetted time to open is 06.00 hrs and closing is 18.00 hrs. If the polling station opens late it is permissible to recover the lost time by closing late by the corresponding period of the lost time. The procedure is that when opening the polling station the Presiding Officer stands outside where he is seen by everyone present and publicly announces that the Polling Station is officially open. At closing time the Presiding Officer again stands outside and in a similar fashion announces that the Polling Station is closed. When the Polling Station closes a uniformed State Police Officer stands behind the last person on the queue meaning that all the prospective voters who are already on the queue and in front of the state police officer at the time the polling station is closing will be allowed to vote. No one will be allowed to join the queue after closure of the polling station.

According to RW12, it was not possible that the 1st Respondent and Kaizer Zulu closed the gate at Vera Chiluba Polling Station because it is the Presiding Officer who closed the gate and kept the key. Here, I have found that RW12 was being speculative. I say so because RW12 was not at Vera Chiluba Polling station at the material time, he can, therefore, not assert who closed the gate.

I have looked at the Provisions of S. 97(2) (a) (b) of the Electoral Process Act No. 35 of 2016. That law is very clear. That law provides circumstances under which a parliamentary election may be nullified. S. 97 (2) (a) (b) reads as follows:

“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 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 the 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.**
- (b) Subject to the provisions of sub-section (4), there has been non-compliance with the Provisions of this Act**

relating to the conduct of elections, and it appears to the High Court or tribunal that the election was not conducted in accordance with the principles laid down in such provision and that such non-compliance affected the result of the election.”

I have also looked at several authorities among them, the following:

- (a) *Kafuka Kafuka v Ndalamei Mundia* (1)
- (b) *Robert Chiseke v Simbula* (2)

The above authorities have shown the circumstances under which a parliamentary election result may be nullified.

I heard all the witnesses who were called by the Petitioner and the Respondents. I have considered all their evidence. I have also read the submissions which I received from parties and I am greatly indebted to counsel for the parties herein.

I now remind myself that the burden of proof rests on the Petitioner. In an election petition like the one in casu, the standard of proof required though a civil matter is higher than “on a balance of probabilities” in order that the allegations raised must be proved to a fairly high degree of convincing clarity. In the case of *L Mumba v P. M Daka* (3) the Supreme Court stated that in election petitions the standard of proof required must fall between the civil standard of balance of probability and the criminal

standard of proof beyond reasonable doubt. This was reaffirmed by the Supreme Court in the case of **Saul Zulu V Victoria Kalima(4)**. I have been well guided. I also remind myself that the Petitioner's evidence must support the pleadings which are in the petition. The Petitioner is not allowed to bring in any evidence other than the evidence which is connected to the pleadings and goes to support those pleadings. Put simply, pleadings in an election petition are allegations by the Petitioner against the Respondent(s). What this means is that the Petitioner cannot go at sea, the Petitioner is restricted only to the evidence which is supportive of the allegations outlined in the petition. If the Petitioner or indeed any witness for the Petitioner adduces evidence which does not support the pleadings then that evidence is irrelevant and inadmissible to the extent of its irrelevancy.

I have looked at the case of **Michael Mabenga v Sikota Wina and Others (5)** where it was stated that the claim in an election petition depends on its pleadings.

In the case of **Brelsford James Gondwe v Catherine Namugala (6)** it was stated that in an election petition pleadings must give sufficient details of the specific wrongs alleged. I have also looked at the case of **Anderson Mazoka v Levy Mwanawasa (7)** which showed that pleadings must be specific in order to give the other party sufficient notice of any wrongs alleged.

What this means is that I must look out only for evidence which support the pleadings in the petition. The pleadings in this

petition were outlined in paragraph 5 under seven sub-heads. In order to show which Petitioner's evidence support the pleadings I shall do so by looking seriatim at the seven sub-heads of paragraph 5 of this petition.

I shall now begin with paragraph 5(i) of the petition. That paragraph reads as follows:

5(1) **"Prior to elections in the course of her campaigns, the 1st Respondent purported herself as a Cabinet Minister in the Ministry of Gender and used public resources such as GRZ motor vehicle, public fuel, public driver, public funds and other resources. That the said abuse of public resources was only stopped following the Judgment of the Constitutional Court that the 1st Respondent was not a Government Minister and not entitled to the use of public resources."**

I have looked at the pleadings in the foregoing paragraph. Witnesses were called to support these pleadings. According to the evidence before me there is no dispute that during the campaign for the 2016 Munali Constituency Parliamentary Elections the 1st Respondent was a Cabinet Minister. It is true that she was a Minister of Gender. This scenario was only stopped by the Constitutional Court in the case of **Steven Katuka (suing as Secretary General of the United Party for National Development (UPND) and the Attorney General and Ngosa Simbyakula and 63 Others (8)**. The most relevant part of that Judgment reads as follows:

“... the continued stay in office by the Respondents who are Cabinet Ministers and Provincial Ministers after the dissolution of Parliament on 11th May, 2016 is contrary to the spirit of the constitution as the Ministers do not qualify to continue to hold office as the basis of their appointments to those offices no longer exist. We order that they should forthwith vacate office”.

This shows that the 1st Respondent held the office of Minister of Gender illegally and this illegality continued throughout most of the campaign period. I am, therefore, satisfied that this part of the pleading has been proved. The next part of the pleading is that while she held herself as a Cabinet Minister during that campaign period she used government resources such as government motor vehicle, public fuel, public driver, public funds and other resources.

It is not in dispute that Cabinet Ministers of which the 1st Respondent purportedly was are entitled to government motor vehicle, public fuel and public driver. The 1st Respondent herself admitted that she had two government motor vehicles of which one was an official motor vehicle and the other was a personal to holder motor vehicle. She also admitted that she had a government driver. The only dispute is that she used a government motor vehicle and a government driver or other government resources during her campaigns. According to her, she told this court that when going on her campaigns she would

park the government motor vehicle at her house and leave the government driver then she would go on her campaigns using her personal motor vehicles namely, a Toyota Noah and a Toyota Regius driven by a non-government driver. The lacuna in her evidence is that I have not seen any government guideline to preclude a Minister from using government resources such as a government motor vehicle during campaigns. Ministers had government resources at their disposal. It was left solely to the Ministers themselves whether or not to avail themselves of those government resources, of which the 1st Respondent denies having used government resources. Truly, the 1st Respondent had her personal motor vehicles, namely, a Toyota Noah and a Toyota Regius which she used during her campaigns but I have seen no evidence to show that she truly did not use a government motor vehicle as well. In the contrast, there is evidence from the Petitioner that the 1st Respondent was seen driven in a government motor vehicle with a Zambian flag flying during campaigns.

The Petitioner testified how she saw the 1st Respondent driven in a government motor vehicle with a Zambian flag on it.

F/Wendy Lwendo Michelo was PW5 who also testified that she once saw the 1st Respondent being driven in a government motor vehicle with a Zambian flag on it, and that there was a Toyota Noah branded in PF colours with a portrait for the 1st Respondent accompanying that government motor vehicle. PW5 described the scene where she saw this as Kaunda Square Stage 2 off Tomstone

Road, first turn to your left then the first house on your right. The 1st Respondent was seen distributing PF 'T' shirts and PF chitenge materials at that house. There were difficulties by the Petitioner's witnesses in describing that government ministerial motor vehicle. The Petitioner described it as a prado vx while the other described it as a pajero. Notwithstanding that the witnesses described this motor vehicle in different dialects I am satisfied that they were both describing the same motor vehicle. I say so because firstly, both prado vx and pajero are Japanese vehicles, and to most laymen in the motor industry the distinction between a prado vx and a pajero is not visible, and secondly, the witnesses knew the 1st Respondent, they testified that they saw the 1st Respondent in that government motor vehicle and that there was a Zambian flag on that government motor vehicle which is a common practice by Ministers in Zambia to fly the Zambian flag on their government motor vehicles. I am, therefore, satisfied that these pleadings in the first paragraph of this election petition have been fully proved.

The 1st Respondent argued vehemently that she did not use government funds during her campaigns, but admitted that she used her salary which she was paid as a Minister. She called her salary as meager and that she raised other funds from other sources to supplement her salary and what was paid to her as gratuity. Indeed that was admission that the salary which she was paid was spent on her campaigns. She was paid that salary as a Minister the office which she held illegally. To the extent that she held the office of Minister illegally it follows that even the salaries

which accrued to her were paid to her illegally, she was not entitled to that money. Those salaries were government money which she used to fund her campaigns. The only question is to what extent did that salary advantaged the 1st Respondent against the Petitioner? The evidence shows that where as the 1st Respondent used that salary and supplemented it with other resources from other sources, the Petitioner did not have such a salary. It is therefore true that she used government funds and this affected the Petitioner who had no access to government funds and had to depend solely on her private sources. This ground has been proved.

The next pleadings to be considered are those contained in paragraph 5(ii) of this petition. That paragraph reads as follows:

5(ii) **“That on the 8th “August, 2016 about 15.00 hrs she sponsored violent cadres in Mtendere and attacked us and destroyed the party campaign bus.”**

There is no dispute that the UPND campaign bus was attacked in Mtendere on 8th August, 2016 at about 15.00 hrs. There are only two disputes. The first dispute is that the attackers of that UPND bus were sponsored by the 1st Respondent. The 1st Respondent vehemently denied sponsoring cadres to attack that UPND campaign bus. I have seen no evidence to show or even to suggest that the 1st Respondent sponsored cadres to attack that UPND campaign bus.

The second dispute is that the attackers of that UPND campaign bus were PF cadres. The 1st Respondent denied that they were PF cadres. I do not agree with the 1st Respondent. I say so because there is evidence that the 1st Respondent was not at the scene of the attack. Respondents' witnesses, including the 1st Respondent herself told this court that at the time of that attack on the UPND campaign bus the 1st Respondent was holding a meeting in Kalikiliki also known as Mtendere East which the Respondents' witnesses said is about 5 km away. The 1st Respondent can, therefore, not know whether those attackers of the UPND campaign bus were PF or not because she was not at the scene of the attack and did not see the attackers for her to positively say that they were not PF cadres.

The 1st Respondent stated that even independent aspiring Members of Parliament were also distributing PF regalia and that in Munali Constituency wearing PF regalia was not associated with PF membership because it was worn by anybody. The grey area in this evidence is that it does not show where the independent aspiring Members of Parliament were getting the PF regalia from. I have noticed that the petition shows that in Munali constituency there was only one Independent aspiring Member of Parliament, namely, Kaweme Sydney P. So then, if Independent aspiring members of Parliament were also distributing PF regalia in Munali constituency, that must be Kaweme Sydney P who was the only Independent aspiring Member of Parliament for Munali constituency. The lacuna in this evidence is that it has not been

shown that Kaweme Sydney P was distributing PF regalia in Munali constituency, and if so, what action was taken to forbid Kaweme Sydney P from distributing PF regalia. There was also no suggestion of the source from which Kaweme Sydney P possibly accessed the PF regalia.

That attack on the UPND campaign bus was availed on a video in court. My observations as I watched that video were as follows:

- (a) I observed the double decker bus in UPND colours moving. The situation looked calm then.
- (b) I observed people clad in PF regalia coming from the direction to which the UPND bus was driving. As they approached the UPND bus those people started throwing various objects at the UPND bus including but not limited to stones.
- (c) People aboard that UPND bus started coming off that bus and scampering in different directions running away from the attackers.
- (d) The attackers seen damaging the UPND bus and shuttering the windows including the windscreen.
- (e) Screams of people were heard such as,
 - i. "these PF guys"
 - ii. "bali kuti ba Honourable?". Meaning "where is the Honourable?" This was in an apparent reference to Doreen Sefuke Mwamba the UPND aspiring Member of Parliament for Munali constituency.
 - iii. One person was screaming, "Nisiyeni ine" meaning leave me.

From the evidence before me I have no doubt that the people who attacked the UPND campaign bus damaging it and brutalizing the people aboard it were PF cadres. I say so because of the following reasons:

Stephen Chanda who was RW1 told this court that the UPND bus drove to Mtendere market and attacked marketeers who were there waiting for the 1st Respondent. I have already stated that I watched that fracas in a video in court. The bus was still moving. There was nobody who left the bus to go and attack marketeers, it is the people clad in PF regalia coming from the direction of the market who advanced towards the bus and attacked the bus including the people aboard the bus. This was not at the market. The insinuation that the UPND campaign bus drove to where the PF had a meeting and thereby igniting violence lacks merit because evidence before me shows that at the material time there was no PF meeting in the area. The PF meeting was in Mtendere East about 5 km away from the scene of the attack. The insinuation by Stephen Chanda who is RW1 that the UPND ignited the violence when their UPND bus drove to the area where the PF was having a meeting confirms that the attackers of the UPND entourage were PF cadres. The evidence of M/Watson Mtonga who was RW4 that he was whisked away from Mtendere market by members of the PF campaign team also proves the presence of PF members at Mtendere market.

The evidence shows that the UPND campaign bus drove into Mtendere an area 5 km away from Mtendere East where the PF were having a meeting. I have found that driving into an area which is 5 km away from where a rival political party is holding the meeting does not amount to igniting violence.

In a democratic society like Zambia, no area can be a NO-GO-ZONE to other political parties. Each political party is free to campaign in any area without hindrance from any rival political parties, provided that no political party should interfere with the meeting of the other political party. Driving 5 km away from where the PF had their meeting as the UPND did does not amount to interference in the circumstances of this petition.

I have looked at the evidence of F/Levan Ngoi Kakompe and M/Chimwasu Njapau who were RW8 and RW9 respectively. The evidence for RW8 and RW9 was embedded mainly on denying that M/Joseph Chilekwa who was PW3 was a former employee of Inzy media the organization which deals in photography, advertising and media buying. They also denied ever training PW3 in photography or videography. They did not deny or dispute the content of the video which was shot by PW3 (M/Joseph Chilekwa). RW 9 (M/Chimwasu Njapau) also attacked the Knowledge of canon cameras by M/Joseph Chilekwa (PW3).

There were several material issues to identify in that video among them, the scene of the attack, who the attackers were and the

magnitude of the violence. The evidence for RW8 and RW9 is destitute of merit to the extent that it did not deny or dispute the material issues depicted in the video. This allegation, therefore, succeeds.

The pleading in paragraph 5(iii) of the petition reads as follows:

5(iii) **“On 11th August, 2016, on the voting day, the PF Councillor was campaigning in the Polling Station dressed in PF regalia in full view of the Police and Electoral Commission of Zambia officials”**

I have gone through the whole of the evidence in this case. I am satisfied that this paragraph of the pleadings was not sufficiently supported by evidence. This means that the allegation that a PF Councillor was campaigning in the polling station dressed in PF regalia in full view of the Police and Electoral commission of Zambia officials has failed by reason of insufficient evidence.

The pleadings in paragraph 5(iv) of the petition read as follows:

5(iv) **“That PF Polling Agents were allowed to wear PF regalia inside the polling station and even during the counting of votes”**

In support of this allegation the Petitioner told this court that PF members were seen campaigning openly at the polling station at Chainda Catholic Church. I have looked at the photographs which were produced in court by F/Gertrude Mundia Munalula Phiri and

F/Wendi Lwendo Michelo who were PW4 and PW5 respectively. In particular, I have looked at photos number 6 and 7 of the Petitioner's bundle of documents which was filed into this court on 30th September, 2016. I have seen people in PF regalia on photos number 6 and 7. However, those photos do not relate to the polling station as alleged. They relate to the totaling centre at Munali Secondary school.

I have not seen credible evidence to support this allegation and I dismiss it on that account.

The fifth allegation of the petition is contained in paragraph 5(v) of the petition. That paragraph shows as follows:

5(v) **"That on the 11th August, 2016, at Vera Chiluba School Polling Station Nkandu Luo and Kaizer Zulu closed the gates and refused the Petitioner and her agent from seeing their polling agents"**

There is no dispute that F/Nkandu Luo who was a Parliamentary Candidate for Munali Constituency went to Vera Chiluba School Polling Station. There are only two (2) disputes. The first dispute is that F/Nkandu Luo was in the company of the said M/Kaizer Zulu. The second dispute is that the Petitioner was denied entry into the polling station. The evidence on this aspect is clear. I have gone through this evidence. I have taken note of the frantic efforts which the Petitioner did in order to be allowed into the polling station. These efforts included self-introduction by the

Petitioner that she was an interested party being a Parliamentary Candidate in Munali Constituency. This effort fell on deaf ears. Whether F/Nkandu Luo was in the company of the said M/Kaizer Zulu or not is immaterial. The material fact is that there was a demonstration of double standards when one Parliamentary Candidate, namely, F/ Nkandu Luo of the PF was allowed entry into the polling station, yet at almost the same time entry into the same polling station was denied to F/Doreen Sefuke Mwamba of the UPND who was also a Parliamentary Candidate in the same constituency. This was unfair treatment to the Petitioner.

M/Emmanuel Makulila was RW12. He was the Returning officer for Munali constituency. His evidence was that it was not possible for the 1st Respondent and M/Kaizer Zulu to close the gate thereby denying entry to the Petitioner into Vera Chiluba school polling station. The evidence shows that when this incident happened at Vera Chiluba school polling station RW12 was not there. I have therefore, found this Respondents' witness to be untruthful on account that he purported to testify on events which happened in his absence and which he did not witness. The material issue here is that the Petitioner did not go to Vera Chiluba polling station to vote but to see her election agents. This was a legitimate intention for which entry should have been allowed to her. Both the Petitioner and the 1st Respondent were similarly circumstanced in that both were candidates in that election, both did not go to Vera Chiluba polling station to vote but to see their agents or generally how the process of elections was unfolding. When F/Nkandu Luo

was allowed entry, the Petitioner should also have been allowed entry because people who are similarly circumstanced must be treated similarly. This shows that the Petitioner was not allowed to monitor the elections in which she was a participant and to ascertain how the events were unfolding.

I am consequently satisfied that this allegation in the pleadings has been proved.

The next allegation is contained in paragraph 5(vi).

That paragraph shows as follows:

5(vi) **“That ECZ refused to provide Form Gen. 12 to UPND Polling Agents and were not able to have the correct total of the results and hence could not submit the correct number of votes the Petitioner obtained at each polling station”**

The evidence by the Petitioner was that in Munali Constituency the Electoral Commission of Zambia did not provide adequate election material such as Form Gen. 12 and ink. In particular, the Petitioner had to make several photo copies of Form Gen. 12 and distributed them to Chainda Ward, Chakunkula Ward, Mtendere Ward and Kalingalinga Ward including University of Zambia (UNZA) which is in Kalingalinga Ward.

By 14.00 hrs on 12th August, 2016 counting of votes had ended yet there was only one (1) Form Gen. 12 there which was with the

Presiding Officer. A dispute arose as to which figures should be indicated on that Form Gen. 12. A PF member had different figures and insisted that his figures should be recorded on Form Gen. 12. This impasse was resolved after a recount of the votes was done.

F/Wendi Lwendo Michelo who was PW5 in this case testified that at Kaunda Square Community Hall which is in Munali Ward ~~22~~³³ PF cadres caused confusion when UPND cadres demanded to have Form Gen. 12. According to PW5, the situation was calmed when state police officers who were present requested the PF cadres to leave the polling station.

The allegation concerning lack of or the inadequacy of Form Gen. 12 did not affect the Petitioner alone. Suffice to state that it affected all the participants in that Parliamentary race. This issue, however, is an important matter in the conduct of elections and in the spirit of promoting transparency and building confidence in the electoral system. It is important because Form Gen. 12 is a document for the Electoral Commission of Zambia which is used in an election at polling stations to record election results both in figures and in words. The design of Form Gen 12 shows that polling agents should append their names in full and signature at the back of that Form Gen. 12. Even if the use of Form Gen 12 is not couched in mandatory terms, when a dispute of this magnitude arises, compliance as to the way it is supposed to be filled in becomes a necessity. I have seen Form Gen. 12 for each

polling station in Munali Constituency. Some of those Form Gen. 12 are not signed at the back. In particular, Form Gen. 12 for the following polling stations were not signed by any polling agent:

1. Chainama 'A'
2. Chainama 'B'
3. Chelston Basic School
4. Patson Ngoma
5. Mtendere North
6. Sakubita
7. Mahatma Ghandi Basic
8. Vera Chiluba
9. LCC Material School
10. Kalingalinga 'B'
11. Chakunkula
12. Chamba Valley
13. Kwacha 'B'
14. Grips Community School

In the wake of the demands by the Petitioner and her agents to comply with the provisions of Form Gen 12, I have seen no reason why Form Gen. 12 for all the above fourteen (14) polling stations were not signed by polling agents. This was despite the fact that the Petitioner wanted Form Gen 12 to be availed by the Electoral Commission of Zambia in order to record the election results thereon and also counter sign the same. That is what compelled the petitioner to make photo copies of Form Gen 12 which she distributed to some polling stations but where not honoured. Even after declining to honour those photo copies the Electoral

Commission of Zambia did not provide the Form Gen 12. Interesting to note is that it is not only the losers who did not sign Form Gen. 12 in those polling stations but the winners as well.

There are some Form Gen. 12 which are partially signed. This confirms the allegation by the Petitioner that there were no Form Gen. 12 at polling stations. The failure by the Electoral commission of Zambia to avail Form Gen. 12 did not help to build confidence in the electoral Process in Munali constituency Parliamentary elections. There was total absence of transparency and it is the Electoral Commission of Zambia who are responsible for the failure to build confidence in the electoral process in Munali Constituency Parliamentary elections as well as the total absence of transparency. This was a lapse on the part of the Electoral Commission of Zambia and the result is that no one can positively ascertain whether or not the votes cast in favour of the Petitioner were fully accounted for. In this regard, the Electoral Commission of Zambia has let down the people of Munali constituency and the Petitioner was personally affected.

On the above facts I find that this allegation has been proved.

The final allegation is contained in paragraph 5(vii) of the petition. That paragraph shows as follows:

5(vii) “At Kalikiliki Polling Station the Petitioner managed to provide their Polling Agents with Form Gen. 12, but the Returning Officer was stopped from signing by PF cadres”

It is not in dispute that it was the duty of the Electoral Commission of Zambia to provide Form Gen. 12 to all Polling Stations. The evidence before me is that the Electoral Commission of Zambia did not do that. That confirms why the Petitioner sourced Form Gen. 12 and supplied to her polling agents at Kalikiliki Polling Station but again they were rejected by the Returning Officer, allegedly after some PF cadres stopped him from having them signed.

I have already discussed this aspect of Form Gen. 12 in paragraph 5(vi) above. For the reasons which I have already given in paragraph 5(vi) above, this allegation succeeds.

I stated earlier that the pleadings in this petition were contained in paragraph 5(i) (ii) (iii) (iv) (v) (vi) and (vii) of the petition. These pleadings are the Petitioner's allegations against the Respondents. The allegations contained in paragraphs 5(iii) and 5(iv) have failed by reason of the Petitioner's failure to prove them.

The allegations contained in paragraphs 5(i), 5(ii), 5(v), 5(vi) and 5(vii) of this petition have been proved and have, therefore, succeeded.

The political battle in Munali Constituency Parliamentary elections was not fought on a level ground because F/Nkandu Luo was a Cabinet Minister and abused government resources in her

campaigns such as government motor vehicle, government driver, government fuel and other resources attaching to the office of Minister, while the other candidates went into that war in their private capacities. The PF slogan "Boma ni Boma" clearly proves that abuse of government resources and confirms that F/Nkandu Luo was in government, she was the Boma. F/Nkandu Luo was aware at the material time that she was in the campaigns as a Minister while other candidates did so as ordinary members of the public. There is no dispute that the slogan, "Boma ni Boma" was used in Munali Constituency Parliamentary elections. There is no dispute that the Respondents including the 1st Respondent were aware of this intimidating slogan. This slogan was not only intimidating but was also belittling the other competitors who then were not in government as F/Nkandu Luo was.

There is evidence that the campaigns in Munali Constituency Parliamentary elections were marred with violence. This violence reached a crescendo when on 8th August, 2016 the UPND campaign bus was attacked by PF cadres. Apart from saying that she was not at the scene of the attack and that she did not know of that attack, F/Nkandu Luo has not sufficiently shown to court what measures she took in order to cage her supporters and/or agents whose violent conduct had then become a notorious fact even to the 1st Respondent.

The brutal attack by PF cadres on UPND supporters which occurred in Mtendere on 8th August, 2016 was capable of

influencing the voting pattern in Munali Constituency, this is so because news of that attack was reported in the media thereby spreading throughout Munali Constituency. It then became risky to be associated with UPND especially when it became apparent that the state police officers were not capable of protecting the UPND supporters. This was proved when the UPND supporters were attacked on their campaign bus. The matter was reported to police and one suspect was identified but no action or arrest was taken by state police officers. The name of that suspect is Mwape who is also known by an alias name of "Great Carry" a PF cadre who operates from Mtendere market. The State which was joined to these proceedings upon their own application because of public interest in this case did not dispute the fact that the matter was reported to State police. The state also did not show what action the State police took regarding that merciless attack by PF supporters on UPND supporters. State police, therefore, like the Electoral Commission of Zambia, have let down the people of Munali constituency.

From the moment of that attack five (5) UPND campaign centers were deserted by UPND supporters because of fear of being attacked by PF cadres. This fear was further proved when the UPND attempted to hold a rally at Mahatma Gandhi grounds in Mtendere on 10th August, 2016. That rally flopped because of fear of an attack by PF cadres. This fear had made campaigns by UPND difficult. This shows how the electorate in Munali Constituency were denied the opportunity to freely listen to the

competing messages from the warring political parties in order for them to choose a preferred parliamentary candidate.

There was also evidence from the Respondents that two (2) days after PF cadres attacked the UPND campaign bus, UPND supporters also attacked the home of M/Watson Mtonga who was RW4 in this petition on 10th August, 2016. It was alleged that the house of RW4 was damaged including two (2) motor vehicles which were parked outside that house, one of which was a Toyota Noah a property of F/Nkandu Luo. I must hasten to state that violence is violence regardless of who the perpetrator is. This proves that although PF cadres were violent, UPND also had sections of violent cadres though the magnitude of the violence by PF cadres in Munali Constituency far outweighed that of the UPND cadres.

The 1st Respondent produced a police report in respect of that attack of the home of RW4 by UPND cadres. I have looked at that report. That report was issued at Chelston Police Station. The evidence shows that the attack was on 10th August, 2016. The police report was issued on or is dated 27th September, 2016 which is more than one (1) calendar month after the attack. This petition was filed on 26th August, 2016. No explanation was given by the 1st Respondent why the matter was reported or why the police report was dated one (1) calendar month after the attack, and, of particular interest is that this police report is dated almost one (1) calendar month after this petition was filed into court.

The treatment which the Petitioner F/Doreen Sefuke Mwamba was subjected to at Vera Chiluba Polling Station, whereby she was denied entry into the polling station while her rival competitor was granted entry shows the unfairness under which the Parliamentary elections in Munali Constituency were held.

Form Gen. 12 is a legal document, failure by the Electoral Commission of Zambia to avail and provide this Form Gen. 12 shows not only the unfairness and lack of transparency but also the illegalities surrounding the Munali Constituency Parliamentary Elections.

Some unfairness, procedural lapses and illegalities which characterized the Munali Constituency Parliamentary Elections could easily have been curtailed by the Electoral Commission of Zambia but did not sufficiently do so. I have found that the Electoral Commission of Zambia failed to conduct transparent, free and fair Parliamentary Elections in Munali Constituency in accordance with their mandate.

I have already shown which unfair or illegal practices the 1st Respondent was guilty of or had knowledge of. I have also shown which unfair or illegal practices the agents/cadres of the 1st Respondent were guilty of. The illegal and/or unfair practices committed by the Respondents in this case affected the Parliamentary election results not only in one or a few wards

and/or polling stations but in the majority of the wards and/or polling stations in Munali Constituency, and in all these, the Petitioner was affected personally.

In consequence of the foregoing, the majority of the voters in Munali Constituency were prevented from voting for a parliamentary candidate of their preference.

Now, therefore, I declare that the election of F/Nkandu Luo (Prof) as a Member of Parliament for Munali Constituency is null and void ab initio.

I order costs occasioned by this Petition in favour of the Petitioner to be taxed in default of agreement.

Leave to appeal is granted.

Delivered and signed in open court at Lusaka this the 22nd day of November, 2016.



Hon. Mr. Justice E.L. Musona
HIGH COURT JUDGE