**JERE v NGOMA (1969) ZR 106 (HC)**

HIGH 15   COURT

MAGNUS J

28th JUNE 1969

**Flynote and Headnote**

[1]   **Elections - Nomination papers, lodging of - Prevention -  Misconduct**20 **avoids election.**

   Where evidence shows that a candidate for election to Parliament was prevented, by the misconduct of other persons, from lodging his nomination papers with the returning officer, such misconduct essentially makes the election in the particular constituency void.

Statute construed: 25

(1)   Electoral Act (No.24 of 1968), s.16 (2) (a).

*Cobbett - Tribe,* for the petitioner

*Kazoka,* for the respondent

**Judgment**

**Magnus J:** In this petition Mr Wingford Kaliza Jere, who had intended to put himself forward as a candidate for the African National 30 Congress Party for the Chipata West Constituency at the last General Election, petitions for a declaration that that election be declared void on the ground that he, the petitioner, was prevented by the supporters of his opposing candidate, Mr John Chiponda Chisamba Peterson Ngoma, 35 from duly lodging his nomination papers on Nomination Day, namely 26th November, 1968.

He says that he left Lusaka for Chipata on 23rd November, together with other prospective ANC candidates, arriving at Chipata on 24th November, staying at a place some sixteen miles to the West of Chipata until Nomination Day. He says that on his arrival at Chipata he found 40 the situation tense, and in fact along the road he found men in yellow shirts with the words "UNIP Election Worker" written on them, all along the road, who were asking for UNIP cards and threatening those who did not produce them. At any rate, although he complained that he

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was "pushed around", he managed to get through to Chipata on his bicycle.

At any rate, he duly arrived in Chipata at about half past ten in the morning, and proceeded to the office of the Chipata Education Officer, which it seems housed for the occasion the Returning Officer for the 5 Chipata West Constituency. He says that as he arrived at the building he saw crowded outside people whom he said he recognised as UNIP supporters because they wore the yellow UNIP election jerseys. As he approached they came towards him and he heard them say, "That is the person we want", and he understood that to mean, not that he was 10 particularly popular among them, but that they wanted to beat him. To prove this point, he says that they got hold of him and started pushing him. He thereupon beat a strategic retreat and went to the police station, which is apparently some fifty yards from the offices of the Chipata Education Officer. 15

He there saw the officer in charge whom he had first known as "Mr Bemba", although it subsequently transpired that he had been misinformed since Mr Bemba was the Divisional Criminal Investigation Officer and when Mr Bemba was brought into the Court, the petitioner immediately admitted that he was not the officer he saw. It would, in 20 fact, appear that the officer that he claims to have seen on that occasion was an Inspector Sichula. Be that as it may, he saw the officer in charge, and asked him whether he could see the Officer Commanding, by whom he meant the Divisional Officer Commanding, a Superintendent Saili. He was informed that the officer commanding was not available, and he 25 then asked the officer in charge for protection, telling him that he was an ANC candidate and was being prevented from lodging his nomination papers with the Returning Officer. He says that the officer in charge refused to afford him protection, saying "It is not our job here, you go and see the Returning Officer." This was at about a quarter to eleven 30in the morning.

He thereupon left the police station, meeting outside a fellow ANC candidate, a Mr Morris Chula, and together they returned to the Police Station, and again asked the officer in charge for protection, and this was again refused. The two thereupon decided to return to the office for the 35 Returning Officer, where the same crowd was still gathered, and a UNIP Organiser whom the petitioner knew as a Mr Maimisa Chiwele, said to him, "If you are a man come to the office", pointing in the direction of the Returning Office. He then drew a line in the road, and said, "If you jump this line you are going to die today". Meanwhile the crowd were 40 closing him, and deciding that discretion was the better part of valour he again withdrew. Again asked who composed this crowd he said they were UNIP because they were dressed in the yellow UNIP election jerseys. Asked about whether the police intervened in any way, he said he did not see any policemen at the Education Offices, but he did notice certain 45 preparations at the Police Station, for example, he said he heard a trumpet blow (by which he presumably meant a bugle), and he saw the police dressed in riot kit, that is, they had shields, truncheons and steel helmets.

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The crowd, however, did not disperse, and in fact he said that Mr Chiwele said that after the election they would take over these "Lozi police and Tonga police", they would dismiss them because he was going to be District Governor of Chipata. The situation did not ease, and 5 the petitioner and Mr Chula then withdrew to the Police yard, from which however they were evicted. At this stage apparently the petitioner was joined by another ANC official, a Mr Daka, together with a little group of supporters. It was now half past twelve and the party moved off to the Indian shopping centre of Chipata in the hope that they might be 10 able to whip up a little more support in order to enable them to get to the Returning Officer. At the Indian shopping centre they met a Mr Tembo, who was another ANC candidate, and who had with him the Land - Rover in which the petitioner had arrived at Chipata from Lusaka, but which meanwhile had been used in connection with the elections at 15 Lundazi. Together they got into the Land - Rover and returned to the Returning Office. The group was still there and they then proceeded to the Boma to see the District Secretary in order to enlist his help in getting to the Returning Officer. When they got to the Boma they met another group of UNIP election workers and fighting began as a result of which 20 two ANC members and one ANC candidate received injuries, and were taken to hospital. The fight lasted for about fifteen minutes and then the police intervened, but by this time it was about a quarter to three, leaving about fifteen minutes in which to lodge nomination papers, and in view of the conditions prevailing the petitioner made no further attempt 25 to reach the Returning Officer. In any case, apparently by the time everything had been cleared up outside the Boma, the three o'clock deadline had arrived, and it was too late. The petitioner said that as a result of the fight some windows were damaged at the Boma, in particular, he said, the big windows in the office, and that is a fact of some significance in  30 view of the conflict of evidence I have had on this point as well as on many other points.

The petitioner also named the injured ANC candidate as Alick Zikani Nkoma. Again, this is of some significance to determine the truth of the evidence adduced before me, to which I will refer later. 35

A point was made in cross - examination that in the circumstances the petitioner could have proceeded by stealth and tried to get before the Returning Officer by the back door. I will say at once that on the assumption that the story told by the petitioner is true, I would reject immediately any suggestion that there was any duty upon an election 40 candidate to get before the Returning Officer by the back door if there was a hostile crowd barring his progress at the front door. An election candidate is entitled to deposit his nomination papers without let or hindrance, and there is no duty upon him, to my mind, to resort to a stratagem in order to evade a hostile mob, even if it would have been possible for him 45 to have reached the Returning Officer by stealthy means, on which no evidence was adduced before me, and the question I have to decide is not whether the petitioner was or was not a man or courage or subtlety, but whether he was prevented by threats from lodging his nomination paper.

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Further in cross - examination the petitioner said that he saw about 500 people wearing yellow shirts, plus about 300 more in ordinary shirts, and more than 100 of these were outside the returning Officer's office. He was adamant that there were several hundred people around that day wearing yellow UNIP election shirts, and if anyone said that Chipata 5 on that date contained no yellow election shirts, he would be lying. Questions arose about things that happened before election day, and although such events are not strictly relevant to the matters in issue in this petition, there is some relevance in so far as it relates to the general atmosphere around Chipata about this time, so far as it becomes necessary 10 for me to determine which set of witnesses are telling the truth in this case. At present it will suffice if I mention that the petitioner and his witnesses have said that on the days preceding Nomination Day there had been interference on the road between Chipata and Petauke, and I have already mentioned alleged interference with the petitioner on his 15 way to Chipata on Nomination Day itself. Furthermore, it appears common ground that there was a certain amount of trouble at Lundazi and the petitioner's witnesses alleged that there was at least one road block on Nomination Day between Lundazi and Chipata manned by UNIP election workers. I mention this as some evidence, if I accept it, 20 of the general conditions in the area at around that time, but will spend no more time on this as not being otherwise relevant to the issue before me.

A further point in cross - examination was whether there were any police stationed at the entrance of the Education Offices, and the petitioner 25 said he did not see any policemen at that entrance. However, the place was so crowded with UNIP election workers, that he could not say with any certainty whether any police were there or not. Police were, he said, patrolling the roads. The main body of police that he saw were at the police station, although even here he said there were more UNIP workers 30 around the police station than there were policemen. He did not see how many policemen there were but were approximately twenty inside the Police Station. Asked further about the officer commanding the petitioner said he did not see the officer commanding, but he was told he was at Luangwa House. He was also told that he was telephoned to come to the 35 charge office but he did not turn up and he did not see the officer commanding on that day, although he asked for him on each occasion that he came to the police station. The petitioner was adamant that he did see Mr Maimisa Chiwele, that Mr Chiwele was wearing a UNIP election shirt, and that he had threatened him if he attempted to cross the line 40 he had drawn in the road. When it was suggested that the petitioner did not really try to get himself nominated, that he did not try to lodge his nomination paper, he said that his papers were all ready, and he produced the nomination papers which, so far as I could tell from inspection and without being in a position to check the qualifications of his supporters, appear to be in order. These nomination papers had been completed before he went to the Returning Office.

Mr Chula was called, and by and large he corroborated the petitioner's evidence from the point when he joined the petitioner. I will therefore

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not go through his evidence again, except that his version of what the officer in charge said to the petitioner was, "I cannot give you policemen, I am not A politician. Go to the Returning Officer. If there will be a fight between ANC and UNIP that is when the police will come, just to 5 see". He also added as his last words, "Now go away from here, I do not want any reports from you." I would also mention that in his description of the fight outside the District Secretary's office he mentions that the injured man, Alick Nkoma, was picked up by two Europeans and the District Secretary. In view of further evidence which came before me, 10 later, I make special mention of this fact here. I might also mention that Mr Chula was apparently successful in lodging his nomination papers that morning. Apparently, he says, this was due to the fact that a fight had occurred outside his Returning Officer's office at 9.15 that morning and he was able to dodge past the contestants and lodge his nomination 15 papers. He also added that in the later fighting that afternoon, he also received injuries, having been hit by a stone, and he showed me a scar on his knee which he said was caused by that stone.

Mr Alick Zikani Nkoma was the next witness, who again largely corroborated the story told by the other two witnesses and also corroborated 20 the fact that he was injured in the fight that afternoon and taken to hospital, that he was knocked unconscious and woke up in hospital, were he found at least one other ANC man named Katende. He also spoke about trouble on the road from Lundazi to Chipata, and again, apart from noting, the fact, I pay no further attention to it as being not relevant to the 25 issue, except in so far as it gives me a general picture of conditions in that area. He also says that there was a big crowd in Chipata on Nomination Day, and that, many of them were wearing yellow UNIP workers' shirts. Also he says that there were a good number who were not wearing these shirts. He also says that he saw a European around, which I also note 30 because off the later evidence that came before me.

Mr Simion Mathias George Tembo also gave evidence, which largely corroborates the evidence of the petitioner and his witnesses from the point at which they went to the Indian shopping centre where the petitioner met Mr Tembo. He says that the UNIP group at the fight in the 35 afternoon at the Boma were carrying sticks and throwing stones, that he too tried to lodge his nomination paper with his Returning Officer and was prevented from doing so by the group which surged towards him and said, "That is Tembo. Kill him." He also says that he saw no policemen in uniform either at the Township Council office where his Returning 40 Officer was stationed or at the Ministry of Education. This witness also confirmed that on the journey from Lundazi to Chipata there were what he called "human road blocks" and drums on the road, and also that although they had a police escort part of the way, even then they were stopped, although the police were not. He also says that he did not see 45 any policemen patrolling and that he also reported to the police about being obstructed and prevented from lodging his nomination papers, but was told by the policeman who appeared to be in charge (as he says someone with two bars on his shoulder) to go away and see his Returning Officer and explain the position to him. He could not go to the District

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Secretary's office or the Boma office because they were covered by yellow shifted UNIP election workers, and he did not think it safe to go there without police protection. Apart from this, as I have said, this witness largely corroborates the evidence given by the other witnesses for the petitioner. 5

The first witness for the respondent was Sergeant Nasausa Mwale, who says that on Nomination Day he was stationed at the office of the Ministry of Education and was on duty there from 6 a.m. until 3.30 p.m., although nomination began at 9 a.m. and finished at 3 p.m. I have not had a satisfactory explanation as to why it was necessary for the policemen to 10 be stationed at these offices three hours before nomination began. Sergeant Mwale merely said that these were instructions given to him. He was there with Constable Katakwa, and his duties were, he said, to see that nobody interfered with people coming to file their nomination papers. He did see Mr Ngoma, the respondent, arriving at between 10 minutes15 and a quarter past 9 a.m., together with Mr Humphrey Mulemba, who was another UNIP candidate for a nearby Chipata constituency. There was nobody else around in the area at the time, and Mr Ngoma was the only person he saw coming to file his nomination papers. During the day he said there were some people passing on the road, but there 20 was nobody at all hanging around the office. He was stationed in front of the building just within the curtilage of the building, and the day was spent by him and Constable Katakwa taking it in turns one patrolling around the building while the other remained standing at the front. This went on he says until about half past three, and the only people they 25 saw during the day were office bearers and people working within the offices. He saw one or two people wearing UNIP workers' shirts passing by in the street, but he saw none with such shirts inside the building. He could not see what they were doing. As far as he could see they were just walking about. There were no such people near the Ministry of 30 Education Headquarters. He noticed no vehicle trying to get into the Headquarters, and the only other visitors they had during the day was the Officer Commanding, Mr Saili, and the Officer in Charge, Mr Sichule. The main road was being patrolled by the police vehicle, and there were other constables on foot. When asked how many occasions between the 35 15th and 26th November, 1968, he was called out to deal with political upheavals, he at first said he could not remember, then in answer to a question by me he said he was not called out at all. Asked if there were any political troubles he said they never came to him, although he was in fact the Criminal Investigation Department sergeant at the Chipata 40 Police Station. He did not know whether any other policemen stationed at Chipata had any political cases to deal with during that period, and so far as he was aware there were no political incidents at all between those dates. He did not know whether there were any political incidents after 29th November and before Election Day on 19th December. Although 45 he was usually told of all such happenings he said he must have forgotten them. He had certainly not heard of any and so far as he was concerned Chipata was very peaceful from the 15th November to 19th December.

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Again asked in cross - examination why he went on duty three hours before people were due to file their nomination papers he could not give any reason, and did not know whether it was because his senior officers expected trouble that day. He was in plain clothes and the constable 5 with him was in uniform. He was not very clear about when Mr Ngoma started his election campaign, but after considerable questioning he conceded it might have been at the beginning of November, and it was a completely peaceful campaign without incident.

Asked about a kidnapping case in Chipata before the elections when 10 a whole lot of ANC candidates were alleged to have been kidnapped by UNIP people, he said he knew about no such case, and such a case never came before him or was mentioned before him by his colleagues. Further questioned about people wearing UNIP shirts, he said he only saw one or two on that day, and it might even have been the same person passing 15 twice, and he never saw two of them together. He did not see any people milling around the Education Office during the course of the day, he was quite adamant about this. When asked what time he left the Education Office he replied (rather significantly to my mind) "When things were all quiet - it was half past three." When challenged about the expression he used he said he meant when everything was finished, and again when I put it to him he said when things were all quiet he answered "Yes", and went on to say that "knocking off" as he called it at 3.30 was his routine work.

He did not see the petitioner approach the Education Office at any 25 stage between 9 a.m. and 3 p.m., or any other ANC candidate. Nor did he see anybody from ANC try to file any papers at the Education Office on that day, and nobody told him that anyone had tried to file any nomination papers.

When he went back he reported to his colleagues what a peaceful 30 day he had had, but apparently he got no reciprocal confidences of that sort from his colleagues. When he said he had had a peaceful day they just grunted. He was not told of any broken windows at the Boma. He did not know whether there were any broken windows, nor did he go anywhere near the Boma on the next day. Nobody had told him about 35 anybody being taken to hospital with injuries after a fight, and he did not know about anyone going to hospital. Asked about a person called Staff Ngoma having been murdered during this period he said he did not remember. He knew Mr Chula, but he did not know about his ever having come to the police station to complain. He knew that the Officer in Charge 40 had arranged for the police Land - Rover to patrol the streets all day, but he said that this was just normal routine. In re-examination he explained that when he said he had reported that he had had a peaceful day this was to the Officer in Charge and no - one else.

The next witness for the respondent was Constable Martex Kitakwa 45 who said he was on duty with Sergeant Mwale at the Education Offices. When asked what his duties were on that day he said that his duty was to control the crowd, which he explained as meaning "to let these people

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not come nearby", but added "these people who were due to nominate their papers were free to come". His evidence was very much on the lines of that given by Sergeant Mwale. He saw Mr Ngoma arrive to hand in his nomination papers and he remained on duty with Sergeant Mwale until about 3.30 p.m., or as he afterwards said, approximately 3.30. When 5 asked why he said approximately, he added it was exactly half past three. He described his duties as already outlined by Sergeant Mwale. The only people who were at the office were those on duty there, and he said, "most of the people were just milling about in the road." Asked whether there were any people wearing UNIP election shirts about, he said, no 10 there were not, he only saw about two moving about in the road. There were no other people in the offices except people working there. He saw no other people around the office. He did not see the petitioner on that day. He saw him for the first time in Court. He saw nobody else trying to come in. The only Land Rover he saw trying to come in was that of the 15 Officer Commanding, and the only other visitor he had was the Officer in Charge. There were policemen patrolling the roads, but there were no other policemen nearby. At the time he saw detailed, others were detailed for other duties. There was no trouble in his area. Cross - examined about the detail of duties he said apart from himself and Sergeant Mwale he 20 heard instructions being given to the police Land - Rover patrols. They were all told not to interfere or to let other people interfere with the election. He agreed that it was not a routine patrol. It was a special patrol, and the Land - Rover patrol was also a special patrol. He could not remember how many policemen were detailed for it. He again repeated 25 that he knew of no trouble in Chipata or district before the 26th November. He did not see any trouble or hear of any trouble. There were no arrests, he said, in Chipata before the 26th November. There were the usual troubles, thefts and the like, but he knew of no political problems either before or after 26th November. He had no idea that Mr Ngoma was 30having an election campaign in the district before the 26th November, nor did he have any idea that there were any broken windows in the Boma on the 26th November. He did not know about any ANC people being beaten up and taken to the hospital.

The next witness for the respondent was Mr Sichula, the Officer in 35 Charge of Chipata Police Station. He came on duty at 6 a.m. on the 26th November, and he says he posted various policemen at the offices where candidates were going to lodge their nomination papers, Sergeant Mwale and Constable Kitakwa being posted at the office of the Chief Education Officer. He put some police officers on general patrol duties to patrol the 40 town location, the Boma, the Civic Centre and the Chief Education Officer's offices. When asked how many were on special duties he seemed to be rather hazy and finally decided that he had between 30 and 40 police officers on special duties. He would not or could not give a more exact figure. Some of these officers were on patrol in vehicles and some on 45 foot, but again he could not say how many were allocated to each sort of duty. The Officer Commanding was in Chipata on that day, and was in the station at 6 o'clock when Inspector Sichula commenced his duties. Witness could not remember how many police remained at the Charge Office.

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All he could say was that there were a good number, and when pressed to give a number he said approximately 10. Constable Kitakwa was in uniform and Sergeant Mwale was in plain clothes. Their duties, he said, were to see that people who had no business there should, as he put it, 5 "be prevented away". He explained that this meant that they should be asked to leave the place, and he went on to say, "those who had business there should be allowed to carry on with their business." He further explained that by those who had business there he had in mind those people going into the offices to lodge their nomination papers, that 10 is to say, the candidates. He also gave specific instructions that if a candidate was in trouble he should report it to the officers present there. Asked what he meant by "trouble", he said such as being prevented from going into the offices. If a candidate was unable to report for one reason or another and the constables saw any trouble they were to assist him 15 and also to report the matter to the witness. He also considered that his own duties that day were to assist any candidate, and the patrols were carried out to keep the peace. He himself visited some of these postings during the day, sometimes alone and sometimes with the Officer Commanding, Mr Saili, as well as the DCIO, Mr Bemba. He went on to say that 20 nothing at all happened in the morning. He did not see the candidates coming to lodge their papers, and in the afternoon he saw nothing. Asked whether he saw any people wearing UNIP election shirts he said he saw very few and these were around the Township Council Offices, the Chief Education Office and the Boma. These were just moving around 25 going about their business. Asked to give the number of yellow shirts he saw, he said he saw not more than five, and these were not gathered in any one particular place. He saw no group of people near the Education Office.

He knew Mr Maimisa Chiwele, the UNIP Regional Secretary for 30 Chipata. He did not see him on that day, neither did he see Mr Chula that day. He did not know who the ANC candidate for Chipata West was, nor did he see him that day. He did not know him and had never seen him before. Nor did he see anyone like him on Nomination Day, nor for that matter did he see Mr Tembo. In the course of his patrols, he had 35 occasion to go to the office of the District Secretary, but he saw nothing unusual happen there. Nor were there any representations made to him as Officer in Charge about disturbances in the Boma area. He had no reports about any people being injured. Asked to explain why patrol duties were finished at half past three, that is, half an hour after nominations 40 closed, he said it was always the practice with the police to remain on duty long after an occasion for the duty had finished, although he did not quite express himself so explicitly, so all finished their duties at 3.30 including the Officer Commanding. He again repeated that he received no representations of fights or skirmishes around the Boma that day. 45

In cross - examination he was asked whether he remembered Mr Chula coming to his Police Station to report incidents in Chipata. His answer was that he could not remember. When pressed about this he repeated that he could not remember, and the reason why he knew Mr Chula was not because he had been to the police station frequently. Asked if

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he had ever had any ANC people coming to the police station he again said he could not remember, nor could he remember ever having had any complaints from any ANC supporters. If a report had been made he should have known about it, but he could not remember. He had a records book at the police station and a daily occurrence book. He had not brought 5 it with him, but he stated that if anything had happened on the 26th it should have been entered. Mr Cobbett - Tribe put to the witness seventeen incidents which were alleged to have taken place before the 26th November, and the witness could not remember any of them. Asked whether he knew anything about a Staff Ngoma, who was alleged to have been killed 10 outside Chipata on 8th December, his answer again was "I don't remember". He could not remember any reports of political violence at all between 15th November and 26th November, nor could he remember any incidents after the 26th November and before the Elections on 19th December. Asked about people being kidnapped, again the witness could 15 not remember, nor had he heard about it. Nor could he remember any broken windows at the Boma after 26th November. Nor could he remember having been told about it. He did not know about any ANC people having been taken to hospital on 26th, and he had received no report about people being injured. Asked why it was necessary to send 30 - 40 20 policemen to patrol on 26th he said it was a big occasion, but he could not remember whether beer halls were open or closed. In all, the atmosphere in Chipata, according to this witness, was peaceful. This witness, too, could give no satisfactory reason why it was necessary to put the sergeant and the constable on duty at 6 o'clock in the morning, three hours before 25 nomination opened. All he could say was that this was the instruction of the Officer Commanding. The patrols he said were not special patrols, just routine, although after a bit he admitted with some reluctance that they were special. He again repeated that he had not received any reports of any incidents on the afternoon of the 26th, and he saw no more than 30 five people wearing UNIP shirts. They were walking up and down. He denied that he had seen Mr Jere on that day, and certainly he could not remember seeing him twice on that day. Asked whether he knew whether there had been trouble at Lundazi again he said that he did not know. I then asked him whether any of his men had been armed with riot equipment that day. His answer was "No". He had men standing by at the police station, but they were not armed with riot equipment. The ten men he had standing by at the station were wearing uniform, but it was just ordinary dress. They were not armed with batons, shields or steel 40 helmets.

Mr Benson Saili, the Officer Commanding Eastern Division, was then called. He said that he came on duty at 7 o'clock that morning, although Mr Sichula had already said that Mr Saili was already on duty when he, Mr Sichula, came on duty at 6 a.m. Mr Saili further said that when he 45 arrived Mr Sichula was already on duty, and he was waiting for him in uniform at the police station, as arranged the previous day. He was carrying out supervisory duties. He had given instructions on the previous day that he should post officers in three places: At the Boma, at the Township Council Offices and the Ministry of Education Offices, and these 50

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men were to be stationed there through the whole day. They were to be there from 6 a.m., their duties were to see that all candidates and their agents lodged their nomination papers freely and that no unauthorised persons should wander about or interfere. By the time he arrived, Mr 5 Sichula had already carried out his instructions. He himself went out on foot patrols or occasionally in vehicle patrols. He went many times to the Ministry of Education Headquarters, and he confirmed that there were two officers posted there, one in plain clothes and, the other in uniform. Every time he went there he found them there. He had met candidates 10 coming to put in their papers, two belonged to UNIP and one ANC candidate, Mr Chula, whom he had known from before. He spoke to him that day, and met him near the Boma offices, asked if he had dodged his nomination papers. He then asked him if there were any other ANC candidates to lodge their papers, and Mr Chula replied that he did not 15 see any. Then he went away. This was in the morning and it was the only time that he saw Mr Chula that day. He did not know the ANC candidate who was supposed to lodge his papers at the Ministry of Education offices, and asked to identify Mr Jere he said he did not see him that day, neither did he see Mr Chula in company with anyone looking like him 20 that day. When he had spoken with Mr Chula, Mr Chula was alone. He did notice a small incident at about 9 o'clock when he saw three to four men dressed in UNIP shirts running from the direction of the road near the Ministry of Agriculture Offices, chased by about eight people with sticks, who said " Beat these UNIP's, they are threatening us." He collected 25 a few policemen, who were unarmed, and who quickly stepped in and the whole crowd dispersed, including those wearing yellow jerseys. I would here observe, as I observed at the time, that none of this was put in cross - examination to any of the witnesses for the petitioner. He went on to say that he did not take any action on this because he considered this 30 a minor incident since as soon as the police appeared they all disappeared and they were unable to see them, and there were no other incidents that he could recall that day except one that happened at Lundazi. Asked at what intervals he had patrolled the Ministry of Education Headquarters he said that he could not remember, but he was there 35 many times, and Mr Sichula was carrying out similar patrols. So was Mr Bemba.

He did not see any disturbance at the office of the District Secretary and nothing was reported to him. Nor was anything reported to him about broken glass or broken windows at these offices. Nor did he receive 40 any reports about a fight near the District Secretary's office or about anybody being taken to hospital. He knew Mr Maimisa Chiwele, but he had not seen him on that day. Apart from the set times for blowing bugles to call officers to their duties, he did not hear any bugles that day blown at any odd time. He received no reports of anyone coming to the 45 police station nor was he at Luangwa House that day.

There had been incidents of kidnapping involving Katete and Chipata, but that was in December, and action had been taken. In many of these cases complainants were not prepared to come forward. No

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deaths were reported about this time. He did not hear of anyone called Staff Ngoma, nor was his death reported to him. The only fatal political incident was in Petauke. He also remembered one in Chipata in December, but he could not remember the name of the deceased. He was satisfied that to the best of their ability all his officers carried out their duties well, and 5 they did a good job. Pressed in cross - examination about who would carry out investigations into incidents and particularly whether Sergeant Mwale, as a CID sergeant, would be likely to be involved, Mr Saili was evasive, and gave no satisfactory reply, and it was only after considerable questioning that he grudgingly admitted that all incidents are 10 ultimately reported to him, but asked about particular cases, like the witnesses before him, he could not remember. Asked whether the officer in charge of Chipata would have known about these incidents he first said that he would not, and then said sometimes he would, but that sometimes he would not know. All these cases came through the CI Office and the 15DCIO informed him about it, and he saw his reports. The CID branch was responsible directly to the DCIO and the DCIO was responsible directly to Mr Saili. DCIO's reports, he said, went through the usual channels, but after some persuasion he eventually admitted that the report always finished up with him. He kept no records of the patrols 20 that were carried out on that day. These were internal movements, and were not recorded. He had received a report of trouble at Lundazi on the 26th between UNIP and ANC. He was at the time at Chipata and received the report from the DCIO. He did not know whether it was necessary for the police at Lundazi to escort some ANC candidates to Chipata. 25

The respondent then gave evidence. He said that apart from being a Member of Parliament he was the Chief Deputy Administrative Secretary of UNIP and was the UNIP candidate for Chipata West at the General Election. He had the special job of distributing all the UNIP shirts to various persons and was in charge of the Eastern Province UNIP campaign. 30 It was his duty to plan the election strategy. Some shirts were issued on the 2nd November, to Chipata region, but six only were in the Chipata region. The instructions were that six shirts should be given to each region throughout Zambia, and that there were forty - seven such regions in Zambia. The bulk of these shirts were not issued until after Nomination Day. On that 35 day Chipata region had no more than six shirts, and there was only one UNIP Land - Rover in the Chipata region. Each region had only one Land - Rover. No additional Land - Rovers went to Chipata for any purpose on the 26th. He knew the Regional Secretary, Mr Maimisa Chiwele, and knew him as the man in charge of the UNIP election campaign, and that 40 on the 26th, Mr Chiwele was in the Marambo area, approximately seventy miles from Chipata. He came back to Chipata on the 27th for a meeting, and in fact he, Mr Ngoma, had to send for him. He arrived at Chipata at 9.30 on the morning of the 27th and was in fact late for the meeting. In cross - examination he emphasised that there could not have been more than 45 six election shirts in the whole of Chipata region and it was not possible for officials from other regions wearing these shirts to come into Chipata on that day because they would be disobeying orders. He knew that orders

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were not disobeyed because they had not been reported by the regional officials. When asked whether it was possible for some regions to have had more than six shirts his answer was "I do not know". Asked about Mr Chiwele, he said that Mr Chiwele had left Chipata on the 25th at 4 o'clock 5 in the afternoon and he, Mr Ngoma, was present when he left. He admitted in further cross - examination that he was not in Chipata for the whole of 26th November, but nobody reported to him that Mr Chiwele had returned to Chipata, and although he could not say of his own knowledge that Mr Chiwele did not return, he expected to have had a report to that effect if he 10 had returned. At this point the respondent closed his case, but it was felt desirable to obtain certain corroborative evidence, and the hearing was adjourned for this evidence to be obtained.

When the hearing resumed, Mr Kazoka called Mr Chiwele, who said that on the 16th November he received a letter from Mr Ngoma, to 15 inform him that he had to go to Marambo to address a meeting. He put in what purported to be this letter, which I found was typed on an ordinary piece of typewriting copy paper, and merely set out a list of meetings from the 17th November to the 26th November at various places, and showing that these meetings would *inter alia* be addressed by 20 Mr T. C. Maimisa, Regional Secretary. These places, the witness said, were all within the Marambo area. He went to Marambo on the 16th at 6.30 p.m., and he followed that programme according to the letter. On Nomination Day he was addressing the meeting at Kulikateme School. He had to cut his programme short in order to attend a meeting in Chipata on 25 the 27th, and he did not go back to Chipata before the 27th. He could not say exactly at what time he arrived. At 11.30 a.m. he found the election meeting had already finished. He did not stay in Chipata and on the 28th he went to Lusaka, where he was ordered to go to campaign, and he remained in Lusaka until 18th December. In cross - examination, Mr 30 Chiwele was asked how he received the letter, whether it was handed to him or whether it came through the post, and he said it came in an envelope. He could not remember the size, but he held up a card which was before him in the witness box, and which was considerably smaller than the letter he produced, and he said that the envelope in which it was 35 was about that size. I observed that the letter handed to me was obviously unfolded, and could not go into the envelope as indicated by that witness without being folded. The witness endeavoured to fold the letter in my presence and managed to make one slight mark thereon, but it is quite obvious to me that this letter had never been folded before it was produced 40 to me in Court. I can only come to the conclusion, therefore, that the letter was concocted for the purpose of this case, and I must reluctantly reject the evidence of this witness accordingly.

In the light of the conflict of evidence which came before me, I felt it desirable to have independent evidence on what was going on in Chipata 45 on the 26th November last, and this was fortunately available in the person of Mr Robert Vincent Molteno, who is a Research Fellow at the University of Zambia, and whom I called as a Court witness in this case. He said that on the 26th November last he was in Chipata helping to

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conduct research into the General Election. He Interviewed the Returning Officers before 9 a.m., before nomination began. He then left the Boma and stood about fifty yards in front of the police station facing the Boma, and as he was standing there a crowd was gathered outside the police station. It was a small crowd and he watched the police come out of the 5 police station ordering these people to fall back, which they did after some minutes. Then around 10 o'clock he left Chipata. The crowd appeared to be fairly angry, but it was not obvious from observing them why they were angry. Some of them wore UNIP election shirts, but he could not remember how many there were. There were several things to watch, 10 and he just could not remember this point of fact. There was a fair amount of excitement around, but as he left Chipata at about 10 o'clock he was not able to say any more about what happened there, that morning. He returned to Chipata at about 2.30, or perhaps a little later, and arranged with the District Secretary to interview him when he was free 15 later that day. He then sat down on a bench fairly near the District Secretary's office on a sort of verandah which ran along the back of the Boma. After waiting some minutes he saw a crowd of five or six men in fairly rugged clothes and carrying sticks come from the left hand end of the verandah, coming in front of him towards the right hand end of the 20 Boma. Then a fight began and he saw one of this original group, a fairly short elderly man, lying on the ground and being beaten with sticks. These appeared to inflict considerable injury on him. His head seemed to be bleeding profusely and then the fight broke up and the police arrived. That was the end of that incident, although he did mention that when 25 he left Chipata by car and went to Chadiza he came across a group of UNIP election workers stopping cars and that was the only incident he saw. Examined by Mr Cobbett - Tribe, he said that on the road between Chipata and Lundazi the previous day he had come across four road blocks, by which he meant that there were pieces of string strung across the 30 road with bits of card hanging from them, and people standing in the road. He saw people wearing UNIP shirts at these road blocks. He said on the morning of the 26th before he left Chipata at 10 a.m. he passed the Township Council offices and he saw a crowd of people outside, some of whom were wearing UNIP election shirts. The group outside the police 35 station could have been between twenty and thirty, and the police dispersing them were in police uniform, some of whom were wearing helmets and some of them were armed with a sort of gun which was fairly short and was not a pistol. The police also had batons and were pushing the group towards the Boma. In the afternoon when the fight 40 broke out he took refuge in the office of the District Secretary and while he was there a stone or a brick came through the window. He could not see how many there were in the attacking group, but it was probably larger than the other group since they beat them, and all the attackers were wearing UNIP shirts. When the fight was over he came out of the 45 office and he, together with another European, a Mr Dresang, went to the assistance of the man lying on the ground, and the District Secretary also came forward to assist him. When the police arrived they were wearing helmets and had weapons and batons. There were about thirty police, but they arrived after the disturbance had come to an end. In 50

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answer to Mr Kasoka's questions, the witness said he saw no actual candidates before nomination, although he saw candidates after. He did not have occasion to visit the Chief Education Officer's office. These offices are very near the Municipal Offices and he did see a group of 5 people standing outside these offices, at the entrance of the building and within its perimeter. He did not notice any policemen, but there could have been policemen behind the Education Offices obscured by the crowd. He said the police had a habit of getting into a Land - Rover and doing a sort of roar on the U - shaped road in front of the Boma about 10 every twenty minutes or half hour. He saw this happen two or three times while he was there.

Thereafter, with the consent of counsel, I inspected the hospital records for the 26th November, in the presence of Counsel. I noted from these records on that day four admissions were made to the surgical ward: 15

   1.   Katenda Zulu, No.7857;

   2.   Kennedy Wilika, No.7890;

   3.   Alick Ngoma, No.7855;

   4.   Liford Tembo, No. 7981.

The case record in the case of Zulu shows that he was brought in by the 20 police, the subject of an assault, and was unconscious. He was detained, and discharged on 13th December, 1968. As he was brought in by the police it is difficult to understand why none of the responsible police officers in the district knew anything about the case. Wilika was brought in with a stab wound in the chest, according to the record, "due to 25 political fighting". He was discharged on 2nd December, 1968. Alick Ngoma was brought in, the subject of an assault with iron bar on his scalp. He was apparently detained in the hospital until 6th December. Tembo was brought in, the subject of an assault with a stick. He was discharged against medical advice on 28th November, 1968. 30

The last witness, who was also called by me, was Mr Albert James Nockolds, who is a Works Supervisor at PWD, Chipata. He produced a requisition accompanied by a note from the District Secretary dated 11th November, 1968. The note from the District Secretary said:

   "Please will you replace glass panes which were broken on 26th 35 November, 1968, Nomination Day, here at the Boma. I would also be very grateful if you could come and replace new door frame,  as the old one does not work."

There does not appear any relevance as regards the new door frame, but it is quite clear that there were broken widows at the Boma on the 40 26th November, and this was obviously associated by the District Secretary with Nomination Day since he expressly mentioned the fact. The requisition showed that 25 panes of glass measuring 12"X 10" had to be replaced, and two panes measuring 171/4" X 111/4" had to be replaced. It therefore appears that there were twenty - seven broken widows to 45 be replaced arising out of damage occurring at Chipata on the 26th November, 1968.

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The independent evidence shows quite clearly that, far from everything being very peaceful in Chipata on Nomination Day and the period immediately preceding it, there *was* trouble in the area. It is clear that there was a crowd who appeared to be angry outside the police station that morning. There was another crowd standing around outside the offices of 5 the Education Officer. There was a fight outside the Boma in which, according to Mr Molteno, an ANC crowd of five was attacked by a larger crowd wearing UNIP shirts, as a result of which one man was injured and taken to hospital. This man was in fact picked up by two Europeans and the District Secretary, as stated by witnesses for the petitioner. There were 10 four admissions to hospital including Mr Alick Ngoma who was one of the witnesses for the petitioner, and there were twenty - seven windows broken at the Boma. All this evidence is completely independent, and to my mind quite irrefutable. It is impossible to reconcile it with the evidence of the police officers, who apparently were suffering from a severe attack of 15 amnesia at the time, and were blind, deaf and dumb to all that was going on. I have no hesitation in rejecting the evidence of the police officers *in toto*. I would remark here that every one of the police witnesses appeared extremely uncomfortable in the witness box. They looked uneasy and at times almost frightened men when they were giving their evidence. 20 Although I am also satisfied that the petitioner's witnesses exaggerated the position to some extent, their evidence is more in keeping with the independent evidence to which I have referred and is corroborated on several significant points by this independent evidence. [1] I am therefore satisfied that on this day there were crowds of opponents of the petitioner 25 stationed at the entrance to the returning officer's office in order to prevent his access to the office; that he was put in reasonable fear so as to prevent him approaching the returning officer to lodge his nomination papers, and that this amounted to misconduct. I therefore find that this behaviour of the crowd at the education offices on that day constituted 30 misconduct as a result of which the majority of voters in the constituency of Chipata West were or may have been prevented from electing the candidate whom they preferred, contrary to section 16 (2) (a) of the Electoral Act, 1968. In the circumstances I, therefore, decide that the respondent John Chiponda Chisamba Peterson Ngoma was not duly 35 elected as Member of Parliament for the Chipata West constituency, and declare that this election void. Costs to the petitioner.

*Petition Upheld*

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