

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

2016/HP/EPO24

IN THE MATTER OF: SECTION 97, 96, 99, 199, 107, 108 AND 109 OF  
THE ELECTORAL PROCESS ACT, 2016 [ACT NO.35  
OF 2016] OF THE LAWS OF ZAMBIA

AND

IN THE MATTER OF: AN ELECTION PETITION BY ABEL MUSONDA  
(MALE)

BETWEEN:

ABEL MUSONDA

PETITIONER

AND

GIVEN KATUTA

1<sup>ST</sup> RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2<sup>ND</sup> RESPONDENT

*For the Petitioner: Mr. Oscar Mudenda and Ms. M. Nzala – Legal Aid Board,  
Mansa.*

*For the 1<sup>st</sup> Respondent: Mr. M. M. Munansangu – A.M.C. Legal Practitioners.*

*For the 2<sup>nd</sup> Respondent: No. Appearance.*

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

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**Legislation Referred to:**

1. *The Electoral Process Act, No.35 of 2016.*

**Cases Referred to:**

1. *Bresfold James Gondwe v. Catherine Namugala, SC Appeal No.175 of 2012.*
2. *Michael Mabenga v. Sikota Wina & Others (2003) SCZ Judgment No.15.*
3. *Mubika Mubika v. Poniso Njeulu, Appeal No.114/2007.*

## **Introduction**

1. This Petition is presented pursuant to section 97 of the Electoral Process Act, No. 35 of 2016 by Abel Musonda, **(the “Petitioner”)**, against the election of Given Katuta as Chienge Member of Parliament **(the “1<sup>st</sup> Respondent”)**.
2. The purpose of the relief sought is to void the election of the 1<sup>st</sup> Respondent. The Petitioner, in his Petition, has advanced a number of complaints. They range from voter bribery, undue influence and electoral malpractice. The Petition is grounded on the Petitioner’s Affidavit filed in this case, his oral testimony and the testimony of eight other witnesses.

## **Background**

3. Both the Petitioner and the Respondent were candidates in the August 2016 Parliamentary elections for Chienge Constituency, which were part of the general elections held throughout the country on 11<sup>th</sup> August, 2016. The Petitioner stood on the ticket of the Patriotic Front (“PF”) while the Respondent stood on the Forum for Democracy and Development (“FDD”), ticket.

The 1<sup>st</sup> Respondent was declared as duly elected Member of Parliament for Chienge Constituency by the 2<sup>nd</sup> Respondent. She was said to have won by 8,319 (eight thousand three hundred and nineteen) votes as against the Petitioner who got 7,676 (seven thousand six hundred and seventy six) votes.

## **The Petition**

4. The Petitioner was not satisfied with the above results contending, among other things, that the said elections were not held in an atmosphere that was free and fair because of several widespread electoral malpractices and the violation, by the 1<sup>st</sup> Respondent, of the Electoral

Process Act, No. 35 of 2016, the Constitution and the Electoral Code of Conduct.

5. Among the violations and electoral malpractices alleged by the Petitioner, were the following:

- (i) That the 1<sup>st</sup> Respondent and her party members or supporters violated section 81(c) and (d) and 83(c) (iii) and (iv) of the Electoral Process Act and Regulations 4(2) (a), 14, 15(c), 15(h) (iii), 15(m) of the Electoral Code of Conduct.
- (ii) That the 1<sup>st</sup> Respondent with her supporters at a public campaign rally held at Lambwe Chomba ward in Musangu Village, Chienge District, on an unknown date but between 25<sup>th</sup> July and 11<sup>th</sup> August, 2016 violated section 81(c) of the Electoral Process Act and Regulation 15(h) (iii) of the Electoral Code of Conduct when she stood at a political podium to confirm to the people in a native language of Bemba that she had donated footballs to the people so as to influence or induce the voters to vote for her.
- (iii) That at the same public rally/meeting the 1<sup>st</sup> Respondent gave to the public, information that the Petitioner and his family were the only ones running affairs in Chienge, a false statement meant to make people rise against the Petitioner and his family, and further falsely stated that the Petitioner was the Chairperson for all the football teams in Chienge, violating section 83(c) (iii) and (iv) of the Electoral Process Act and Regulations 4(2) (a), 14, 15(c) and 15 (m) of the Electoral Code of Conduct.
- (iv) That on or about the 10<sup>th</sup> day of August 2016, the 1<sup>st</sup> Respondent with her supporters at Mununga, in Chienge District in the night but between 20.00 hours and 03.00 hours were found bribing voters with non-election material being tablets of soap known as B29 and part of the remaining soap was confiscated by Kennedy Ntenda and another only known as Peter and a report and a docket was made and opened at Mununga Police Station where the said confiscated soap was retained. The soap was also distributed in Chikubi, Kapampale and Kapwepwe of the Chienge District.
- (v) That the 1<sup>st</sup> Respondent with her supporters at Mununga, Chienge District, at a public rally held within the campaign period and also on Radio Luapula repeated false statements that if people voted for the Petitioner, they would suffer and thereby perpetuating falsehoods.

6. The Petitioner contended that the said malpractices and electoral violations rendered the election process not to be free and fair.
7. This is the basis upon which the Petitioner challenges the declaration of the 1<sup>st</sup> Respondent as the duly elected Member of Parliament for Chienge Constituency and in the Petition dated 26<sup>th</sup> August 2016, the Petitioner seeks the following relief from this Court:
  - (i) A determination to the effect that the 1<sup>st</sup> Respondent was not duly elected and that the election be nullified.
  - (ii) The costs of and incidental to this Petition.

### **The 1<sup>st</sup> Respondent's Answer**

8. Upon being served with the Petition, the 1<sup>st</sup> Respondent filed her response to the Petition on 7<sup>th</sup> September 2016. She opposed the petition. The 1<sup>st</sup> Respondent's case is that:
  - (i) the contents of paragraph 4(i), (ii), (iv) and (v) of the Petition were within the peculiar knowledge of the Petitioner, or a total fabrication by the Petitioner and were denied.
  - (ii) she did not state in her native language of Bemba that she had donated footballs so as to influence the voters to vote for her as alleged.
  - (iii) with regard to the contents of paragraph 4(iii) of the Petition she maintained that the Petitioner was the brother to Chief Puta; the wife to Chief Puta was the District Educational Standards Officer (DESO); the Mayor was the grandson to Chief Puta; the Personal Assistant to the Office of the Member of Parliament was the younger to the Mayor; the Chairman of the Youth Network was the younger brother to the Petitioner and the sub-chief to Chief Puta was the Campaign Manager for Patriotic Front and were all related.
9. In summary the 1<sup>st</sup> Respondent's case is that the elections were conducted in a free and fair atmosphere and urges this Court to dismiss the petition and that it be determined and declared:
  - (i) that the said elections were neither void nor a nullity and the election results be upheld as true and accurate.

- (ii) that the 1<sup>st</sup> Respondent was duly elected as Member of Parliament for Chienge Constituency.

10. The 2<sup>nd</sup> Respondent did not file any Answer.

### **Issues for Determination**

11. Having stated the positions taken by the parties in this suit, the issues that fall for determination can be stated as follows:

11.1 Whether the 1<sup>st</sup> Respondent engaged in corrupt practices, illegal practice or misconduct and violated the electoral laws, namely the Electoral Process Act, the Constitution and the Electoral Code of Conduct and that the majority of voters in Chienge Constituency were or may have been prevented from electing the candidate whom they preferred.

11.2 Whether the 1<sup>st</sup> Respondent committed wide spread electoral malpractices in the August 11<sup>th</sup> Elections such that there was non-compliance with the provisions of the electoral laws and that such non-compliance affected the result of the election.

12. The following documents were agreed upon:

12.1 Declaration of the result poll – Chienge Member of Parliament (Document No.1 in Petitioner’s Bundle of Documents), pages 1 to 2

12.2 Video footage of 1<sup>st</sup> Respondent’s rally at Lambwe Chomba (Document No. 2 in Petitioner’s Bundle of Documents) page 3.

12.3 Record of Proceedings at the totalling of Votes (Document in Respondent Bundle of Documents pages 1 to 4)

### **Matters not in Dispute**

13. The following matters were not in dispute:

13.1 Both the Petitioner and the 1<sup>st</sup> Respondent contested the Parliamentary General Elections held on 11<sup>th</sup> August 2016 in the Chienge Constituency.

17. He stated that the malpractices and corruption that Given Katuta was involved in was giving soap and salt to the electorate. That this was done when the campaign period was over but before the polling day.
18. He informed the Court that the 1<sup>st</sup> Respondent sponsored a programme on radio where she categorically mentioned that the Petitioner's family members were the only ones benefitting in all Chienge Constituency. This programme was aired on Radio Luapula and was repeated, not once, but many times. That the said Radio Luapula had a coverage of 80 percent of Chienge Constituency.
19. He further testified that when the 1<sup>st</sup> Respondent made these revelations about his family she was mentioning his elder brother who is a Senior Chief in Chief Puta's Chieftom; she mentioned the wife of Chief Puta as being the one occupying the Office of the District Education Standard's Officer (DESO) which is a civil service office and had nothing to do with politics. That she went further also to mentioning the name of his young brother that he was the Chairperson for Youth Network in Chienge, a Non-Governmental Organisation that had nothing to do with politics. And that these revelations made the electorate or people of Chienge to rise against him.
20. He informed the Court that the 1<sup>st</sup> Respondent mentioned that his brother had an account where he was channeling all the resources for the youth development. That he listened to the said radio programme in the presence of the Patriotic Front District Treasurer for Chienge Mr. Shindano. That this programme was aired two weeks before the voting day. That after listening to the programme, he assigned some party officials to go and see the District Conflict Management Committee (DCMC). Unfortunately, due to the busy schedule, the people he had assigned reported that they were unable to meet the DCMC.

21. That in her revelations, she portrayed to the people that the Petitioner and his family were stealing from the people or that they were a bunch of thieves. He concluded his examination-in-chief by saying that he wanted this Court to declare that the 1<sup>st</sup> Respondent was not duly elected and nullify the election of the 1<sup>st</sup> Respondent as Member of Parliament for Chienge Constituency.
22. When asked under cross-examination, to tell the Court what the 1<sup>st</sup> Respondent said word for word in the alleged hate speech, the Petitioner said that he was not there when the hate speech was uttered by the 1<sup>st</sup> Respondent. That apart from the video he had listened to the radio programme which promoted hate speech which was repeated several times and that his witnesses would testify on the hate speech propagated by the 1<sup>st</sup> Respondent at her campaign rallies. That the hate speech affected the electorate because Chienge was a rural setting where most people were less educated and took whatever was said as gospel truth. That when the people were told that the Petitioner and his family were stealing from them they believed and this particularly affected him.
23. The Petitioner, however, conceded that he could not provide evidence immediately to show that most people in Chienge were less educated but maintained that records were there. He also admitted that he did not have documentary evidence to prove that most people in Chienge listened to the offending radio programme on Radio Luapula. He said that despite the fact that there was no riot or demonstration, the people of Chienge rose against him because they believed that the Petitioner and his family were thieves and were going to steal CDF Funds.
24. Regarding the alleged distribution of salt and soap by the 1<sup>st</sup> Respondent's agents, PW1 said that he did not himself see the distribution of soap and salt. That he only heard this from his agents

who witnessed it and that the said agents would come to testify to that effect.

25. On the issue of the allegation through the Radio programme that it was only his family that was benefitting, PW1 confirmed in Court that his family included his immediate elder brother, Senior Chief Puta. His immediate younger brother, Benson Lombe who does not hold any position. Last born brother Simon Chishimba and that the wife to Senior Chief Puta who was mentioned, was related to him as an in-law. He stated that he was, however, not related to the Mayor in Chienge District, Lackson Mpundu Mwape.
26. In re-examination, he maintained that according to information he had Radio Luapula had 80 percent coverage and that the people of Chienge despite being agitated or incited do not go to demonstrate but they do it through the ballot.
27. **Julius Chiwele (PW2) was the Petitioner's 2<sup>nd</sup> witness.** He informed the Court that on a day he could not remember, but in the month of August 2016, he was at home chatting with his daughter, Gift, a pupil at Ponde Basic School. That his daughter informed him about what had transpired at her school. She told him that she had been told by her Mathematics teacher that the 1<sup>st</sup> Respondent, had asked that she and other pupils go to school to represent or help them over elections. That him, as a parent, told her not to get involved in politics and did not give her permission for her to participate in the call up.
28. He told the Court that in the area where he lived, he was a foot soldier for the Patriotic Front party. That on 11<sup>th</sup> August 2016 at about 01.00 hours, he was on patrol, going round his village, Shikashimbi Village, which is in Chief Puta's Chiefdom in Chienge District, when he heard some voices at a house which was in front of him. As he approached the house, he saw two people run away. He tried to give chase but they out



in his office and register their names. That she and other pupils obliged as requested.

32. That two days later after the said registration, the pupils were told by the teacher that those that did not have Voters Cards would have their names removed from the list. The teacher told them that the information came from Katuta Given. That the same teacher told the pupils that they should go and meet Katuta Given at Bana Buka's residence.
33. She informed the Court that she personally went to Bana Buka's home and met Katuta. At that meeting, Katuta told them that they should not vote for Mr. Musonda (the Petitioner) because he belonged to the royal family. And that if Musonda was elected, then all the resources coming from the Government will be passing through "Shiwaililwa shop". The owner of that shop is the brother to Mr. Musonda.
34. She said that she could not tell the number of people who attended the meeting at Bana Buka's but that there were so many of them. That at the time their head teacher, who is the wife to the Chief, had just been promoted to the position of DESO. That Given Katuta went on to say that they should not vote for Mr. Musonda because everything would be revolving around the same family and that family would be the only ones to benefit. That she further informed the meeting that they should not vote for Musonda because he was just appointed by the President and that he, Musonda, together with the government, had taken the money away which they had used to buy Chitenge materials. That money was meant to be given to the government workers as loans and the poor.
35. She testified that they were further told that whenever they heard the slogan "*sonta apo wabomba*" they should respond with the slogan that "*sonta apo waiba*". That she and other pupils who had registered were supposed to work as polling agents but they were told that they would work as foot soldiers. That this entailed going door to door to collect

people and urge them to vote on the leaf on election day. They were each given a "Kwacha Magazine" at the meeting and were told that "Kwacha" meant "light" and if they voted for Musonda or PF there would be darkness.

36. That she took the Magazine home with her but her father, Mr. Chiwele Julius, confiscated it and told her that pupils should not be involved in politics. She said that she did not take up the role of foot soldier to go and collect people as requested because her father stopped her and he confiscated the Magazine.
37. Under Cross-examination she said that she could not tell the number of pupils who registered with the mathematics teacher because they were too many including those from Lupiya and Mununga villages. That she was not there when people from Lupiya and Mununga villages were told to register. That she would not know the number of people who registered from those villages. She would not know the number of people who were informed by Mr. Sikapizya nor the number of people who went to Bana Buka's residence.
38. That she met Given Katuta for the first time at Bana Buka's residence and that it was Given katuta who told them not to vote for Musonda because all the government resources would then be revolving around the Musonda family. That she could prove that it was Given Katuta she had met at Bana Buka's residence because of the 'Kwacha Magazine' that was given to her and that was proof enough. That she was able to identify Given Katuta because of the stickers on her vehicles and what she used to wear.
39. That her role and duties as foot soldiers was to collect people and tell them whom to vote for. That she personally did not go there because her father stopped her. That she did not know how many people were recruited as foot soldiers.

40. In Re-examination she maintained that she could not say the number of people who went to Bana Buka's home.
41. **PW4 was Chongo Borniface.** His testimony was that around 01.00 hours on the morning of 11<sup>th</sup> August 2016, two people came to knock on his door at his house. When he came out they told him that they were giving out something. It was salt. Of the two people that came he knew one of them as Jack who was standing on the FDD ticket as Councillor. He said that he was told to vote for FDD starting from President to Councillor and that if he voted he would be given more things.
42. He recalled that on that night Mr. Chiwele (PW2) was on patrol around the village. When those two people saw him they decided to run away. That Mr. Chiwele came back and asked me what those people were doing at his house and that he explained to him just as he has explained to the Court. Mr. Chiwele left after explaining to him what had transpired.
43. Under Cross-examination he repeated what he said in direct examination and confirmed that Mr. Chiwele confiscated the salt that was left for him. He also said that he could not tell if there were any other people in the village who were given salt.
44. **Chishimba Donald, PW5,** was the next witness. He testified that he was working as a foot soldier for the PF. That on the night of 11<sup>th</sup> August 2016 between 01.00 hours and 02.00 hours he was on patrol and his job was to look out for and apprehend people who were engaging in malpractices or corruption. He said found some people standing. When these people saw him, they ran away. He did not know the number of people. He gave chase but gave up. He then went to Mr. Kasongo's house to find out what they were discussing with the people who had run away. Mr. Kasongo told him that he had been given soap and asked to vote for "Mayo Mayo".

45. He said that he learnt that "Mayo Mayo" meant the candidate for FDD, but he did not find out the name of that "Mayo Mayo". He said he saw the soap. It was called B29 and was white in colour. From there he proceeded and went back in the field. Again he found some people who upon seeing him ran away. He went to the place where he had seen them standing and found a lady known as Kalwa and asked her what was happening. She told him that the people who had run away had given her some tablets of soap. She did not know the people.
46. Under Cross-examination, PW5 said that Mr. Kasongo had told him that he had been given soap so that he could vote for Mayo Mayo. He admitted that he did not know the actual names of Mayo Mayo. That he was given the soap by Kasongo and he kept it and would be able to produce it. That he did not see Mayo Mayo distributing the soap. That he did know the people distributing the soap but was just told by Kasongo. Kasongo did not tell him the names of the people that had run away. That he was not told by Kasongo what those people were wearing.
47. **William Kasongo, came in as PW6.** He informed the Court that on the night of 11<sup>th</sup> August 2016 around 01.00 hours, at his house he heard a knock. He asked who it was and opened the door. The people at the door told him that they were FDD and that they asked him to vote for FDD. Specifically that he should vote for Katuta Given and for Jack as Councillor. That he was given soap branded as B29, white in colour. Thereafter, Chishimba Donald came and those people decided to run away. Chishimba gave chase but failed to get hold of any of them and came back to the house and he explained to him what had happened.
48. Under Cross-examination, PW6 maintained that the people who came to his house at 01.00 hours on the 11<sup>th</sup> August had asked him to vote for FDD. That they were not dressed in FDD regalia but he knew one of them as a prospective Councillor. That he knew that those people were

sent by Given Katuta because the prospective Councillor was the candidate for FDD. He admitted that he never saw Given Katuta distributing salt or soap.

49. **Mwamba Rasford Kalimanshi was PW7.** He informed the Court that on 10<sup>th</sup> August 2016, while seated at a certain bar opposite Chipampe's wholesale, he saw Given Katuta with a group of people, among them, Chishimba John a.k.a "Bondo" and Chongo William. He also saw the vehicle belonging to Boma. Those people bought goods soap, salt and mealie meal and loaded the vehicle belonging to Boma.

When asked by the owner of the bar, Chisala Misheck, where the things were going, Boma told him that the goods were going to Lambwe Chomba for an underground campaign and would be off loaded at night and given to the headmen for distribution. PW7 said the said group of people went to several other shops, about 4 shops and this was around 18.00 hours.

50. Being a task force member for PF he decided to call his Councillor, Chomba Charles, and explained what he saw and heard regarding the goods and the "underground campaign". He was asked to be ready and on standby. At 23.00 hours PW7 received a phone call from the Councillor to the effect that they had apprehended some people and was asked to dash there. That he did go with his mother, Mrs. Lizzi Chipampe, who was a PF district functionary and found the Councillor with the people he had apprehended with the goods. Among the people apprehended were Fewdays Mpundu, Mary Sanki, Chishimba John and Chongo William. Those were the only people he could identify.

51. That he was shown the boxes by the Councillor. There was one full box and one half box. The soap was in brown boxes and is branded B29 and was white in colour. PW7 identified the boxes of soap and were marked for identification as "AM1" collectively. That the boxes were then taken

to the police station. That on the way they found a vehicle that was being used by Katuta under a tree an X-trail Reg. No. ALX 9581.

52. Under Cross-examination, PW7 said that on 10<sup>th</sup> August 2016 he saw Boma with his vehicle with Katuta, Chishimba John and William Chongo. That he saw Katuta paying for the goods that included mealie – meal, soap and salt. He admitted that he did not see Katuta distributing any goods on 10<sup>th</sup> or 11<sup>th</sup> August 2016. He said the people who were apprehended did not mention the name of the person who had given them the goods to distribute.
53. That when they found the people who were apprehended, Given Katuta was not there. That he was able to identify the boxes of soap because they were labelled B29. He admitted however that there were many shops that sold the soap with the brand name of B29. He conceded that it was possible that the said boxes of soap could have been bought from a different shop from the ones that he had mentioned. That he would not know the owner of the X-trail that he had seen but that Given Katuta was the one who used to use it. He confirmed that he never saw Given Katuta distributing the goods.
54. **Assistant Seperintendent, Muleza Patrick, was presented as PW8.** He informed the Court that on 11<sup>th</sup> August 2016 at around 01.14 hours, a report was received at Mununga Police Post from Charles Chomba who came in the company of other people. He came to report that he had confiscated one carton and one half carton of B29 soap from members of FDD, a political party. The goods confiscated were B29 tablets of soap. The first carton was full and the other carton was almost half. The colour of the soap was white and branded as B29. [When shown exhibit marked “AM1” PW8 identified it and produced it as part of his evidence, and the Court admitted it accordingly]. He testified that the report was recorded in the Occurrence Book (OB) under two entries.

The first entry was to the effect that a report was received from Charles Chomba in connection with the confiscated soap ("AM1") from Mpundu Fewdays of Kapwepwe village, Mununga, Chienge District. The second entry simply recorded that M/Chomba leaves office.

55. Under Cross-examination PW8 confirmed that he was on duty on the day of the report. He confirmed that the report did not make any specific reference to Given Katuta. He admitted that the parliamentary elections were merely part of the general elections that included, Presidential, Mayoral and Councillor elections. He confirmed that the complainant said that the people had run away.
56. **The Petitioners last witness was Chanda Samuel (PW9).** His testimony was to the effect that on 6<sup>th</sup> August 2016, Mr. Abel Musonda picked him up to go to Lambwe. They arrived at 14.00 hours and heard that there was going to be an FDD rally at 15.00 hours. He went to attend the meeting. During the meeting, Katuta was heard saying words to the effect that at first there was Kaunda in the driving seat but he did nothing. Then MMD came and they did nothing. Then PF came but the only person with a vision to help the poor was Mr. Sata. After Mr. Sata's death there was need to change the government. That people should not vote for Musonda because he was the brother to the chief. Lackson on the Mayor ticket was also a grandson to the chief.
57. Katuta was then heard to ask the people at the rally if they knew Shiwaililwa to which they agreed. Shiwaililwa is the young brother to the Petitioner. That Katuta was further heard to say that Shiwaililwa was the young brother to Tefwetefwe, the senior chief and that he was the youngest brother in the family of the Petitioner. She was further heard to say that Shiwaililwa had stolen the money meant for the youth and that if she happened to win the elections she would take Shiwaililwa to jail. That Mr. Sata had given Shiwaililwa a block making machine to

empower the youth but it turned out that Shiwaililwa was using the same machine for his own benefit before he sold the machine and she was then heard to ask the people why they would vote for the Petitioner, who was the elder brother to Shiwaililwa, and that what guarantee was there that he would not steal like the young brother?

58. That she further told the people that over the slogan "*sonta apo wabomba*" the people should be telling Musonda to "*sonta apo waiba no kubweshwa ubweshwe*". That she then told the crowd about the Petitioner's family and that people should not put the same people from the chiefdom into politics. She further advised the people not to vote for Musonda and further said that the President was saying the road to Lambwe had been completed and yet it was still being constructed. She was further heard to say that the wife to Tefwetefwe was DESO and the same people were running all the affairs and it would therefore not be wise to vote for Musonda.
59. PW9 testified that during the meeting he captured the proceedings, in video format, at the rally using his phone. That he later took what he had captured on the phone to Shiwaililwa who put the information on the computer.
60. The video of the proceedings as captured was played in Court and was admitted into evidence as part of PW9's evidence.
61. In Cross-examination, PW9 confirmed that he was taken to Lambwe by Musonda on 6<sup>th</sup> August 2016. That he was aware that there was a polling station at Lambwe and that the polling station was called Lambwe Chomba. He conceded however that the Petitioner polled more votes at Lambwe Chomba than the 1<sup>st</sup> Respondent. He said that the words uttered by Given Katuta at Lambwe Chomba had an effect on the electorate. That he did not attend any other rally where Given Katuta uttered the same words as those in the video.



B. **1<sup>st</sup> Respondent's Case**

62. **The 1<sup>st</sup> Respondent Given Katuta (RW1)** opened her defence, denying that she promoted hate speech. She testified that all that she did was to explain to the electorate what she would do for them if elected. That she went to Radio Luapula to inform the electorate of Chienge Constituency about developmental issues which concerned them. That had she promoted hate speech, when she was seeking the Office of Member of Parliament, the people of Chienge would not have voted for her because they were looking for someone to represent them in Parliament and not one who was promoting hate speech. And that if that were so people would have revolted in Chienge.
63. She testified that to her knowledge she had never ever been reported to the police and has never ever been called by the police nor the District Conflict Management Committee on any issue regarding hate speech during or after the campaign period.
64. She further told the Court that she never practiced corruption in anyway during the campaign time or at any time prior to the election date. She informed the Court that she stood on FDD, a least funded party, which did not even have campaign materials and this was a great challenge to her and her team because they had to use the little monies in their pockets. The Chienge constituency was a large constituency which candidates like herself on FDD ticket could not even afford to feed one thousand people.
65. She dispelled the evidence of PW7, Lasford Kalimanshi who had testified that he had seen her buying mealie meal, and soap as not true. She informed the Court that on the material day 10<sup>th</sup> August 2016, when PW7 claimed to have seen her, she was down with malaria and was sleeping at her cousin's place in Mununga.

That on that day her husband had travelled to Mansa to withdraw some cash in order for them to buy food for their foot soldiers and polling agents.

66. She explained that FDD did not have any structures at the time they started the campaign. So what she did for the convenience of the campaign, was to go to her brother's house in Puta village. It was then decided to use her brother's house as the campaign centre. Her brother's wife, Bana Buka, was appointed as the District Treasurer. So on 10<sup>th</sup> August 2016, when her sister-in-law, Bana Buka found out that she was sick, she travelled to Mununga to collect the money that her husband had withdrawn on the 9<sup>th</sup> of August so that they could buy the food for the foot soldiers and polling agents.
67. She further explained that Bana Buka, met with her husband at the town centre in Mununga to collect the items bought together with the help of William Chongo. Her husband had to proceed to Puta, Chienge District to check on the polling agents. Bana Buka remained in Mununga and was being assisted by William Chongo to buy food for the foot soldiers and the polling agents. That only food was bought for the polling agents on the 10<sup>th</sup> August. That it was not true that the food was meant for an underground campaign. William Chongo was the one in-charge of the foot soldiers.
68. She testified that she was not aware of any food being distributed at night. That if that had been the case, she would have been called by the police or the DCMC. That she was not aware of the arrest of any of her agents or foot soldiers by the Petitioner for distributing food at night.
69. She further told the Court that Lambwe Chomba and Mununga were quite far apart. The food that was bought was meant for Mununga foot soldiers and Puta because of the distance. Lambwe Chomba was a long distance from those two areas. That she did not know where the

Petitioner's witnesses got the information that the food was to be distributed at Lambwe Chomba.

- 70 On the testimony of PW3, Gift Kapindi, that she had asked the pupils at Ponde Secondary School to register, she denied ever having been in contact with any teacher at that school. She testified that she did not know the Mathematics teacher, Mr. Sikapizya, nor did she know any pupil there. That she had never ever communicated or sent a message to any teacher at any school in Chienge District.
71. She informed the Court that she went to Bana Buka's house because it was her brother's house, and it was her campaign centre. That the said house was close to the police station, being separated only by a hedge of flowers. That if she had a meeting there the police would be aware of it and would disperse if it was not authorized. She said that it was her practice to get permits from the police for all their campaign meetings or rally. When applying for the campaign permits they would indicate the venue for the meeting. That at no time, at that house, did she ever say or tell people that not to vote for the Petitioner on account that he is from the Royal family.
72. She explained that Bana Buka's house was in the Chiefdom of Chief Puta, in Puta village. Some of the polling stations that were near Bana Buka's house or residence were Puta Primary School, Musabulwa which is located at Mwase Secondary School and Mulolwa. The polling stations were within the locality of where Bana Buka lives. That the Petitioner in fact polled the highest votes at these polling stations as follows:

(a) **Puta**

Given Katuta - 176

Musonda Abel - 535

(b) **Musabulwa**

Given Katuta - 111

Musonda Abel - 355

(c) **Mulolwa**

Given Katuta - 38

Musonda Abel - 52

That she lost at those polling stations. That she had no influence on the electorate as a result of having had a meeting at Bana Buka's and if it were so she would have won in that locality at those polling stations.

73. She told the Court that she did campaign at Lambwe Chomba within the stipulated campaign period. That the statements she made at that rally were true. That it was a fact that the Petitioner was the immediate young brother to Chief Puta. Regarding the statement of 'changing government' she said that she elaborated to the people that they should not be afraid, because people in Chienge District, especially in Chief Puta's area were being intimidated that if they supported 'Na Mayo' they would be taken to the police station. That she did state that it was necessary to change Government. That she wanted to inform the electorate that it was their right to do so if they wanted.
74. She further testified that she did state the words attributed to her at the rally regarding the Petitioner's young brother in connection with the block making machine. She explained that she was informing the electorate about the Petitioner and who he was. That she informed the electorate that the Petitioner had a young brother who was the chairman for the Youth Network in Chienge District, and who was given the block making machine by the then government of late Michael Sata. The machine was meant to benefit the youth of Chienge District but no one had ever benefited from that machine which was kept by the young brother to the Petitioner.

75. She further informed the Court that the video recording shown in Court captured her campaign rally at Lambwe Chomba. That she was aware of two polling stations in the locality of where the rally was held and these were Red Cross and Lambwe Chomba. At those two polling stations the Petitioner polled the highest votes as follows:

(a) **Red Cross**

Given Katuta - 172

Musonda Abel - 428

(b) **Lambwe Chomba**

Given Katuta - 64

Musonda Abel - 166

That the Petitioner won at those two polling stations.

76. She testified that she appeared on Radio Luapula but it was not true that on that programme she said that the family of the Petitioner were the only one's benefitting. She challenged the Petitioner to produce the recording of that broadcast. She explained that, in the radio programme she went to talk about developmental issues and issues that were affecting the people of Chienge.

77. In Cross-examination, the 1<sup>st</sup> Respondent confirmed that she had watched the video that was played and produced in Court. She confirmed that she said that the Petitioner was the brother to Senior Chief Puta. She said that the audio part of the video was not clear. That she did not hear on that video words to the effect that the wife to Chief Puta is DESO but she did not hear the words with respect to the block making machine. That she did not hear words to the effect that if Musonda won then the money would pass in his brother's shop. She confirmed that otherwise what was recorded in the video was correct.

78. She said that she did not know what positions Senior Chief Puta, the young brother to the Petitioner and the wife to Senior Chief Puta held in the PF. She confirmed that none of the above-mentioned contested the parliamentary elections on any political party's ticket. That she did not know the exact date when the brick making machine was given to the Petitioner's young brother but that it was sometime in 2012.
79. She confirmed that she resigned from being a member of PF four days before nomination date in 2016. That she became aware about the block making machine not being used for its intended purpose during the campaign period when the youths complained to her. That after being informed by the Youth Network Committee she informed the electorate (as in the video) about the state of affairs. In the video the crowd said that they were not aware and that was the reason she was making them aware. She, however, admitted that she did not know the circumstances under which the block making machine was given and whether it was personally given to the Petitioner's brother. That she was informed by the Youth Network Committee of Luapula, and it falls under the Ministry of Sports.
80. On the issue of intimidation in Chief Puta's area, she said that the information came from some headmen from Chipungu area and a former headman in Lupiya. That she believed the intimidation was an attempt by the Petitioner to have an advantage over 'Mayo Mayo'. That she was aware that intimidation was not allowed under the electoral law. That she only reported once to the DCMC despite the many intimidation reports she received.
81. She confirmed that Bana Buka was her brother's wife and sister-in-law. Her home was her campaign centre and it was the place where her executive committee met and it was also the distribution centre for her campaign materials, and also served as a place where anything and

information relating to the campaign could be obtained. That there were no restrictions and anyone was free to go to the campaign centre. A few meetings were held there and she recalls having attended only three because she was in Lusaka most of the time.

82. Regarding the rally at Lambwe Chomba, she confirmed that the announcements for the rally were made using megaphones not the radio station. She did not know the people who attended her rally. That the few votes she got from Lambwe Chomba probably came from her party members with their families given her dismal results.
83. She confirmed that her husband, on 9<sup>th</sup> August 2016 went to buy provisions for her foot soldiers and arrived back on 10<sup>th</sup> August 2016 and that the food was purchased from Mununga. That William Chongo was in charge of the foot soldiers.
84. **William Chongo (RW2)** was the Respondent next witness. His testimony was that he was not with the 1<sup>st</sup> Respondent on the material day, 10<sup>th</sup> August 2016. That he was with Chishimba John and Bana Buka. They bought mealie meal and salt for the foot soldiers and polling agents. That the goods were not for distribution at night as alleged.
85. He confirmed that he was the campaign co-ordinator for the 1<sup>st</sup> Respondent and his role was to organize the campaigns on her behalf. He informed the Court that he has never been reported, arrested or apprehended for any malpractice or corruption, distributing soap. He denied ever buying any soap on the material day.
86. In cross-examination, RW2 confirmed that he was the co-ordinator for the 1<sup>st</sup> Respondent. That he was involved in the campaign team for Chienge District. That he was with Chishimba John, Musonda Raphael, Chileshe and Bana Buka at the time he was buying foodstuffs. He denied knowing Fewdays Mpundu.

87. He confirmed that the money to buy food for the polling agents came from the 1<sup>st</sup> Respondent. The food was bought at Mununga. That he personally distributed the food to foot soldiers and polling agents in Mununga area and they were more than five of them but that he recalled, Chikwanda Timothy, Simon Chomba, Chola Chileshe and Chishimba John. That he was not the one who distributed at Lambwe Chomba. That he was not there when Boma was saying that the goods were for underground campaign.
88. **Kapya John RW3 was the 1<sup>st</sup> Respondent's last witness.** He told the Court that he was a Taxi driver by occupation and that he belonged to Kafimbwa Youth Group (KYG) and Nchelenge District Youth Network (NDYN). That KYG is where they mould bricks in Nchelenge and NDYN is the motherbody for all the Youth Network groups in Nchelenge.
89. His testimony was to the effect that he knew about the block making machine that had been given to the Petitioner's young brother. That the said block making machine was for Luapula Province Youth Network and it was meant for youth empowerment for youths to raise funds. That it came from the Ministry of Youth and Sport. He explained that the Luapula Province Youth Network Committee had decided to place the block making machine in a district where sand, as a primary raw material was plentiful. Chienge was chosen and the machine was taken to Chienge.
90. In Chienge, the machine was received by the Chienge District Youth Network (CDYN) Chairperson who happened to be Simon Chishimba, popularly known as 'Shiwaililwa'. That the machine did not work in accordance with the purpose for which it was intended. This was because the youths did not receive any benefits from its use. No proceeds were ever received from the use of the block making machine whenever it went for hire.



91. In cross-examination, RW3 confirmed that that the Youth Network organization did not fall under any political party. That he was just a member of the Nchelenge District Youth Network. That he did not have any report or complaint from the Luapula Province Youth Network concerning the block making machine. That he did not have any complaint or report to the Ministry of Youth and Sport concerning the working of the machines.
92. He confirmed that the machine was given to Simon Chishimba between the year 2012 and 2013. That he was there in Mununga when the machine was being used but he does not know when it stopped working. That he has no idea whether the machine was used to raise funds for campaign or petition.

### **The Respective Submissions**

93. **The Petitioner's submissions**, through his Counsel were in two parts, viz:
- (i) Corruption and inducement allegations
  - (ii) violations of the Electoral Process Act.
- 93.2 The gist of the Petitioner's submission in support of (i) above was to the effect that the Petitioner had shown sufficient evidence that the 1<sup>st</sup> Respondent did participate either directly or indirectly in corrupt practices in order for the voters to vote for her hence the elections cannot be considered to have been free and fair and therefore should be nullified. He submitted that the Petitioner in paragraph 4 (i) (ii) (iv) of the petition and paragraphs 7 (iii) (iv) of the Petitioner's affidavit clearly averred the corruption and inducement perpetrated by the Respondent.
- 93.3 Counsel further placed reliance on the evidence of PW2 who testified that he saw two people at 01.00 hours on 11<sup>th</sup> August 2016 talking to Chongo (PW4) but ran away upon seeing him. And that Chongo told him that he had been given some salt and was told to vote for "Mayo Mayo". That Chongo confirmed in his testimony that he had been left with salt. He further relied on the evidence of PW5, PW7 and PW8 to support his submission.

93.4 With regard to (ii) above, the gist of the Petitioner's submission was that the 1<sup>st</sup> Respondent clearly violated the Electoral Process Act and the Electoral Code of Conduct when she told the crowd at a public rally at Lambwe Chomba that they should not vote for the Petitioner because he was the brother to Senior Chief Puta and that it was the only family that was benefiting and that she was going to send Shiwaililwa (brother to the Petitioner) to jail if she won the elections. That this amounted to hate speech.

93.5 Counsel relied on PW9's testimony and RW1's testimony to support his submissions.

94. **The Respondent's submissions** were to the effect that no evidence had been adduced by the Petitioner to demonstrate that the political environment in the Chienge Constituency during the 11<sup>th</sup> August 2016 elections were marred with widespread and serious illegal and corrupt practices evidenced by undue influence, bribery, intimidation and violence.

95. Further, that there was no evidence adduced to show that the majority voters in Chienge Constituency were prevented from voting for a candidate of their own choice as demanded by section 97 of the Electoral Process Act, No. 35 of 2015.

96. That the Petition fell short of satisfying the principle laid down by the Supreme Court case of **Michael Mabenga v. Sikota Wina and Others** where it was held that:

*"an election petition like any other civil claim depends on the pleadings and the burden of proof is on the challenger to that election to prove to a standard higher than on a mere balance of probability"*

97. On the basis of the above, this Court was urged to dismiss the Petition with costs.

### **The Law**

98. Before evaluating the evidence adduced before this Court, I consider it appropriate to review the law and principles that govern election petitions. I set out below the relevant law:

98.1 Election petitions are governed by Section 97 of the Electoral Process Act, No. 35 of 2016. Specifically section 97 (2) (a), (b) and (3) provides (quoting the relevant parts) that:

**“(2) The election of a candidate as a Member of Parliament... shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court... as the case may be, that -**

**(a) a corrupt practice, illegal practice or other misconduct has been committed in connection with the election**

**(i) by a candidate; or**

**(ii) with the knowledge and consent or approval of a candidate or of that candidate’s election agent or polling agent; and**

**the majority of voters in a constituency...were or may have been prevented from electing the candidate in that constituency... whom they preferred;**

**(b) subject to the provisions of subsection (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...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; or**

**(c) ...**

**(3) Despite the provisions of subsection (2) where, upon the trial of an election petition the High Court... finds that a corrupt practice or illegal practice has been committed by, or with the knowledge and consent or approval of, any agent of the candidate whose election is the subject of such election petition, and the High Court further finds that such candidate has proved that -**

**(a) a corrupt practice or illegal practice was not committed by the candidate personally or by that candidate’s election agent, or with the knowledge and consent or approval of such candidate or that candidate’s election agent;**

**(b) such candidate and that candidate’s election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and**

- (c) ***in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent***

***the High Court or a tribunal shall not, by reason only of such corrupt***

***practice or illegal practice, declare that election of the candidate void.***"

- 98.2 The burden of establishing anyone of the grounds lies on the person making the allegation and in election petitions, it is the petitioner in keeping with the well settled principle of law in civil matters that he who alleges must prove. (See ***Bresfold James Gondwe v. Catherine Namugala page 13***).
- 98.3 The grounds must be established to the required standard in election petitions namely a fairly high degree of convincing clarity. (See ***Bresfold James Gondwe v. Catherine Namugala***)
- 98.4 Subsection 3 of section 97 will only come into question after anyone of the grounds set out in subsection 2 has been established. It is not mandatory that every election petition the High Court must call upon the person whose election petition is being challenged to establish that no corrupt practice or illegal practice was committed by him or her personally or by that persons election agent, or with the knowledge and consent or approval of such person or that person's election agent; or that such person and that person's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election.
- 98.5 The High Court will only be duty bound to do so in the event that the petitioner establishes anyone of the grounds aforementioned to the requisite standard in election petitions.
99. The principles set out above were espoused in the case of ***Bresfold James Gondwe v. Catherine Namugala*** when the Court was interpreting section 93 of the Electoral Act 2006. The cited case is instructive with regard to the nature, scope and application of section 97 of the Electoral Process Act No. 35 of 2016. This is so because section 93 of the Electoral Act of 2006 and section 97 of the Electoral Process Act of 2016 are similar in scope and effect. A comparison of the two

reveals that the two sections are the same in nature and effect save for the drafting style. The **Namugala case** was interpreting the said section.

100. The lesson to be drawn from the authorities cited above is, in my view, that this Court, is bound to determine this matter within the parametres of the principles outlined above. The threshold of proof is, in principle, to be above the balance of probability and is stated to be "*a fairly high degree of convincing clarity.*" The legal burden of proof lies with the Petitioner to succinctly demonstrate that there was non-conformity with the law on the part of the 1<sup>st</sup> Respondent in engaging in or permitting the commission of electoral malpractices.
101. It is not enough for the Petitioner to only point out the irregularities or alleged breaches which took place during the election campaign and fail to establish that such irregularities were of such a nature that they affected the exercise by the voters to exercise their will to choose a candidate of their choice.

#### **Resolution of the Issues**

102. **The first issue for determination** is whether the 1<sup>st</sup> Respondent committed the electoral offences and malpractices in the August 11, 2016 elections. The Petitioner, in his petition, accused the 1<sup>st</sup> Respondent of having committed several offences and malpractices in the run up to the elections such that the outcome of the election was not a representative of the freewill of the people of Chienge Constituency.
103. On examination of the petition it comes out clearly, that a total of four imputations of electoral offences and malpractices were cast against the 1<sup>st</sup> Respondent. These are outlined in paragraph 4 (i) (ii) (iv) and (v) of the petition and reproduced in paragraph 5 of this judgment above.
104. The Petitioner alleges under paragraph 4(i) (ii) and (iv) of his petition that there was widespread bribery and undue influence by the Petitioner so as to influence or induce the voters to vote for her. The evidence on record, however, is clear that the Petitioner was not present when the alleged

bribery of voters was made nor was he present at the rally held by the 1<sup>st</sup> Respondent at Lambwe Chomba.

105. The Petitioner called PW2, PW4, PW5, PW6, PW7 and PW8 to support his allegations of bribery and what he termed the elections were “*marred with widespread electoral malpractices*” contrary to the electoral laws. PW2’s evidence was mainly hearsay. His testimony centred only on what he was told by his daughter (PW3) and Chongo (PW4). His evidence was therefore of little value to the Petitioner’s allegations on that account.
106. PW4 merely confirmed that on the night of 11<sup>th</sup> August 2016 two people, one unknown and another named Jack, gave him salt urging him to vote for FDD. That salt was confiscated by PW2. PW5’s evidence was that he was on patrol on the night of August 11, 2016 around 01.00 hours when he saw some people running away from Kasongo’s house. Upon inquiry from Kasongo, Kasongo told him he had been given soap and asked to vote for “Mayo Mayo.” He did not know the people who were distributing soap. PW6’s evidence was similar to PW5’s evidence. He also did not know the people but was able to identify one as a prospective Councillor standing on FDD ticket. None of those people who were seen to be running away were apprehended or arrested.
107. PW7’s evidence was that on 10<sup>th</sup> August 2016, during the day, he saw the 1<sup>st</sup> Respondent with other named persons buying goods that included soap, salt and mealie-meal. He later overheard Boma telling Chishala Misheck that the goods were going to be taken to Lambwe Chomba for an underground campaign. That he saw the 1<sup>st</sup> Respondent paying for the goods but did not see her distributing the goods.
- PW8’s evidence was merely to confirm that a report had been made at the police post regarding some soap that had been confiscated from one Mpundu Fewdays of Kapwepwe village. He confirmed that the report did not make any specific reference to the 1<sup>st</sup> Respondent.
108. On the said allegations of bribery, the 1<sup>st</sup> Respondent denied the allegations levelled against her by PW7. She testified that on the

material day she down with malaria and did not go anywhere on that day. Bana Buka, assisted by Chongo, were the one's who had gone to buy food for her foot soldiers.

109. After reviewing the totality of evidence before me as regards the allegation of bribery and widespread electoral malpractices, it is difficult to see how the 1<sup>st</sup> Respondent can be made accountable for the alleged deeds of unknown persons who were not proved to be agents of the Respondent. It is also difficult to say that the said unknown persons who were said to have run away did what they did with the consent of the 1<sup>st</sup> Respondent. There was no proof that the people who were alleged to have been distributing salt and soap in the night of 11<sup>th</sup> August 2016 were sent by the Respondent. There was no complaint by the Petitioner registered with the District Conflict Management Committee regarding the alleged electoral malpractices. The report to the police was made by the Petitioner as confirmed by PW8, but was not useful as no suspects were apprehended or arrested. Mere allegations without proof to the required standard remain mere speculations which the Court cannot accept as cogent and credible.
110. Accordingly, I accept the submission by the 1<sup>st</sup> Respondent that no evidence has been led by the Petitioner to demonstrate that the 1<sup>st</sup> Respondent personally and or through her agents made any gifts, loans, offers, presents etc for the benefit of the people of Chienge in order to entice the people not to vote for the Petitioner. I am therefore of the settled view that the Petitioner has failed to adduce cogent and credible evidence to prove the allegations against the 1<sup>st</sup> Respondent to the required standard.
111. **The second issue for determination** is whether there was non-compliance by the 1<sup>st</sup> Respondent with the electoral laws and if so, whether such non-compliance affected the result of the election. The Petitioner accused the 1<sup>st</sup> Respondent that she and her supporters at a public rally at Lambwe Chomba and on a sponsored radio programme on

Radio Luapula promoted hate speech and incited the people to rise against the Petitioner.

112. In support of the allegation, the Petitioner relies on the said radio programme, the video footage the evidence of PW3, the testimony of PW7 and his own testimony. PW3, testified that she had attended a meeting called by the 1<sup>st</sup> Respondent at Bana Buka's place. She met the 1<sup>st</sup> Respondent at that meeting who she told the people gathered there not to vote for the Petitioner because he belonged to the Royal Family and that if he was given the vote then all government resources would be passing through the Petitioner's young brother's shop, "*Shiwaililwa Shop*". She was, however, not able to tell the Court the number of people who attended that meeting at Bana Buka's place.
113. The evidence of PW7 was that he attended the rally addressed by the 1<sup>st</sup> Respondent at Lambwe Chomba. That he captured the proceedings on his phone in video format. The video was played in Court. He testified that at that rally the 1<sup>st</sup> Respondent was heard to tell the people about the family connections of the Petitioner and his connection to the Chief, the wife of the Chief, 'Shiwaililwa', his young brother and the Mayor. And that the Petitioner's young brother popularly known as Shiwaililwa had used a block making machine that was meant for the youths for his own benefit. The Petitioner's argument is that the 1<sup>st</sup> Respondent influenced the electorate in Chienge Constituency by making false allegations against the Petitioner both on a sponsored radio programme on Radio Luapula and at a public rally held at Lambwe Chomba.
114. In his own testimony, the Petitioner alleged that the 1<sup>st</sup> Respondent sponsored a programme on Radio Luapula where she categorically mentioned that the Petitioner's family members were the only one's to benefit in all Chienge Constituency. That the programme was aired several times and these revelations made the electorate or the people of Chienge to rise against him. The Petitioner's argument is that the 1<sup>st</sup> Respondent influenced the electorate of Chienge Constituency by making



false allegations against the Petitioner both on a sponsored radio programme on Radio Luapula and at a public rally held at Lambwe Chomba.

115. The 1<sup>st</sup> Respondent denied that she promoted hate speech. In her testimony she maintained that she only talked about developmental issues on Radio Luapula. She challenged the Petitioner to produce the recording of the programme. Regarding the rally at Lambwe Chomba she maintained that what she said about the Petitioner's family connections was true. Regarding the contents of the video recordings she admitted that what was recorded was correct.
116. The question before me is whether or not the Petitioner has proved to the required standard of proof his allegation that the 1<sup>st</sup> Respondent was guilty of non-compliance with the electoral laws and, if so, whether such non-compliance affected the result of the election.
117. The allegation regarding the alleged hate speech on Radio Luapula has been rebutted by the 1<sup>st</sup> Respondent. The Petitioner has not produced sufficient proof in Court in the form of a recording from Radio Luapula to support his claim. Regarding the words attributed to the 1<sup>st</sup> Respondent at the Public Rally in Lambwe Chomba, the Petitioner produced a video recording to back his claim. The Respondent justified that what she said about the Petitioner's web of relationship with the Royal family was true but denied that she peddled other falsehoods disparaging the Petitioner.
118. The Court has watched and listened to the video recording where the 1<sup>st</sup> Respondent revealed the web of the Petitioner's relationship with the Royal family. In his oral testimony the Petitioner actually confirmed that senior chief Puta was his elder brother; the chief's wife his in-law and Shiwaililwa was his younger brother. He has also not disputed the allegation that the chief's wife was in the position of DESO nor that his young brother was the one who got the block making machine and that he was the chairman of the Youth District Network and its football team in Chienge.

119. My observation on the video which was produced and played in Court is that it was an amateur video of poor quality. The audio part of the video was poor and one had to strain his ears to get what was being said. I have watched and listened to the video in the comfort of my chambers. From the video one cannot tell whether the rally was well attended. It appears as if there were only thirty people present at that rally in the video footage. I was able to hear what was said about the family web of relationship and about the block making machine in relation to the Petitioner and his young brother.
120. Given that the Petitioner failed to produce the recording of the “offensive” programme from Radio Luapula, I consider the allegation of sponsored hate speech programme on radio as unproven and take it as mere speculation. No attempt was made by the Petitioner to obtain the recording of the said programme to support his allegation other than his own testimony.
121. Regarding the rally held at Lambwe Chomba, I find that the 1<sup>st</sup> Respondent did say that the Petitioner said that the Petitioner could not be trusted to be elected as a Member of Parliament because of his web of connection with the Royal family and Shiwaililwa. I do not, however, think that the words said at Lambwe Chomba regarding his relationship with the Royal family could be said to amount hate speech. They were to a large extent true.
122. Could the said words have influenced the electorate in the entire constituency? I am minded to answer the question in the negative. The 1<sup>st</sup> Respondent demonstrated that, in fact, the Petitioner polled more votes at Lambwe Chomba and the Polling station near Bana Buka’s residence where she was said to have uttered the alleged offending words. No evidence has been led before this Court that the said words affected the result of the election. The evidence on record shows that the said words were uttered by the Petitioner at a rally held in Lambwe

Chomba. There was no evidence that the said rally was covered live by any radio station in the Constituency.

123. It is up to the Petitioner to prove with convincing clarity that the words uttered by the 1<sup>st</sup> Respondent at the said rally were in contravention or in non-compliance the result of which the election was effected. I find the case of **Mubika Mubika v. Poniso Njeulu** instructive in this respect where the Supreme Court said:

*“While we uphold this finding by the learned trial judge in the course of the election campaign, we are at pains to verify the extent of influence on registered voters in the whole constituency”*

And at page J30 it was stated:

*“The evidence therefore, does not indicate widespread vilification of the Respondent, neither does it indicate that the majority of the registered voters were influenced against the Respondent. In this type of allegation, statistics of registered voters who attended the rallies should have been given to assist the trial court on the extent of the influence in the constituency.”*

In the case before me, other than the poor video footage, no evidence was led at trial to show the number of people who attended the rally and how the electorate was influenced, if at all, by the alleged statements.

The finding of the Court is that the Petitioner has not proved to the required standard that the 1<sup>st</sup> Respondent is guilty of non-compliance with the electoral laws of Zambia.

124. I am satisfied that the election was conducted in substantial conformity with the law and that the actions complained of did not affect the result of the whole constituency. In the instant petition the offences or malpractices complained of by the Petitioner have not been proved to the required standard as to persuade this Court to make a finding in favour of the Petitioner that such irregularities materially affected the outcome of the results.


**Conclusion**

For the reasons given above, the evidence on record and on the weight of authority, I find the petition lacks merit and the Petitioner's relief to void the election is refused.

Accordingly, I order and direct as follows:

1. The Petition is dismissed with costs.
2. It is hereby declared that the 1<sup>st</sup> Respondent was duly elected as Member of Parliament for Chiengwe Constituency.

**DELIVERED AT LUSAKA THIS.....DAY OF.....2016.**

  
.....  
**HON. JUSTICE M. K. CHISUNKA**  
.....  
JUDGE  
INDUSTRIAL RELATIONS DIVISION  
BOX 34009, LUSAKA