

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA
(Constitutional Jurisdiction)

2011/HP/EP/0004

IN THE MATTER OF: PART VIII OF THE ELECTORAL ACT, NO. 12 OF 2006
IN THE MATTER OF: PARLIAMENTARY ELECTION FOR NUMBER 141 LUKULU
WEST CONSTITUENCY HELD IN SEPTEMBER, 2011
IN THE MATTER OF: AN ELECTION PETITION BY EILEEN MBUYWANA
IMBWAE

BETWEEN:

EILEEN MBUYWANA IMBWAE	PETITIONER
AND	
MISHECK MUTELO	1 ST RESPONDENT
ELECTORAL COMMISSION OF ZAMBIA	2 ND RESPONDENT
THE ATTORNEY GENERAL	3 RD RESPONDENT

BEFORE HON. MADAM JUSTICE EMELIA P. SUNKUTU

For the Petitioner: Ms S. N. Kateka and Ms N. Simachela, Messrs Nchito & Nchito
Advocates

For the 1st Respondent: Mr. H. Kabwe, Messrs Hobday Kabwe & Company

For the 2nd and 3rd Respondents: Mr. S. K. Nkandu, State Advocate

JUDGMENT

Cases referred to:

1. Akashambatwa Mbikusita Lewanika, Hicuunga Evaristo Kambaila, Dean Namulya
Mung'omba, Sebastian Saizi Zulu and Jennifer Mwaba Vs FTJ Chiluba (1998) ZR at page 84

2. Anderson K. Mazoka Vs Levy Mwanawasa, Electoral Commission of Zambia and the Attorney General (2005) ZR at page 138
3. Michael Mabenga Vs Sikota Wina, Wallace Mafo and George Samulela (2003) ZR at page 43
4. Webster Chipili Vs David Nyirenda SCZ Appeal Judgment No. 35 of 2003
5. Jere Vs Ngoma (1969) ZR at page 106
6. Mlewa Vs Wightman (1995/1997) ZR at page 171
7. Webster Chipili VS David Nyirenda SCZ Appeal Judgment Number 35 of 2003
8. Batuke Imenda Vs Alex Cadman Luhila Appeal No. 5 of 2003 (SCZ)
9. Simasiku Namakando Vs Eileen Imbwae Appeal No. 108 2007
10. Alex Cadman Luhila Vs Batuke Imenda 2002 HP/EP/0017
11. Simasiku Namakando Vs Eileen Imbwae 2006/ HP/EP/0002
12. Chizande Vs The People (1975) ZR at page 66
13. Attorney General Vs Kakoma (1975) ZR at page 212
14. **Legislation referred to:**
 1. The Electoral Act, No. 12 of 2006
 2. The Electoral (Code of Conduct) Regulations, 2006

This is the Election Petition of **Eileen Mbuywana Imbwae** who was a Parliamentary Candidate, under the Patriotic Front (PF), in the Lukulu West Constituency election held on 20th September, 2011. The Petitioner is challenging the election of **Micheck Mutelo**, the 1st Respondent, who stood under the Movement for Multi-Party Democracy (MMD) and was declared duly elected by the Electoral Commission of Zambia (ECZ) which is the 2nd Respondent in this matter. The Attorney General, who is the 3rd Respondent, is sued pursuant to section 12(1) of the State Proceedings Act, Chapter 71 of the Laws of Zambia. The Petition is made pursuant to part VIII of the Electoral Act, No. 12 of 2006, and alleges the following:

6. That the election of the 1st Respondent was void by reason of corrupt and illegal practices.
7. That the voters in the Lukulu West Constituency were prevented from electing

the candidate that they preferred by reason of electoral offences, intimidation and threats which were committed in connection with the election, by the 1st Respondent and his agents, and, as such, the election of the 1st Respondent as a Member of Parliament for the Lukulu West Constituency is void for the reasons set out in hereunder:

- (a) That in the campaign period, the first Respondent held numerous meetings during which he produced a letter written by the Petitioner requesting for funds in 2006, and alleged that the said funds were, in fact, stolen by the Petitioner when in fact not; contrary to section 83 (2) of the Electoral Act, Number 12 of 2006 (hereinafter referred to as 'the Act').
- (b) The 1st Respondent, in an area called Lindole, held numerous meetings where he falsely told voters that the Petitioner had pulled out of the race and travelled to China, contrary to section 83(2) of the Act.
- (c) That the 1st Respondent was aware that the statements at (a) and (b) above were false and he made them with the sole aim of preventing the voters from electing the Petitioner to the National Assembly and/or procuring his election at the expense of the Petitioner.
- (d) On 18th and 19th September, 2011, after the close of the campaign period, the 1st Respondent and/or his Agents went from door to door, campaigning and distributing money ranging from five thousand Kwacha (K5,000) to one hundred thousand Kwacha (K100,000) which in and of itself is an illegal and/or a corrupt practice; as it amounted to bribery contrary to section 79 of the Act.
- (e) The 1st Respondent also distributed money to voters at a campaign meeting at Sitwala School in order to secure their votes.
- (f) The 2nd Respondent only distributed ballot papers and polling materials in the areas where the 1st Respondent had distributed money and maize, such as at Mbumi, Mitete, Kakulunda and Chinonwe Polling Stations.
- (g) On the official polling day, which was 20th September, 2011, the Petitioners were not allowed to monitor the voting process at Mbumi Polling Station.

- (h) The 2nd Respondent commenced the polls very late in the day on the official Polling date. At Sibungana Polling Station, voting started at 12.00 hours and at Namakando at 13.00 hours. This affected the result of the election, as most voters who had queued up as early as 05.00 hours began to leave due to fatigue and hunger.
- (i) In some Polling Stations such as Kalumbwa and Sipuma, voting had not commenced by 18.00 hours. At those Polling Stations, there was no sign that voting would take place on that day or on any other day as none of the 2nd Respondent's agents were present to advise the voters of what had happened. Voting at Kalumbwa and Sipuma was only done on 21st September, 2011. The turnout was very low because there was no information available, from the 2nd Respondent, at the Polling Stations on 20th September, 2011.
- (j) At Katebe Polling Station, on 20th September, 2011, the 1st Respondent's Polling Agents, with the knowledge and approval of the 1st Respondent, were campaigning and instructing voters to vote for the 1st Respondent only, contrary to Section 88 (1)(e) of the Act.
- (k) That the event at (f) above was done whilst Polling Agents, namely Mr. Lukonga and Mr. Mutapa, were having a discussion with a Mr. Mushuwa, who even had a copy of the Voters' Register in his hands. No voting took place at Katebe on this date.
- (l) On 21st September, 2011 when voting actually took place, the 1st Respondent's Polling Agent was allowed to assist voters to cast their vote. The 1st Respondent was allowed to assist even those who did not require assistance, contrary to sections 60 (2) and 60 (4) of the Act. This was all done to procure the election of the 1st Respondent, to the detriment of the Petitioner.
- (m) At Mambungo Ward Polling Station, the 1st Respondent addressed a meeting before nomination date, where he told the people that they should vote for him since he was the son of the Chief in Lukulu West and distributor of land parcels. This statement was false and was made to the disadvantage of the Petitioner and to prevent voters from voting for the Petitioner.

- (n) The 1st Respondent further instructed Headmen to write letters, which letters were actually written to the villagers and voters telling them that they would be banished from the area if they voted for the Patriotic Front.
- (o) The 1st Respondent and his Agents, who included the Ward Councillors for Chinonwe and Kashizhi distributed mattresses and blankets that were initially used for the 2010 census to village Headmen and voters in order to secure their votes.
- (p) The 1st Respondent, together with his Agents, distributed maize to voters, which maize was supposed to be distributed by the Disaster Management Unit (DMU). The 1st Respondent's Agents were in charge of distributing this maize and they told voters that those who belonged to different parties would not be allowed to collect any maize even after the election.
- (q) The 1st Respondent and his Agents distributed undisclosed amounts of money to Women's Clubs in the Constituency and informed them that the funds were from the then ruling party, the MMD.
- (r) The 1st Respondent's Agent also transported voters to Chinonwe Polling Station from Lukulu East, using trucks belonging to the MMD and after voting, transported them back to their homes.
- (s) The election in most parts of the Lukulu West Constituency took place two days after the official polling date of 20th September, 2011. This affected the voters' ability to cast their votes freely and fairly as, at the time, some results were already being announced by the 2nd Respondent.
- (t) Contrary to section 57(8) of the Act, the two days that voting actually took place were not Public Holidays and, as such, a large number of eligible voters had to report for work and were thereby disenfranchised.
- (u) On 19th September, 2011, the District Commissioner for Lukulu West transported ballot papers from the Boma across the pontoon to Lukulu West. The ballot papers were distributed to unknown Polling Stations.
- (v) On 21st September, 2011 the District Commissioner for Lukulu transported ballot papers from the aerodrome and attempted to cross the pontoon with the said ballot

papers. When he was confronted by the Petitioner's Agent, he changed vehicles and took the ballot papers to Lukulu Boma.

8. By reason of the said illegal practices committed by the 1st Respondent and his Election Agents, the threats to and intimidation of the voters, as well as the confusion as to the polling dates caused by the 2nd Respondent, the majority of the voters were prevented from electing the candidate that they preferred in Lukulu West Constituency.

Consequent to the foregoing, the Petitioner seeks the following relief:

- (I) A declaration that the election of the 1st Respondent as a Member of Parliament for the Lukulu West is null and void.
- (II) A declaration that the illegal practices so affected the election result that the same ought to be annulled.
- (III) A scrutiny of the ballots cast in the poll.
- (IV) Costs of this Petition to be borne by the Respondents.

For ease of reference, the numbering in the paragraphs above has been retained as outlined in the Petition.

The 1st Respondent filed an Answer denying all the allegations of the Petitioner. The 2nd and 3rd Respondents filed in a joint Answer, specifically denying paragraphs 6 and 8 of the Petition. In their Answer, the 2nd and 3rd Respondents aver that some Polling Stations were opened late due to the breakdown of the 2nd Respondent's vehicles which were transporting Poll staff. Further, that the voting period was extended to compensate for the late opening of the Polling Stations. The 2nd and 3rd Respondents admit that voting at some Polling Stations took place on 21st September, 2011, also due to the breakdown of the 2nd Respondent's vehicles. The 2nd and 3rd Respondents contend that the extension of the voting did not affect the voters' ability to cast their vote freely and fairly.

The 2nd and 3rd Respondents deny the Petitioner's allegation that the voters were not informed of the postponement of the poll date and aver that the said postponement was done pursuant to Section 29 of the Electoral Act, No. 12 of 2006. The 2nd and 3rd Respondents also deny the allegation that the 1st Respondent and some Polling Agents were allowed to assist voters to cast their votes, so as to procure the election of the 1st Respondent. Also denied is the allegation that the District Commissioner for Lukulu carried ballot papers across the pontoon to unknown Polling Stations. The 2nd and 3rd Respondents aver that the Petitioner is not entitled to the reliefs that she claims in this Petition.

The hearing of this Petition took place in the High Court at Mongu. This was to secure the attendance of the witnesses, most of whom were from Lukulu. The evidence of the Petitioner was that she was a Member of Parliament for the Lukulu West Constituency, in the last Parliament, before the elections of 20th September, 2011. She was adopted by the PF to contest the September 2011 elections in the same Constituency of Lukulu West. In her evidence, the Petitioner, who took the stand as **PW1**, told the court that she found it necessary to render an account of the geography of the Lukulu West Constituency; in order to give a clearer picture of the basis of some of her allegations against the 1st Respondent. In this regard, the Petitioner stated that Lukulu West borders with Liuwa and Angola and also with North Western Province and Zambezi West. She added that the area had six major rivers which were flooded most of the time, causing the water level to be usually very high. As such, agricultural productivity was only tenable for six months of the year; when the land was dry. The Petitioner contended that food security in Lukulu West was a challenge because of this background.

Returning to the substance of the Petition, the Petitioner testified that apart from herself, the 1st Respondent, Misheck Mutelo, also contested the Lukulu West Parliamentary seat under the MMD and won the election. The Petitioner told the court that she was robbed of the election victory on account of the election not having been free and fair. She explained that at the time of the election, she was in the opposition and the many corrupt and illegal practices that went on greatly affected the result of the election; to her

detriment. The Petitioner contended that, as an opposition party member, she was dealing with the MMD who were in Government and had an existing structure on the ground. This meant that the resources of Government, to which the 1st Respondent belonged, were operating in the election to her detriment.

In asking the court to annul the election results, the Petitioner testified that one of the malpractices that went on was that letters were circulated, to the voters, to the effect that she had stolen money and was a thief; which gave her a very unfair ground and also shattered her integrity. The Petitioner told the court that the background to those letters was that when she was the area Member of Parliament, from 2006, she wrote many letters to Government requesting money for the provision of various services to the people of Lukulu West Constituency. Among those letters was a letter that she had written, to the Provincial Administration, on 17th November, 2006, to ask for money to drill boreholes in the Constituency. That letter came into the possession of the 1st Respondent and his Agents and they circulated it, whenever they were holding meetings, in the run up to the September 2011 elections.

According to the Petitioner, that letter was circulated to people who could hardly read or write and these people were informed that that letter was evidence or proof that the Petitioner had stolen money. In driving her point home on this allegation, the Petitioner told the court that where she came from, elders were respected; but because of the letter depicting her as a thief, people who were young enough to be her grandchildren called her a thief everywhere she went. That, she emphasized, is what gave her unfair ground during the period leading to the election. The Petitioner also lamented that apart from her integrity being shattered, her confidence to be seen about in the Constituency was affected because of that letter which was the purported proof that she had stolen money. The Petitioner identified the letter which was before the court at page 1 of her Bundle of Documents filed into court on 13th January, 2012.

It was the Petitioner's further testimony that since she was being called a thief wherever she went, she got the urge to know why she was being called that. As she went round some areas of Lukulu West, the Petitioner discovered why she was being referred to as a thief. This was because she was shown the letter which was being circulated, supposedly attesting to her being a thief, and was told that she had signed the letter and taken money meant for the people of Lukulu West and, because of that, she would not be allowed to contest for re-election as a Member of Parliament for that Constituency. In short, she would not represent the people in Parliament because she was a thief. The Petitioner told the court that that was a dramatic change in the people of her area; as they had never called her a thief before then. Asked how she was disadvantaged by that letter, the Petitioner explained that she lost the respect of the people because even young people were calling her a thief. She added that during the campaign, she stuck to the programme of asking to be elected as a Member of Parliament, while the 1st Respondent was focusing on her as an agenda and maligning her name and reputation, to her total disadvantage.

Elaborating on why she wrote the now infamous letter of 17th November, 2006, the Petitioner told the court that one of her priorities, during her term of office as Member of Parliament, had been to make water available in various places in Lukulu West in order to alleviate the challenge of fetching water, which mostly fell upon women. That was the reason why she had asked Government for money for the drilling of boreholes/wells in Lukulu West. When there was no response to that letter, the Petitioner took it that the request was being processed and the Provincial Administration would work on it when funds were available. The Petitioner's request was eventually attended to, but only after she had left office as the drilling of the boreholes only commenced just after the September, 2011 election.

The Petitioner proceeded to another allegation that she raised in her Petition, that of maize distribution. She told the court that due to the challenge of food security, occasioned by the high rainfall in Lukulu West, it was usual for her, as Member of Parliament, to write to the Disaster Management and Mitigation Unit (DMMU) in the Office of the Vice President, to ask

for relief maize. Sometimes, the relief maize was never availed to the people of Lukulu West, but there were times when it was distributed once a year. The Petitioner told the court that in 2011, relief maize was sent to Lukulu West three (03) times, and one of those occasions was on 12th September, 2011, during the election campaigns. The Petitioner complained that usually, when relief maize was distributed, the area Member of Parliament was involved, but in 2011, she was not told that maize had been sent to Lukulu.

The Petitioner told the court that what compounded the disadvantage to her, concerning the distribution of relief maize, was that the distribution was accompanied by a circular letter telling the people that the then Republican President loved them very much and that was the reason why he was giving them that maize. The Petitioner contends that the maize distribution was a disadvantage to her prospects of re-election to Parliament because she did not have any maize to distribute and, in any case, it would have been wrong for her to be distributing maize when Parliament had been dissolved.

The Petitioner testified that she personally had sight of the circular letter which accompanied the distribution of maize. To be specific, she saw copies of that circular letter at Sibungana , Kakulunda and Mataba. The author thereof was a Mr. Godfrey Lifuna Siisii, who was the District Commissioner for Lukulu West. The Petitioner identified the circular letter as the one at page 4 of her Bundle of Documents. It was written in Silozi but there was an English version thereof, although not an exact translation, at pages 5 to 10 of the Bundle of Documents. Concluding her evidence on this allegation, the Petitioner stated that the distribution of relief maize during the campaign period, coupled with the circular letter expressing the Republican President's concern for the hunger affecting the people of Lukulu West, swung the hungry people's votes for the MMD and disadvantaged her, particularly since the distribution was done during the campaign period.

The Petitioner then moved onto the allegation of the 1st Respondent's distribution of money to the electorate. The Petitioner told the court that as she went round the Lukulu West

Constituency, campaigning, the people she met asked her what she would give them; since her opponent, the first Respondent, had given them money. The Petitioner contended that she was faced with this question wherever she went in the Constituency and that she actually gleaned evidence of this malpractice, of distribution of money, from Mitete, Kakulunda and Sitwala.

The Petitioner next moved to the issue of the absence of her Polling Agents at some Polling Stations, the late delivery of election materials and the lack of information from the 2nd Respondent to the electorate, about voting in some areas being postponed to another date. The Petitioner testified that Mbumi and Kalondolondo did not have any PF Polling Agents; as they were not allowed inside the Polling Stations. The Petitioner told the court that the Polling Agents for the PF and those for the United Party for National Development (UPND) were rejected by the Presiding Officers, while those for the MMD were allowed to be in the Polling Stations. As a result, there was no one from the PF to monitor what was happening inside the Polling Stations. The Petitioner also told the court that, from her visits to Katebe, Sipuma and Kalumbwa, she discovered that the 2nd Respondent had not sent any ballot boxes to Katebe, Sipuma and Kalumbwa, and neither were there any ballot booths at these Polling Stations. To add onto that, ballot papers were delivered very late at Sibungana and Namakando.

Regarding the lack of information to the voters, the Petitioner testified that some Polling Stations were very far away from the villages and people had walked long distances to the mentioned Polling Stations, expecting to cast their votes on 20th September, 2011. Instead, they found that voting was not going on and, as if that was not enough, there was no information from the 2nd Respondent to explain why there was no voting going on. The Petitioner told the court that because there was no information, until about 1800 hours on polling day, people went away and only a few returned to vote the following day. It was the Petitioner's contention that had the ballot papers been conveyed to the Polling Stations in time, then many people would have voted.

The last allegation that the Petitioner spoke about in her evidence was that the 1st Respondent conducted the illegal practice of telling people that he was the son of Chief Situmbeko and that the people should vote for their own. This, the Petitioner contended, was not true because the 1st Respondent was not the Chief's son as he had alleged. He just hailed from Chief Situmbeko's area. When asked to explain how the 1st Respondent's claim that he was the son of Chief Situmbeko negatively affected her election as Member of Parliament, the Petitioner replied that villagers do what the son of the Chief tells them to. On that note, the Petitioner prayed that the court annul the election result for the elections in the Lukulu West Constituency, held in September, 2011 because the elections were not free and fair and there was a lot of intimidation. She additionally prayed that the election be declared null and void because of the corruption and illegal practices that took place in Lukulu West.

In cross examination, the Petitioner stated that she had contested the Lukulu West Constituency Parliamentary seat under the United Liberal Party (ULP) in 2006 but had never contested the election as a candidate for the MMD. She admitted that the letter at pages 4 and 5 of her Bundle of Documents did not mention the name of the 1st Respondent, and that she did not see him distributing the letter of 17th November, 2006 to anybody. The Petitioner also admitted that the 1st Respondent did not personally call her a thief. She stated that she did not attend any of the 1st Respondent's meetings.

Regarding the distribution of maize, the Petitioner stated that Members of Parliament were not personally involved in the distribution of maize, but took part in the discussions for that exercise. She admitted that the Respondent was not mentioned in any of the circular letters that were originated by Mr. Siisii and that the District Commissioner was an agent for the Republican President and not for the 1st Respondent. The Petitioner confirmed that she did not copy her letter of 17th November, 2006 to the 1st Respondent. She denied failing to explain her development plans, as area Member of Parliament, to the people of Lukulu West Constituency. The Petitioner conceded that Government programmes did not stop because of elections.

Still under cross examination, the Petitioner stated that she did not personally see the 1st Respondent give out money to voters. She also admitted that the absence of Polling Agents at some Polling Stations was a disadvantage to both herself and the 1st Respondent as aspiring Parliamentary Candidates. The Petitioner stated that she personally gathered the information about the absence of Polling Agents at Mbumi while she learnt about the absence of Polling Agents at Kalondolondo from her Agents.

The Petitioner indicated that she did not check the Electoral Commission of Zambia results in places where ballot papers were delivered late. She added that she could not remember when the people at Katebe voted, but maintained that had voting taken place on 20th September, 2011, she would have scored higher. The Petitioner conceded that it was not everywhere where voting took place that she lost; and further conceded that she was aware that she could have made a complaint, regarding the corrupt and illegal practices that she was alleging the 1st Respondent perpetuated, but did not do so. The Petitioner explained that she did not report the corrupt and illegal activities to the authorities because she was unwell for the tail-end of the campaign. The Petitioner added that although she was unwell, she still went round to most parts of the Lukulu West Constituency to campaign.

In response to the question as to whether she found out the reason why elections were held on 21st September at Katebe, Sipuma and Kalumbwa, the Petitioner replied that she did not. The Petitioner did not dispute the fact that it was not the duty of the 2nd Respondent to ensure that Polling Agents were accredited but maintained that at Mbumi, there were only MMD Polling Agents inside the Polling Station, which was a source of concern to her. The Petitioner indicated that she did not know whether or not the 2nd Respondent's vehicle had broken down, as contended, because she did not find any of its vehicles on her journeys within the Constituency. She confirmed that she was aware that the 2nd Respondent was legally mandated to hold elections on a date other than the scheduled date. The Petitioner also told the court that she was unaware that the voters at Katebe, Sipuma and Kalumbwa has been informed that the 2nd Respondent's vehicles had broken down.

In re-examination, the Petitioner reiterated that Government released the funds for the project of drilling bore holes for Lukulu West long after her letter of 17th November, 2006. To be precise, the project only started in October, 2011 after the election. The Petitioner also reiterated that the three distributions of relief maize, to Lukulu West, in 2011 were unusual because maize was normally distributed once a year and sometimes there was no distribution at all. Regarding the extension of voting hours, the Petitioner stated that the people who knew about the extension were those who lived close to the Polling Station and not those who lived far away.

PW2 was **Kaale Kasaku**. His evidence pertained to the allegation of the 1st Respondent having distributed the Petitioner's letter, to the Provincial Administration, written on 17th November, 2006. PW2 testified that on 27th August, 2011, he attended a meeting, held by 1st Respondent, at Muyondoti School. The 1st Respondent in the company of a Mr. Mukata, a Mr. Kamuti and a Mr. George Wayoya. At that meeting, the 1st Respondent introduced himself as the Parliamentary Candidate contesting the Lukulu West Parliamentary seat on the MMD ticket, after which he asked for the vote of the people, as their son. PW2 told the court that, in asking for the people's vote the 1st Respondent said they should vote for him and not for Ms Imbwae (the Petitioner), a thief. The 1st Respondent added that on that day, the people would hear all about the Petitioner's stealing. He told the people that the Petitioner had stolen money meant for boreholes, or wells that should have been sank for their benefit. PW2 further testified that the 1st Respondent had added that in order for the people to be convinced that the Petitioner was a thief, he would show them a letter attesting to the fact that she was a thief. After saying that, the 1st Respondent got a letter from a table, flashed that letter to the gathering and told them that that was the evidence that the Petitioner was a thief.

The Respondent also told the gathering that the money meant for boreholes had been spent, by the Petitioner, on the purchase of a vehicle for her son. The 1st Respondent thereafter asked the people gathered whether that thief, meaning the Petitioner, was the same person that they

wanted to vote for again. He further asked all the people at that meeting to vote for him on 20th September, 2011 and not for the Petitioner who was a thief. The 1st Respondent stated that he had left copies of that letter at the other places where he had been, for meetings, so that people, themselves, could ask the Petitioner where the money for the boreholes was. The 1st Respondent told the people that he would also distribute that letter at other places where he was going to have meetings and then left a copy of that letter with PW2.

In continuing with his testimony, PW2 told the court that he would be able to recognize the letter if it were shown to him; by its date which was 17th November, 2006 and also by the Petitioner's name and signature which were on the letter. The witness proceeded to identify that letter which is exhibited at pages 1 and 2 of the Petitioner's Bundle of Documents. PW2 also told the court that he had handed that letter over to the Petitioner. According to PW2, the whole of the 1st Respondent's meeting at Muyondoti, that day, had been about the Petitioner having stolen money for the drilling of boreholes. PW2 added that at some point during the meeting, the 1st Respondent asked the gathering who it was that was responsible for the construction of the High School at Muyondoti.

When PW2 responded that it was the members of the Area Development Committee (ADC), the 1st Respondent had then produced one hundred thousand Kwacha (K100,000) from his pocket and given it to an ADC Member. The 1st Respondent indicated that that money was for paying a stone crusher who was crushing stones for use in the construction of the High School. PW2 personally received that money from the 1st Respondent and counted it. The amount was one hundred thousand Kwacha. As he was about to put it in his pocket, a Mr. White Mubita, who was an MMD Chairperson for Muyondoti Ward snatched the money out of PW2's hands and gave it back to the 1st Respondent, advising him that he would end up in court if he gave money to voters.

In cross examination, PW2 confirmed that he was a registered voter. He confessed that he was unable to read the letter that the 1st Respondent gave to him. He, however, maintained that

the letter bore the Petitioner's name and it said that she was a thief. PW2 also confirmed that he had kept that letter at his house; awaiting the coming of the Petitioner so that he could hand it over to her. He stated that the 1st Respondent had given the letter to him and not to anyone else at Muyondoti. PW2 told the court that the Petitioner scored the highest number of votes at Muyondoti.

PW3 was **Kakoma Mbunji**. His evidence also pertained to the allegation that the 1st Respondent distributed money to voters. This witness testified that he attended a meeting, at Lindole Basic School, on 15th September, 2011. That meeting was convened by the 1st Respondent, who was in the company of a Mr. Kamuti. The latter introduced the 1st Respondent as the MMD Parliamentary candidate for Lukulu West. He asked the people to vote for the 1st Respondent, their son. After being introduced, the 1st Respondent also stood up and asked for the people's vote, as their son. He asked the people to vote for him so that he could help them to get the money that they had applied for, to use in the Women's Clubs.

The 1st Respondent then asked the people whether they had ever seen the money meant for drilling boreholes. They responded that they had never heard about that money and did not know anything about the boreholes. The people denounced the Petitioner as a thief and said that they were shocked that she was a thief. The 1st Respondent told the people that he would give them money, after which he proceeded to donate the sum of one hundred thousand Kwacha (K100,000) for the building of the school. That money was, however, squandered by a man called Justin Musoka. The 1st Respondent promised to donate some more money in the sum of one hundred thousand Kwacha. At that meeting, the 1st Respondent gave a voter, Chipango Kakoma, who was PW2's brother, the sum of five thousand Kwacha (K5,000).

In cross examination, PW3 told the court that the Respondent scored the highest votes at Lindole; that the first K100,000 donated by the 1st Respondent only benefited Justin Musoka and that the 1st Respondent gave Chipango Kakoma the sum of K5,000. PW3 added that the reason why the 1st Respondent gave Chipango the money was because he had answered a

question posed by the 1st Respondent. The witness stated that the Petitioner never stopped over at Lindole School and that she did not hold a meeting there. He strongly refuted any suggestion that the Petitioner, herself, may have gone from door to door, distributing money to voters. PW3 confirmed that he had voted in the September, 2011 elections.

The next witness, **PW4**, was **Barbara Muzala**. She, too, was called upon to testify on the allegation of distribution of money by the Respondent. Her brief testimony was that on 18th September, 2011, she was at her home in Sachilombo Village, in the Mitete area of Lukulu West. The 1st Respondent came to that village in the company of a Mr. Lemba and a Mr. Mushuwa. He produced some money and gave PW4 the sum of twenty-five thousand Kwacha (K25,000). The 1st Respondent then gave five thousand Kwacha (K5,000) to PW4's mother, Chipango, and to Mary, PW4's aunt, the sum of ten thousand Kwacha (K10,000). After distributing that money, the 1st Respondent told PW4 and her relatives to vote for him, the son of Chief Situmbeko, on polling day. She added that Mr. Lemba was the one who first referred to the 1st Respondent as the Chief's son. PW4 concluded her testimony by stating that the 1st Respondent had told her and her relatives, to whom he had given money, that he and his team were going from door to door giving out money in the villages, even though the campaigns in the towns had closed.

In cross examination, PW4 stated that the 1st Respondent scooped the most votes in Mitete, although she did not know by how many votes he had beaten the Petitioner. PW4 also stated that she had not seen the Petitioner prior to the date that the 1st Respondent gave her and her relatives money at Sachilombo Village, and neither did she see the Petitioner at any time during the campaigns. PW4 added that the last time that she had seen the Petitioner was at the time of her nomination as Parliamentary Candidate. PW4 told the court that she saw the 1st Respondent with a huge sum of money at the time that he gave some to her and her relatives. She explained that the 1st Respondent produced that money from his pocket and, although she did not count it, PW4 could tell that it was a lot of money.

On the issue of the 1st Respondent having been introduced as the son of the Chief, PW4 stated that she believed Mr. Lemba when he told her that the 1st Respondent was the son of Chief Situmbeko. She denied ever having received any money or gift from the Petitioner. PW4 emphatically stated that the 1st Respondent won the election because of the money he that was giving out to the voters. She added that she, herself, had voted for the 1st Respondent because of the money that she was given. PW4 firmly denied having been bribed to testify in this Petition.

PW5 was Kapoba Solochi. His evidence was also pertaining to the allegation that the 1st Respondent distributed money to voters in the Lukulu West Constituency. The witness' evidence also pertained to the events that took place at Katebe Polling Station. PW5 testified that on 18th September, 2011 he was at Dickson Village in the Mitete area of Lukulu West. At around 14.30 hours, the 1st Respondent came to that village, in the company of a Mr. Lemba and a Mr. Muchapa. The three asked PW5 to call the Village Headman, Mr. Sangezo and PW5 obliged. When Headman Sangezo came to where the 1st Respondent was, he found him, and the people he had come with, seated. The 1st Respondent then produced some fifty thousand Kwacha (K50,000) notes from his left pocket and some twenty thousand Kwacha (K20,000) notes from his right pocket. He gave Headman Sangezo the sum of K50,000. PW5 was given K20,000, as was someone called Tuma. A Mrs. Mulyata, who was present among the people gathered, was also given the sum of K20,000.

PW5 further testified that after giving out that money the 1st Respondent told PW5, who is his nephew, to vote for him on polling day. After that, Mr. Lemba told PW5 and the others that he was taking the 1st Respondent around the villages because he was the son of Chief Situmbeko and, as such, the people should vote for him. Mr. Muchapa echoed Mr. Lemba's words and told PW5 and the others not to vote for the Petitioner, but to vote for the 1st Respondent, as he would look after them. Continuing with his testimony, PW5 told the court that on 20th September, 2011 he went to cast his vote at Mitete Polling Station. Whilst there, he learnt that there would be no voting at Katebe that day. At around 18.00 hours, PW5 decided to go to Katebe Polling Station with his friend Oscar Mundanya. On the way there, they met two men by

the names of Mushuwa and Lukonga. Mushuwa was an Agent for the MMD and had a Voters' Register in his hands. Lukonga was one of the Electoral Officers. According to PW5, these men were standing a hundred metres away from Katebe Polling Station. When PW5 saw the duo, he asked Lukonga what he was doing with Mushuwa, which nearly triggered a fight between PW5 and Mushuwa. PW5 did not report that incident to the Police, but reported it to a PF Polling Agent by the name of Chindele Yambayamba.

In cross examination, PW5 confirmed that the 1st Respondent was his uncle. He also made the surprising admission, considering the circumstances, that he considered receiving money in order to vote for someone, to be a wrongdoing, even though he, himself, had accepted money to vote for the 1st Respondent. PW5 denied having been given money to testify in this Election Petition. He stated that he did not report the incident of having been given money to vote because the officials to whom he should have made the report were the same ones who had wanted to fight him at Katebe Polling Station. PW5 stated that the Respondent was the son of Chief Situmbeko and that he, himself, was the grandson to the Chief. He added that he had not brought the K20,000 that he had been given, as evidence before the court, because he had used that money to purchase soap. PW5 added that he was not aware that the Petitioner was the daughter of Chief Akabati. He told the court that the 1st Respondent polled the highest votes in the Mitete area, although he was not aware of the margin by which he beat the Petitioner. PW5 categorically stated that he and others voted for the 1st Respondent because of the money that he had given them. PW5 reiterated that he saw Martin Lukonga with Mushuwa, who had a Voters' Register with him, at around 18.00 hours and that they were standing a short distance away from Katebe Polling Station.

PW6 was Shadreck Kayawe Kayawe. He was called upon to give evidence on the events that transpired at Katebe Polling Station. The evidence of this witness was that he was a Polling Agent for the PF and, on 20th September, 2011 he went to Katebe Polling Station. There, he found Martin Lukonga, who was a Polling Assistant, and a Mr. Nasilele who was an Election Monitor. PW6 noticed that there were ballot boxes for Presidential and Parliamentary Elections, but no ballot boxes for Local Government Elections and no logistics to facilitate

voting. As a result, people who had come to cast their votes on 20th September, 2011 returned to their homes. According to PW6, the voters were upset because the 2nd Respondent had not put logistics in place for voting to take place at Katebe on the official polling date.

It was PW6's further evidence that voting, at Katebe, took place on 21st September, 2011 as that is when the 2nd Respondent put logistics in place for so doing. He stated that he was allowed into the Polling Station after producing his credentials as a Polling Agent. PW6 added that at some point during the voting exercise, the 1st Respondent was allowed inside the Polling Station, that he was given a bench upon which to sit and that he spent almost an hour there. PW6 also stated that he observed that a Mr. Muchapa Yowano, who was a supporter of the 1st Respondent, cast his vote and was later allowed to assist a Mr. Chinyama Chinyemba to vote. PW6 objected to this, but his objection was not heeded. According to PW5, Mr. Muchapa Yohano helped almost eleven (11) people to vote; and after Pw5's objection to that exercise, the Election Officials admitted that they were wrong and escorted Mr. Yowano out of the Polling Station. Later, the 1st Respondent brought some food for his Polling Agents. PW6 told the court that some time later, he himself attempted to assist a voter to cast his vote but was stopped from doing so on the basis that he was a PF Polling Agent. PW5 added that he did not take issue with being stopped from assisting a voter to vote because it was polling day and he was aware that it was an offence to disrupt elections.

PW6 testified that he reported the happenings at Katebe Polling Station to the Petitioner. He maintained that Martin Lukonga, who was a Polling Assistant, was found campaigning for the 1st Respondent and that he (Lukonga) had said he would assist voters to cast their votes in order to increase the tally of votes for the MMD. PW6 told the court that the 1st Respondent sat in the Polling Station for a while and, according to him, the 1st Respondent was campaigning because there were noises or sounds like '*chwee, chwee, chwee*', which was the MMD campaign slogan, coming from outside the Polling Station.

In cross examination, PW6 confirmed that he was an accredited PF Polling Agent and that he had attended a workshop at Lukulu District Boma, organized by the 2nd Respondent, whose purpose was to teach Polling Agents about their responsibilities during elections. At that

workshop, Polling Agents were told that voters who needed assistance to vote could request someone to help them to do so and that person could even be a relative who was with them in a queue waiting to vote. PW6 reiterated that he reported what had happened at Katebe Polling Station, on 20th September 2011, to the Petitioner. He maintained that Martin Lukonga, an Electoral Officer was a sympathizer of the MMD as he was campaigning for the MMD and was seen together with Mushuwa, an MMD Agent, near Katebe Polling Station. PW6 also maintained that the 1st Respondent was campaigning on polling day because he was sitting in the Polling Booth and there were sounds of '*chwee chwee chwee*', the MMD slogan, that were coming from outside the Polling Station. PW6 told the court that he was aware that the 1st Respondent was registered to vote at Mbao and not at Katebe Polling Station. He stated that he was aware that the Petitioner did not visit Katebe and that she did not visit each and every Constituency in Lukulu West due to her illness at the time.

PW7 was Coster Nalishebo Samende. His evidence pertained to the events at Sipuma Polling Station. This witness testified that on 20th September, 2011, he and other voters went to Sipuma Polling Station, as early as 0600 hours in the morning, in order to cast their votes but when they got there, there were no logistics for voting and no Electoral Officers present at the Polling Station. As a result of that, no voting took place at Sipuma Polling Station on the official polling date. According to PW7, the electorate, who arrived at varying times from 0600 hours in the morning, spent the whole day at Sipuma Polling Station. Some started leaving for their homes at around 1600 hours and by that time, there was still no information from the 2nd Respondent regarding what was happening in terms of the voting exercise. The 2nd Respondent finally sent Electoral Officers and polling materials to Sipuma at 0300 hours the following day, on 21st September, 2011. The Electoral Officers informed PW7, who was the Village Headman, that they did not come to Sipuma on 20th September, 2011 because the vehicles ferrying them had broken down and, as a result of that, they had no transport. PW7 told the court that voting commenced at 0600 hours but the voter turnout was low in comparison with the previous day of 20th September, 2011. According to PW7, this was because the people were fed up by the delay in voting. They had known the polling date to be 20th September, 2011 and since some of

the voters came from far away, they did not return to Sipuma on 21st September, 2011 to go and cast their vote.

In cross examination, PW7 told the court that the Petitioner scored the highest votes at Sipuma but that she was disadvantaged because of the low turnout of voters on the day that voting actually took place. This was because the people knew that polling day was 20th September, 2011 and not 21st September, 2011 which was why they did not return to cast their votes on the rescheduled date, to the disadvantage of the Petitioner.

PW8 was Nyambe Namunji. His evidence concerned the allegation that the 1st Respondent distributed maize during the campaign period. PW8 testified that on 29 August, 2011, he attended a meeting at Lwee Community School. That meeting, which started at 1000 hours in the morning and ended at 1200 hours in the afternoon, was held by the 1st Respondent; who was in the company of a Mr. Mukata and a Mr. Nanjeko Kamuti. PW8 told the court that the meeting was opened by Mr. Mukata, who told the people to vote for the 1st Respondent on 20th September, 2011. Thereafter, the 1st Respondent took the floor and told the people that he had given them 32 x 50kg bags of maize, which maize was delivered using tow of his boats. The 1st Respondent then asked the people gathered at that meeting to vote for him on polling day and added that he would bring them some more maize after they voted for him.

PW8 further testified that at that meeting, the 1st Respondent asked they people if they knew the amount of money that was meant for drilling boreholes in the Muyondoti and Nyala Wards. He told them that the money, for that purpose, was signed for by the Petitioner, who they had voted into office. Upon hearing this, the people told the 1st Respondent that they knew nothing about the money. The 1st Respondent then told the people that the Petitioner was a thief who had stolen from them. He added that he had shown some people copies of a letter pertaining to the Petitioner's theft; and that if the people thought he was telling lies, they were free to go to Muyondoti and see the letter that he was talking about. PW8 also testified that at that same meeting, the 1st Respondent gave a teacher, by the name of Lombanya, the sum of two hundred thousand Kwacha (K200,000.00) to buy a door for one of the classes at Lwee

Community School, while urging the people to remember him and vote for him on the clock (the MMD party symbol) on 20th September, 2011.

PW8's further testimony was that he was a Polling Agent for the PF at Namakando Polling Station and that although people turned up in numbers to vote, some having come from very faraway places, no voting took place until around 14.30 hours, when the Electoral Officials finally showed up. By that time, some of the people who had come from afar had gone back home as there was no information as to when voting would commence. According to PW8, some people actually left the Polling Station around 1230 hours and went to drink alcohol, while others went home. PW6 informed the court that voting eventually started at about 1500 hours, but those who had gone away did not come back.

In cross examination, PW9 confirmed that he was a PF Polling Agent, but added that he was with the 1st Respondent during the campaigns because he wanted to hear what he was saying to the people in his campaign message. PW8 told the court that the 1st Respondent did not distribute any letter at the meeting at Lwee Community School, but that he made mention of the same, saying that he had left a copy of that letter with PW2 at Muyondoti. He added that boreholes were sunk, in Lukulu West, some two weeks or so after the elections of 2011.

PW8 stated that there was no maize distributed at the meeting, but that the maize had been distributed earlier. He confirmed that he was one of those who had gone to collect that maize. The witness maintained that voting at Sipuma started late, at around 1500 hours. He told the court that the voting closed at 0300 hours in the morning. PW8 also confirmed that the Electoral Officials explained that they were delayed on the way and that was the reason why voting had not started on time. He also maintained that there was a low voter turnout because of that delay.

The next witness for the Petitioner, **PW9**, was **Mundia Nalishebo**. His evidence pertained to the late voting at Kalumbwa Polling Station. He testified that on 20th September, 2011, he was at

home, in Kalumbwa Village, waiting to cast his vote. Besides PW9, there were many other voters at the Polling Station. They waited the whole day, but no voting took place and neither was there any information from the 2nd Respondent as to whether or not voting would take place on that day. At around 1600 hours, the voters dispersed without having voted and by that time, there was still no word from the second Respondent on when voting would take place. PW9 further testified that voting materials only arrived in the early hours of 21st September, 2011 and voting took place on that day. However, the voter turnout was lower than that of the previous day because only those voters who lived nearby returned to vote on 21st September, 2011.

In cross examination, PW9 indicated he did not know the total number of registered voters at Kalumbwa, but he maintained that the turnout of voters on 21st September, 2011 was lower than that of the previous day. He added that the 1st Respondent was more popular than the Petitioner and would have gotten more votes if there had been a large turnout of voters on 21st September, 2011. According to PW9, the Petitioner did not go to Kalumbwa to campaign. The witness also maintained that there was no communication from the 2nd Respondent as to why there was no voting on 20th September, 2011.

PW10 was Godwin Saputu. He was called upon to testify on the allegation that the 1st Respondent distributed maize to voters at Chinonwe. His evidence was that he was a member of the UPND and was contesting the September 2011 Local Government Elections, as a Ward Councilor, under the UNDP. According to the witness, when the campaigns started, the PF and UPND were the more popular parties in the Lukulu West Constituency but, suddenly, their popularity in the area waned. Seeking to find out why this was so, PW9 launched an individual investigation and discovered that the MMD was buying peoples' votes by giving them money.

PW10 told the court that on 17th September, 2011, he received information to the effect that the 1st Respondent was buying voters and that he had given Headman Makwangala the sum of one hundred and fifty thousand Kwacha (K150,000.00) at a meeting which had been held in the

Headman's Village. Acting on that information, went to see Headman Makwangala; who confirmed that he had received that money from some people who had conducted a meeting in his area on 16th September, 2011. According to the Headman, the money, which was for distribution to the electorate, was handed over to a Mr. Blasto Chinyama, who was his Secretary. The Headman informed PW10 that at that meeting, Headman Chiyeba was also given the sum of K150,000.00. PW10 told the court that when he gathered this information from Headman Makwangala, he reported the matter to the Police at Lukulu Police Station. The Police told him that they would open a docket, but never followed the matter up.

PW10 also testified that he received information concerning the distribution of maize at Kakulunda. When he went to investigate the veracity of that information, PW10 found that there were, indeed, sixty (60) bags of maize at Kakulunda Rural Health Centre. The bags of maize were in the custody of a Mr. Peter Chinyama who was a worker at the clinic. PW10 told the court that that maize was taken to Kakulunda by the 1st Respondent's Agent, Malikana, who himself was contesting the Local Government Elections, as Ward Councilor, on the MMD ticket. PW10 also testified that he similarly received information to the effect that the 1st Respondent was distributing maize at Kashizhi Local Court. PW10 went to Kashizhi Local Court and found sixty bags of maize there. When he asked one of the Court Clerks, by the name of Collins Muyapekwa, where the maize had come from, he was informed that it had come from the 1st Respondent and had been ferried there by one of the 1st Respondent's boats. When Pw10 asked Collins what the maize was for, he was informed that it was meant for distribution to all the Polling Stations. PW10 similarly reported this matter to the Police at Lukulu Police Station, where the Officer -in- Charge said he would look into it, but never did.

In cross examination, PW10 maintained that Headman Makwangala told him that he had received the sum of K150, 000 from the 1st Respondent's Agent, Twembuci Malikana, but conceded that he himself, did not see Mr. Malikana distributing any money. PW10 admitted that he had had no documentary evidence to show that he had reported the incidents of distribution of money and maize to the Police at Lukulu Police Station. PW10 stated that he did

not see the person who distributed the sixty bags of maize at Kakulunda, and neither did he see Peter Chinyama receiving that maize.

PW11 was **Blasto Chinyama**. His evidence pertained to the allegations of bribery and distribution of money by the 1st Respondent. He testified that he was a registered voter at Chinonwe Polling Station and that on 17th September, 2011; he attended a meeting that was held at Makwangala Village. At that meeting the 1st Respondent's Agent, Mr. Twembuci Malikana, addressed the people gathered and told them to vote for the 1st Respondent. After that meeting, Mr. Twembuci gave out fifty thousand Kwacha (K50,000) to a group of women who were at that meeting and gave one hundred thousand Kwacha to Headman Makwangala. The money give to the women was not enough to go round, so Mr. Malikana asked PW11 to write a list of those who did not receive any money, which PW11 did. PW11 added that the money that had been given to Headman Makwangala was distributed to the men that attended that meeting and all the people there were asked to vote for the 1st Respondent on 20th September, 2011.

In cross examination, PW11 told the court that the money was distributed by Mr. Twembuci Malikana, and not by the 1st Respondent, who was not at that meeting. He added that that money had been sent to Mr. Malikana to distribute to the voters. PW11 According to PW11, Mr. Malikana was campaigning for the 1st Respondent. This was because he told the people at that meeting to vote for the 1st Respondent, for himself and for Rupiah B. Banda.

PW12 was **Method Mukokwe Kanyama**, whose testimony related to the events that transpired at Mbumi Polling Station. His evidence was that he was a Polling Agent for the PF in the September 2011 elections. On polling day, he arrived at the Polling Station at 0500 hours and presented his credentials to the Presiding Officer, Mr. Siaminwa. The latter refused to sign those documents and turned PW12 away from the Polling station. According to PW12, there was no reason advanced for Mr. Siaminwa refusing to sign the oath that he had presented. PW12 thereafter went back home.

In cross examination, PW12 stated that he did not attend any workshop organized for Polling Agents by the 2nd Respondent. He also stated that he was not aware that the Petitioner had to arrange for his accreditation as her Polling Agent. PW12 told the court that he was not the only one affected, the UPND Polling Agent was also turned away for the same reason that his documentation for accreditation was not in order.

PW13 was **Kelvin Kaloza Kaloza**. His evidence was on the allegation that the 1st Respondent distributed money and also distributed the Petitioner's letter of 17th November 2006. The witness told the court that on 15th September, 2011, he attended a campaign meeting at Lindole. That meeting was addressed by the 1st Respondent and was well attended. The 1st Respondent told the people gathered to vote for him, as they knew him. He later added that the lady who claimed to be the Member of Parliament, the Petitioner, was nothing but a thief. The 1st Respondent told the people that he would explain how the Petitioner was a thief. After saying this, he opened a file from which he got a letter. He gave that letter to a man called Kayombo Sakasema to read out. The man read out that letter; which he said stated that the people of Lindole were supposed to have a borehole sunk, which was worth twenty-five million kwacha (K25,000,000.00), those at Nangongo should have had a borehole worth the same amount of money sunk for them, while there should have been a Mother's Shelter, worth two hundred million Kwacha (K200,000,000.00) built at Mitete Rural Health Centre. After that, the 1st Respondent asked the people if they were going to vote for someone who had squandered so much money. That question upset the people who proceeded to say that the Petitioner was a thief. PW13 told the court that he attended the meeting for its duration.

PW13 also testified that the 1st Respondent told the people that the Women's Cubs which money would be given two million Kwacha after he was voted into Office. Thereafter, the 1st Respondent promised to give the people thirty bags of maize if they voted for him. At that point, Mr. Sakasema read out another letter, which the people were informed had come from the District Commissioner and concerned the delivery of maize. That letter greatly elated the

women who were at that meeting. The 1st Respondent then produced the sum of one hundred thousand Kwacha (K100,000.00) and gave it to the Headmen who were in attendance at the meeting. Headman Samukumbi received K20,000.00 as did Headman Lindole, Headman Bernard Kandolo and Headman Amos Kandolo. Headman Amon Kamboyi did not attend the meeting but the sum of K20,000.00 was saved for him. It was PW13's testimony that the Vice Headmen who were at that meeting, namely, Dauti Kayombo, Patson Kapalu and Nasilele Mangomba, were given ten thousand Kwacha (K10,000) each.

PW13 testified that after distributing the money, the 1st Respondent asked the people to vote him, the MMD candidate for Ward Councillor, Twembuci Malikana, and also for Rupiah Banda, the MMD presidential candidate. He also testified that the 1st Respondent told the gathering that they would never see the Petitioner again as she had gone back to Lusaka because she had squandered the people's money and feared to be challenged over that. Upon hearing this, the people at the meeting rejoiced that the thief had gone.

In cross examination, PW13 reiterated that the 1st Respondent promised to give the Women's Club the sum K2,000,000.00 if they voted for him. PW13 added that the women had, in fact, gone to collect that money after the election of the 1st Respondent's Member of Parliament. PW13 maintained that the 1st Respondent had promised the people of Lindole 32 bags of maize; which he said would be collected after the elections. He however, conceded that he did not physically see those bags of maize and that the letter read out by Mr. Sakasema did not mention the name of the 1st Respondent. PW13 was adamant that he saw money being distributed at the meeting and that he even saw the share for Headman Amon Kamboyi being put aside.

PW14 was **Elizabeth Kalumbu**. Her evidence pertained to the allegation that the 1st Respondent distributed money to Women's clubs. She testified that in September, 2011, she attended a campaign meeting convened by the 1st Respondent at Lindole. At that meeting the

1st Respondent told the members of the Women's Clubs to vote for him and that after voting for him they should follow him and go and collect K2,000,000.

PW14 told the court that some time in October 2011, after the election, she, as Treasurer of her Women's Club, went to Lukulu Boma and collected the sum of one million, nine hundred thousand Kwacha (K1,900,000.00) from a Miss Mikosa. The sum of K100,000.00 remained in a bank account that had been set up for the club. PW14 added that she was taken to Ms Mikosa to collect money by a man known as Chiyengele, who was an MMD Councillor.

PW15 was **Maina Kameme**. He was called to give evidence pertaining to the allegation of the 1st Respondent having distributed chitenge materials, money and a letter. PW15 testified that on 24th July, he attended a campaign meeting convened by the 1st Respondent, at Mbangweta School. He told the court that at that meeting, he was given some money by the 1st Respondent and there were also some chitenge materials distributed to the people who attended that meeting. PW15 informed the court that the 1st Respondent asked the people to vote for him on 20th September, 2011 and that in addition to distributing money and chitenge materials, the 1st Respondent told the people that the relief maize programme was in his hands. Further to this, the 1st Respondent invited the people to follow him after the meeting so that they could go and get some more maize so that they could vote for him on 20th September, 2011. Acting on that promise by the 1st Respondent, PW15 went to Lukulu Boma, to the District Commissioner's office. There, he was given three letters by the District Commissioner. Those letters concerned the distribution of maize at Mbangweta, Sitwala and Sibungana, which were all in Nyala Ward. PW15 identified those letters, in court, as the ones produced at pages 3 and 4 of the Petitioner's Bundle of Documents. He informed the court that he took those letters home with him.

It was PW15's further testimony that on 12th August, 2011, relief maize was delivered to Mbangweta Mbangweta School, along with one of the letters that PW15 had gotten from the

District Commissioner. PW15 added that that maize was transported to the harbour by the 1st Respondent's paddlers, before being delivered to Mbangweta School.

Continuing with his testimony, PW15 told the court that on 30th August, 2011, he attended a campaign meeting that was convened by the 1st Respondent at Mbangweta School. That meeting was addressed by the 1st Respondent and started at 1400 hours. The 1st Respondent requested the people to vote for him as they had seen the relief maize which he had previously brought for them.

The 1st Respondent then went on to speak about how the Petitioner had pocketed money that should have been used to sink boreholes in Nyala Ward. He added that there was a letter which confirmed that the money had been misused. The 1st Respondent told the people that he would have shown them that letter, but for the fact that it was at Muyondoti School. According to PW15, the people at that meeting were very upset by the information that money meant for projects in their area had been misused by the Petitioner and they said that they had voted for a thief. The people added that there was no need for them to vote for a thief and that it was better for them to vote for the 1st Respondent, whom they knew.

In cross examination, PW15 stated that he did not find any maize at the District Commissioner's Office. He told the court that he was aware that Civil Servants were not allowed to engage in active politics. PW15 also told the court that he was not a member of any political party and that he had received the letters from the District Commissioner in his capacity as a member of the Area Development Committee. He confirmed that the Petitioner had scored the highest votes at Mbangweta. PW15 also told the court that when the 1st Respondent convened the meeting at Mbangweta, which meeting was, in fact a rally, on 24th July, 2011, he had not yet been nominated as a candidate for the MMD. He added that the Petitioner had lodged a complaint with the Police about that rally. PW15 made the rather shocking claim that the 1st Respondent had paid him to omit some information from his testimony, such as the fact that he had followed the 1st Respondent to the Office of the District Commissioner where he was told,

or believed that the relief maize was. He reiterated that the 1st Respondent had given him some money at the meeting, adding that it was ten thousand Kwacha. He also told the court that he did not tell the Officer in Charge at Lukulu Police Station that the 1st Respondent had given him money because that money was for him to keep quiet about the July 24th meeting; which was convened prior to the official campaign period. PW15 refuted having received money to come and testify in the Election Petition.

PW16 was **Oliver Katwe**. His evidence pertained to letters from Headmen. PW16 testified that he was a member of the PF in the Kalondolondo area of Lukulu West and that he was tasked by his party to form branches in that area. PW16 obliged and set up a PF branches at Kamato and Kalonda on 2nd August, 2011. On 8th August, 2011, he was surprised to receive a letter from Headman Godfrey Kakulekule, which among other things, questioned the authority upon which PW16 was leading the PF, a party which had been rejected by the people in that area. The letter also said that the people were united in their resolve to vote for the 1st Respondent and Hastin Twembuci; and not for any other party. PW16 identified the letter as the one exhibited at pages 17 to 18 of the Petitioner's Bundle of Documents. The letter asked PW16 to stop bringing the PF to Kalondolondo. PW16 told the court that he was engulfed in fear after reading that letter. This notwithstanding, he continued to set up some more PF branches in the area, such as Likwasha Branch which he set up on 6th September, 2011. On 10th September, 2011, PW16 received another letter from Headman Kakulekule, which letter stated that the Headman was not happy with PW16's conduct and was asking why PW16 hated the Twembuci family. PW16 identified the second letter that he received as the one exhibited at pages 25 and 26 of the Petitioner's Bundle of Documents. After receiving the second letter, PW16 was so engulfed in fear that he stopped setting up PF branches in Kalondolondo. He also stopped campaigning for the PF for fear of conflict with Headman Kakulekule.

In cross examination, PW16 stated that he was a Village Headman in Kalondolondo; that he was a PF supporter and that he campaigned for the Petitioner during the run up to the September 2011 elections. He clarified that although he was the Headman of his village, Headman

Kakulekule was the Headman for the whole area and, as such, was senior to him in hierarchy. PW16 admitted that he had also written a letter declining an invitation to meet with Headman Kakulekule. He, however, denied ever having issued threats to the Headman Kakulekule or indeed having alleged that he was equal in rank to him. PW16 read out some segments of letter at page 25 of the Petitioner's Bundle of Documents. PW16 reiterated that one of the letters that he received from the Headman had stated that the people were united to vote for the 1st Respondent. To this end, he read out a portion of the letter exhibited at page 22 of the Petitioner's Bundle aforementioned. PW16 maintained that the second letter that he received told him to stop campaigning for the PF, which he did. PW16 also reiterated that he was below Headman Kakulekule in rank. He further stated that he did not avail a copy of that correspondence to the Petitioner as it was just between himself and Headman Kakulekule.

In re-examination, PW16 told the court that although he was also a Village Headman, he was afraid of Headman Kakulekule as the latter was the area Headman and his (PW16's) village was under Headman Kakulekule.

The last witness for the Petitioner, **PW17**, was **Kelvin Nabita** . He was called to give evidence on the allegation that the 1st Respondent distributed money at Sitwala School. PW17 testified that on 29th August, 2011, he attended a meeting at Sitwala School. That meeting was held by the 1st Respondent; who was with a Mr. Mukata and a Mr. Nanjeko Kamuti. In his opening remarks, Mr. Mukata introduced the 1st Respondent as the MMD Parliamentary candidate. He asked the people to vote for the 1st Respondent; as he was their relative. Later, the 1st Respondent also addressed the people. He told them to vote for him and not for the Petitioner because she had squandered their money which was meant for drilling boreholes.

It was PW17's further testimony that at some point during the meeting, a man called Dickson Situmbeko stood up and said the people would not vote for the Petitioner; as she was a thief. The 1st Respondent then told the people that if they wanted to verify that the Petitioner was a thief, they should go to the office of the District Commissioner. Thereafter, the 1st Respondent

got a bag which contained some money and got one hundred thousand Kwacha (K100, 000) from it. He gave that money to one Collins Sililo Mbangweta and told him that the money was his (1st Respondent's) contribution towards the building of a teacher's house. The 1st Respondent gave Dickson Situmbeko the sum of ten thousand Kwacha (K10,000) and told him that he wanted his vote. The 1st Respondent produced another one hundred thousand Kwacha which he gave to the women who were dancing at the meeting namely, Mrs. Mukangolwa, Mrs. Mubita and Mrs. Nangana. PW17 also informed the court that, to his knowledge, the 1st Respondent scored the highest votes at Sitwala.

The 1st Respondent, Misheck Mutelo took the witness stand as **RW1**. He testified that he was the duly elected Member of Parliament for the Lukulu West Constituency, following the election held on 20th September, 2011. He told the court that the election was held under a free and fair environment and that there were no corrupt or illegal practices during the run up to the September, 2011 elections. The 1st Respondent stated that he had no knowledge of any letter written by the Petitioner in 2006. He denied alleging that the Petitioner was a thief and that he circulated copies of any letter to that effect.

The 1st Respondent further testified that he did not, at any time during his campaign, make any reference to the Petitioner. He told the court that his campaign message to the people of Lukulu West was to urge them to go into rice farming. He stated that he had asked for the people's vote because a Member of Parliament was the 'conduit pipeline' between the community and Government. The 1st Respondent also denied giving out any money to the voters during his campaign trail and added that his campaign was even called "*campaign ya njala*" because he did not give out any election materials. The 1st Respondent also refuted having mounted door to door campaigns. He denied having distributed relief maize during the campaign period and having campaigned as the son of Chief Situmbeko, only admitting that the Chief was his uncle.

In cross examination, the 1st Respondent informed the court that he was an airtime dealer for Airtel and that he had stopped being a fishmonger five years ago. He denied having referred to the Petitioner as a failure. He reiterated that he neither referred to the Petitioner, nor called her a thief at any time during his campaigns. The 1st Respondent confirmed that he had held meetings at all the places that the Petitioner's witnesses had mentioned in their evidence. He also confirmed that Mr. Mukata and Mr. Kamuti were his campaign managers, although he categorically denied knowing their first names. The 1st Respondent admitted that Mr. Hastings Twembuci Malikana was the overseer of his campaign in Chinonwe Ward and acknowledged that his campaign meetings were well attended. He also confirmed he polled the highest votes in Kalondolondo, Katebe and Mitete. When asked to explain the issue of his campaign being called "campaign ya njala", the 1st Respondent said he did not know who coined that term and neither did he know who was using the said phrase.

RW2 was White Mubita. He was called upon to testify on the Respondent's meeting at Muyondoti School. His evidence was that he was a resident of Muyondoti, in Lukulu West, and that on 27 August, 2011, he attended a meeting convened by the 1st Respondent. The speakers at that meeting were Mr. Mukata and Mr. Nanjeko Kamuti and the 1st Respondent. The meeting was opened by Mr. Mukata who introduced the 1st Respondent. RW2 told the court that no one mentioned the Petitioner, at all, or called her a thief at that meeting. He told the court that Mr. Kamuti sang a song, to the effect that it was the people who could remove leaders from power, starting from the colonial days. RW2 refuted the allegation that the 1st Respondent had handed out money to voters and denied having grabbed money from PW2.

In cross examination, RW2 confirmed that Mr. Kamuti had sang a song, at that meeting, about how various leaders had been removed from office by the people. When he was asked whether the song referred to the Petitioner, RW2 denied it. But when asked who had to be removed in order for the 1st Respondent to become a Member of Parliament, he conceded that it was the Petitioner. RW2 stated that it was wrong to give people money in exchange for their votes, but added that he would not allow anyone to accept money in order to vote for a candidate.

The third witness for the Respondent, **RW3**, was **Dauti Samukumbi Kayombo**. His testimony related to the allegation that the 1st Respondent gave money to five Village Headmen. His brief testimony was that he was the Headman at Samukumbi Village and that he attended a meeting at Lindole, convened by the 1st Respondent, on a date he could not remember due to his advanced age. The witness told the court that apart from him, some other Headmen also attended that meeting. He denied having been given any money at that meeting. He told the court that, at that meeting, there was no reference to the Petitioner being a thief.

In cross examination, RW3 stated that he did not know what time the meeting started or what time it ended. All he could remember was that it lasted for a short time. The witness told the court that all that the 1st Respondent did at that meeting was to ask the people to vote for him, after which he sat down

RW4 was **Justin Musoka**. His testimony pertained to the 1st Respondent's meeting at Lindole School. The witness testified that he was a resident of Lindole Village in Lukulu West and that on 14 September, 2011, he attended a meeting held by the 1st Respondent who was in the company of Mr. Mukata, Mr. Kamuti and someone called Jimmy and two (02) women. The meeting which was opened by Mr. Mukata started at 10.00 hours and ended at 14.00 hours. According to RW4 Mr. Kamuti spoke next. He told the people their vote was the only one which could change their livelihood in the area. Thereafter the 1st Respondent stood up and greeted the people. He requested them to vote for him on the MMD ticket on the symbol of the clock. RW4 added that the 1st Respondent did not refer to the Petitioner as a thief and that PW3 was not in attendance at that meeting.

In cross examination, RW4 stated that he did not know each of the speakers spoke. He reiterated that Mr. Kamuti spoke first and said only the people's vote would bring development to the area. He said this in form of a song in Luvale. The 1st Respondent spoke next, saying that the people should vote for development. RW4 maintained that the 1st Respondent did not make reference to the Petitioner and that he said nothing else thereafter. RW4 conceded that Mr. Kamuti's song made reference to the Petitioner. He, however, denied the existence of Women's Clubs at Lindole

The next witness for the Respondent, **RW5**, was **Vincent Nanjeko Kamuti**. His evidence was that he was the Campaign Manager and Election Agent for the 1st Respondent. During the campaigns, he and the 1st Respondent visited all the nine (09) Wards of Lukulu West, namely Chinonwe, Kashizhi, Kakwacha, Muyondoti, Nyala, Mataba and Mitete Wards. During those meetings Mr. Mukata would introduce the 1st Respondent as the MMD Parliamentary candidate after which he (RW5) would sensitize the people about their right to vote. The witness told the court that he would summarize this in a song but that that song did not make any reference to the Petitioner. He added that the song was titled '*Mutu*'. He told the court that no one referred to the Petitioner as a thief; that no money was distributed at Muyondoti; that he was not aware of any letter written by the Petitioner in 2006 and that she was not the subject of discussion at the meeting at Muyondoti. RW5 stated that the 1st Respondent only emphasized on agricultural development especially the growing of rice to alleviate hunger

In cross examination, RW5 admitted that his song made reference to the Petitioner. He added that if there were any witnesses who had told the court that there was no reference to the Petitioner in his song, then they would be telling lies and the court should believe them. When he was asked for how long he had known the 1st Respondent, RW5 said he had known him since he was a young man. He stated that he would be surprised if the 1st Respondent did not know his first name and that anyone who told the court that the 1st Respondent did not know his first name would be lying.

RW6 was **Mukambwa Mukata**. His evidence was that he was the Election Agent for the 1st Respondent and that he went round the Lukulu West Constituency campaigning with the 1st Respondent and RW5. Like RW5 had done he confirmed that he and the 1st Respondent together with RW5 toured all the nine Wards in Lukulu West. He stated that no one mentioned the Petitioner or called her a thief at the meeting in Muyondoti which was well attended. He confirmed that Mr. Kamuti sang a song at the meetings but denied that it referred to the Petitioner. .

In cross examination, RW6 admitted that he knew Mr. White Mubita but failed to explain exactly how he knew him; just stating that he was a fellow MMD supporter. RW6 told the court

that the meeting at Chinonwe was held before the one at Muyondoti. When he asked how the 1st Respondent's team travelled from Chinonwe to Muyondoti, he said that they had used a dugout canoe and thereafter boarded a motor vehicle which was given to them by a well-wisher whose names he did not know. RW6 denied that the song by Mr. Kamuti referred to the Petitioner. RW6 told the court that he did not know how many times relief maize was distributed because it was the District Commissioner who was in charge of that exercise.

RW7 was **Geoffrey Kakulekule**. He told the court that he was Headman Kakulekule of Kalondolondo area, and was also Induna Silalo at Kakulekule Village. He confirmed that he knew PW16 who was the Headman of Katwe Village. RW7 admitted that he was the author of the letters at pages 17 – 18 and also 19 – 21 of the Petitioner's Bundle of Documents. He also admitted that he told PW16 to stop holding PF campaign meetings without his permission; according to the guidelines from Namayula Royal Establishment, which was headed by senior Chief Anang'ana. He added that PW16 continued opening up PF branches in the Kalondolondo area even after he received the letters referred to above. RW7 identified both letters to the court.

In cross examination, RW7 informed the court that he did not expect his subjects, including PW16, to disobey him and that when a subject was disobedient, he tried to advise them. If the advice was not heeded, then the next step was to report that matter to his superiors. Asked whether he had followed that procedure with PW16, RW7 said he had not. RW7 told the court that he had said that he would not allow the Petitioner to hold any campaign meetings in the Kalondolondo area. Still in cross examination, RW7 confirmed that Hastings Malikana Twembuci was an MMD Ward Councillor for Chinonwe and that Kalondolondo was in Chinonwe Ward. He told the court that Hastings Malikana Twembuci was one of his subjects and not his brother. When asked as to who delivered the letters to PW16, RW7 responded that they were delivered by his sons Maybin Twembuci and Joseph Kakulekule.

RW8 was **Mushuwa Chinyemba**. He was called upon to give evidence pertaining to his possession of a Voters' Register at Katebe Polling Station. He testified that he was a Polling Agent for the MMD at Katebe Polling Station. He told the court that voting did not take place,

at Katebe, on 20 September, 2011 because there were no voting materials available on that date. RW8 stated that he asked the 2nd Respondent's official, Martin Lukonga, why the voting materials had not arrived in time and he was informed that it was because the motor vehicle carrying the polling materials had broken down. RW8 denied having been with Martin Lukonga in the bush near Katebe Polling Station, stating, instead, that he was with Lukonga inside the Polling Station. RW8 admitted that he had a Voters' Register with him on polling day, but told the court that the said Register was given to him by MMD party officials.

In cross examination, RW8 confirmed that he had asked Lukonga why the polling materials had not come on schedule; and that he asked him that question around 1800 hours as the people who had come to vote were dispersing. He confirmed that voting at Katebe took place on 21st September, 2011 and that it commenced at 0600 hours and closed at 1800 hours. According to RW8, the voter turnout on 21st September, 2011 was lower than it had been on 20th September, 2011. RW8 reiterated that he had been in possession of a Voters' Register on polling day, but that he had given it back to his party officials after the election. He told the court that he did not know the name or position of the person to whom he gave the Voters' Register.

The next witness for the Respondent, **RW9**, was **Mbangweta Mbangweta**, whose evidence pertained to the events that transpired at Sitwala and Mbangweta Polling Stations. He testified that on 29 August, 2011, he attended a meeting at Sitwala Basic School. That meeting was convened by the 1st Respondent, who was in the company of Mr. Mukata and Mr. Kamuti. The first speaker was Mr. Mukata, who asked the people to vote for the 1st Respondent, President Rupiah Banda and the MMD candidate for Ward Councillor. RW9 further testified that Mr. Kamuti spoke next and that he sang a song about how people were ones who could vote a person in and out of power. RW9 testified that the 1st Respondent then addressed the meeting. He told the people that there was no difference between a black man and a white man's brain so the people of Lukulu West could also develop their area and improve their livelihoods.

RW9 told the court that the meeting was well attended; as there were many people there. He confirmed knowing PW17, Kelvin Nabita, but could not confirm whether or not he attended that meeting. RW9 told the court that, at that meeting, there was no mention of the Petitioner having squandered money for boreholes. He told the court that he knew Dickson Situmbeko but refuted the allegation that the said Dickson Situmbeko was given any money by the 1st Respondent.

In cross examination, RW9 conceded that he could not say, with certainty, that Dickson Situmbeko was not given any money as he did not see him at the meeting. He told the court that there was no construction going on at Sitwala School at the time that the 1st Respondent held his campaign meeting there. RW9 reiterated that the meeting was well attended.

RW10 was Hastings Malikana Twembuci. His evidence pertained to the events that transpired at Sipuma Village. This witness told the court that he contested the Local Government Elections held in September 2011. He vied for the position of Councillor on the MMD ticket. RW10 told the court that during the campaign period, he would sometimes hold joint meetings with the 1st Respondent and his Agents. In particular, RW10 held meetings at Kalondolondo, Kasenda, Chinonwe, Kakulunda and Ngongo. The witness told the court that on 25th August, 2011, he attended a meeting with the 1st Respondent but there was no mention of the Petitioner as had been alleged by her witnesses. He told the court that he had campaigned at Makwangala Village but had not held any meetings there. As such, the evidence that he gave the women of that village fifty thousand Kwacha was not true. He further testified that he knew both PW10 and PW11 but refuted PW10's evidence that he RW10 had distributed bags of maize at Chinonwe.

In cross examination, RW10 conceded that Sikuyu Village was in Lukulu East and that Headman Kakulekule's Village was not in Lukulu East. He told the court that he did not know how many times relief maize was distributed to Lukulu West in the year 2011. RW10 denied being part of the 1st Respondent's campaign team. The evidence of RW10 marked the close of the case for the 1st Respondent. The 2nd and 3rd Respondents called three witnesses, namely Reasonable Kankomba Siyaminwe, Mukuwa Mbangweta and Martin Lukonga.

The first witness, who was **RW11** for convenience was **Reasonable Kankomba Siyaminwe**. His evidence was that he was the Presiding Officer at Mbumi Polling Station in the September 2011 elections and that his role was to conduct the elections within the electoral rules. RW11 told the court that voting at Mbumi took place on 20th September, 2011 and that it started at 0730 hours in the morning and ended at 1930 hours. The witness told the court that the Petitioner's Agent, Method Mukokwe Kanyama, (PW12) was not allowed to enter the Polling Station because he had not taken oath or affirmation, in accordance with the standards set by the Electoral Commission of Zambia.

RW12 was **Mukuwa Mbangweta**. He was called upon to give evidence on the allegation that voting started late in Sibungana. RW12 testified that he was the Presiding Officer at Sibungana Polling Station. He told the court that voting at Sibungana took place on 20th September, 2011 and that it commenced at 06.00 hours and closed at 18.00 hours.

The last witness for the 2nd and 3rd Respondent, **RW13**, was **Martin Lukonga**. His evidence pertained to the allegation that Polling Agents had Voters' Registers at Katebe Polling Station and also the allegation that the 1st Respondent was in a Polling Station. The witness was also called upon to give evidence pertaining to the allegation that people were assisted to vote. RW13 told the court that he was a Polling Assistant at Katebe Polling station and that his role was to verify the details on the Voters' Register. He also had to issue ballot papers to the voters and to assist those who were unable to vote on their own. His other role was to help the Presiding Officer to count votes.

RW13 testified that voting at Katebe took place on 21 September, 2011 because the 2nd Respondent's vehicle had broken down. RW13 told the court that a candidate in an election was at liberty to pass through a Polling Station on Election Day. The witness refuted the allegation, by PW11, that eleven people were assisted to vote by unauthorized persons. He added the allegation was not true because RW12, who was the only one authorized to assist voters who needed help to vote, was present at the Polling Station for the duration of the voting exercise.

RW13 further it was not true that there was no information given to the electorate on the reason why voting did not take place on the official polling day because he, himself announced to the people that voting would take place the following day on 21st September, 2011 and it was thereafter that the people had dispersed. RW13 confirmed that the 1st Respondent passed through Katebe Polling Station on 21st September, 2011, but added that he only stayed for about five minutes. RW13 denied being in the bush, near Katebe Polling Station, with RW8 who had a Voters' Register, as alleged by PW5. RW13 stated that he was not at Katebe at 1800 hours as he officially closed the Polling Station at 1700 hours on 20th September, 2011. The witness admitted that he met PW5 on his way home, but stated that he did not talk to him as he appeared to be drunk. He added that there was nothing untoward about RW8 having a Voters' Register as all Party Agents had them.

In cross examination RW13 stated that he could not have been with RW8 at the Polling Station at 18.00 hours because he left the Polling Station around 17.10 hours on 20th September, 2011. RW13 told the court that a lot of people had turned up to vote on 20 September, 2011 but conceded that by the time he was making the announcement that voting would not take place on that day, some people had already left the Polling Station. RW13 also conceded that no measures were put in place to ensure that the people who had left before the announcement were made aware of the new polling date. The evidence of RW13 marked the close of the case for the 2nd and 3rd Respondents and the parties informed the court that they would tender written submissions into court.

It was submitted, for the Petitioner, that she had petitioned the court to nullify the election of the 1st Respondent, as Member of Parliament for the Lukulu West Constituency, because the election was not free and fair, and that the reason why the election was not free and fair was because of the corrupt and illegal practices of the 1st Respondent as well as the failure by the 2nd Respondent to conduct the election in conformity with the law. The Petitioner complained that the 1st Respondent, during his campaign, had circulated a letter which she wrote to the Government in 2006, requesting funds for the sinking of boreholes in Lukulu West. In

circulating that letter to the electorate, the 1st Respondent alleged it was proof that the Petitioner had stolen the said funds.

The effect of the circulation of that letter was that people began to call the Petitioner a thief wherever she went, in her campaigns, which shocked her. It was also submitted, in the Petitioner's behalf, that the 1st Respondent used the distribution of relief maize to woo votes in his favour, because the said relief maize was distributed thrice in the same year, unlike in the past when it was distributed once a year or sometimes not at all. It was canvassed that the people of Lukulu West were being asked, through that triple distribution of relief maize, to show gratitude to the MMD and the then Republican President, Rupiah Banda. It was further submitted that the 1st Respondent was dishing out money to voters and, because of this, the Petitioner was asked, wherever she went, about what she would give to the electorate since her opponent, the 1st Respondent, had given them money.

Regarding the allegation that the 2nd Respondent failed to conduct the election within the confines of the law, it was submitted that voting started very late in certain Polling Stations; such as Sibungana and Namakando and that at other Polling Stations such as Katebe, Kalumbwa and Sipuma, voting only took place on 21st September, 2011, a day after the official polling date. This, the Petitioner contended, was to her detriment because people who had come from distant places, to cast their votes on 20th September, 2011 went back home without having voted; and these people did not participate in the voting of 21st September, 2011 because they were not aware that voting would now take place on 21st September, 2011. The Petitioner added, in this regard, that it was noteworthy that the 2nd and 3rd Respondents did not lead any evidence to show that they communicated to the electorate at Kalumbwa Polling Station that voting would take place on 21st September, 2011.

Submitting on the evidence of PW2, the Petitioner noted that his evidence was not controverted in cross examination and that RW2 confirmed that there was, indeed, a meeting at Muyondoti on 27th August, 2011. The Petitioner submits that the evidence of PW3 and PW4 was also not controverted in cross examination and that their credibility was not brought into question. The Petitioner observes that PW5 informed the court that he voted for the 1st

Respondent because of the money that he had been given by the 1st Respondent; that PW6 and PW7 confirmed that voting at Katebe Polling Station took place on 21st September, 2011; that the turnout of voters on that day was slow and that Martin Lukonga, who was a Polling Assistant, was an MMD sympathizer as he was found campaigning for the 1st Respondent.

The Petitioner submitted that the distribution of money, by the 1st Respondent was confirmed by PW1, PW3, and P15, and the evidence of PW13 was not controverted in cross examination. On the absence of a PF Polling Agent at Mbumi Polling Station, it was submitted that when PW12 presented his oath for commissioning, he was turned away, by the Presiding Officer, thereby denying him the ability to monitor the elections. This, it was submitted, occurred despite the fact that PW12 was based in a rural area where the only Commissioners of Oath were the Election Officials who were only available on polling day.

Expanding on the contention that the election of the 1st Respondent was not free and fair, it was submitted that PW16's evidence concerned acts of intimidation perpetrated by RW7. That evidence was to the effect that he (PW16) was stopped from setting up PF branches in his area on the ground that people were united in their resolve to vote for the 1st Respondent. RW7 conceded that he did not report PW16 to the higher traditional authorities in his chiefdom; which the Petitioner submits, shows that he intimidated PW16, which in turn was the reason why PW16 stopped opening PF branches in Kalondolondo.

The Petitioner's submissions also referred to the evidence of the 1st Respondent, RW1 who denied that there were any illegal or corrupt practices in the run up to the September, 2011 elections. It was submitted, in this regard, that the 1st Respondent denied circulating any letter alleging that the Petitioner was a thief and that he informed the court that he did not, at any time during his campaign, make any reference to the Petitioner. The 1st Respondent similarly denied giving out any money to the voters, stating that his campaign was called '*campaign ya njala*' because he did not give out any election materials. The Petitioner contends that the illegal practices during the elections were not peculiar to the 1st Respondent as evidenced by the fact that RW8 conceded that there were a lot of people who had come to vote on 20th

September, 2011 (unlike the numbers on 21st September, 2011) and that he had a Voters' Register with him on 20th September, 2011.

The Petitioner submits that RW2 to RW10 supported the Respondent's denial of the Petitioner's allegations, but with some inconsistencies. To this end, the Petitioner observes that the 1st Respondent informed the court, in examination -in- chief, that he was an airtime dealer for Airtel and that he stopped being a fisherman five years ago, whereas RW5 testified that the Respondent was still engaged in the fishing business. It was submitted that another inconsistency was in the evidence of RW2 who stated that no one called the Petitioner a thief and that there was no reference to her, at all, at the meeting at Muyondoti. However, the same witness conceded that the song sung by RW5 implied that the Petitioner had to be removed from office in order for the 1st Respondent to assume that office.

Yet another inconsistency was in the evidence of RW4 who denied the existence of Women's Clubs at Lindole, while the other witnesses for the Respondent confirmed their existence. Further to this, it was submitted that RW6 denied that the song sung by RW5 made any reference to the Petitioner, despite RW5 himself making an admission to the contrary. Concluding on the submissions pertaining to the 1st Respondent's witnesses, the Petitioner submitted that RW10's testimony that Sikuyu Village was in Lukulu East and that Headman Kakulekule's village was not in that area was contradictory to RW7's testimony which was that RW10 was one of his subjects.

Regarding the witnesses for the 2nd Respondent, the Petitioner's submissions were only to state that RW11, Reasonable Kankomba Siaminwe, who was the Presiding Officer at Mbuni Polling Station, denied PW12 entry into the Polling Station because he had not taken oath or affirmation. It was submitted, with regard to RW13, that his evidence that he met PW5 on his way home confirms PW5's testimony that he saw RW13 with RW8 on 20th September, 2011 at around 18.00 hours.

The Petitioner further submitted that a review of the body of evidence tendered before this court will show that whereas the Petitioner's witnesses were consistent in their evidence, there were a lot of inconsistencies in the evidence of the 1st Respondent's witnesses and that these inconsistencies stemmed from the fact that the 1st Respondent's witnesses were not telling the truth. Citing the case of **Chizande Vs The People (1975) ZR at page 66**, in which case it was held that *'an adverse finding as to credit may be based, for instance on discrepancies on the witness's evidence or on a previous inconsistent statement or on proved bad character or on evasive demeanour and so on'*, the Petitioner has contended that the issue of credibility must be resolved in favour of the Petitioner in this matter.

The Petitioner also submits that she has established the allegation of illegal and corrupt practices, on the part of the 1st Respondent, through the evidence of her credible witnesses. It is contended that the 1st Respondent breached Section 83(1) of the Electoral Act, Number 12 of 2006 by publishing a false statement concerning the character of the Petitioner, who was a candidate in the September 2011 elections; and that the evidence proving this allegation comes from PW2, PW3, PW8, PW13 and PW17 who all testified that the first Respondent convened meetings at Muyondoti, Lindole, Lwee Community School and Sitwala Basic School where he accused the Petitioner of having stolen money for boreholes or wells, a Mother's Shelter and various other projects in numerous areas of the Lukulu West Constituency.

The Petitioner submits that the 1st Respondent's allegation that the Petitioner was a thief was not true as it was clear from the letter that was circulated to the voters, that the same was simply a request for funds and not a disbursement. The Petitioner further contends that the 1st Respondent's false statement that she was a thief made voters refrain from voting for her because they believed that she was a thief, as evidenced by the election results from Sitwala Polling Station; where the Petitioner polled a paltry sixty-seven (67) votes while the Respondent obtained one hundred and twenty four (124) votes. It is the Petitioner's further submission that the publication of the false statement also affected her performance in Lindole; where she polled eighteen (18) votes as against the Respondent's forty-eight (48) votes.

By way of persuasion, the Petitioner quoted from the case of **Alex Cadman Luhila Vs Batuke Imenda 2002/HP/EP/0017** in which Munthali J, as he then was, said the following:

“Those who think they can find their way to Parliament on the platform of lies and calumnies intended to defame the characters of opponents, those who think they can find their way to Parliament on the platform of illegal practices of various shades, those who think they can find their way to Parliament on the platform of bribery and corruption the message is this: The courts will not hesitate to show them the door”.

Also cited for my attention was the case of the **Attorney General Vs Kakoma (1975) ZR at page 212.** In that case, the Supreme Court held that”

“A court is entitled to make findings of fact where the parties advance directly conflicting stories, and the court must make those findings on the evidence before it and having seen and heard the witnesses giving that evidence”.

The Petitioner submits that her witnesses were more credible than those of the Respondent and the court should believe their testimony. The Petitioner submits that the 1st Respondent’s witnesses were cagey and were led by their Advocate in a manner that did not allow them to give their testimony freely in examination-in-chief. The Petitioner also submitted that even though the 1st Respondent and his witnesses deny having mentioned the Petitioner at his meetings, it was not plausible that the 1st Respondent would launch a campaign to be elected Member of Parliament, without making any mention of the previous office holder. It was the Petitioner’s submission that the court should take note that RW5 testified that the witnesses who said there was no mention made of the Petitioner were being untruthful.

In sum, the Petitioner submitted that her allegations under paragraph 7(a) and (c) of the Petition had been proven to a reasonable degree of clarity as required by the law; that paragraph 7(d) of the Petition had been proved to a reasonable degree of convincing clarity as the evidence of the Petitioner’s witnesses showed that the 1st Respondent, in distributing money to voters, was guilty of bribery in terms of section 79 (1) (a) of the Electoral Act and that the effect of the 1st Respondent’s vote buying was that it prevented the electorate from

electing a candidate of their choice, as evidenced by the 1st Respondent's victory at Mitete School. It is submitted that this was the same scenario at Sitwala Basic School, where the 1st Respondent was able to score the highest number of votes because of the distribution of money.

Regarding the distribution of money to Women's Clubs, the Petitioner submitted that this allegation, contained in paragraph 7(g) of the Petition was proved by the testimony of PW13 and PW14, whose evidence was that they attended a meeting at Lindole, at which the 1st Respondent promised to give money to the Women's Clubs when he was voted into office and that PW14 did, in fact, collect the sum of one million, nine hundred thousand Kwacha (K1,900,000.00) after the 1st Respondent's election as Member of Parliament. The Petitioner's contention is that these monies were distributed with the sole aim of inducing voters to elect the 1st Respondent at the expense of the Petitioner who was not engaging in illegal and corrupt practices.

In contending that the 1st Respondent was also guilty of contravening sections 79(1) (c) and (d) of the Electoral Act, the Petitioner contends that he engaged in the distribution of relief maize in order to woo voters in that in the year 2011, there was an unprecedented three time distribution of relief maize in Lukulu West. The evidence of PW8 and PW15, which confirms this, is that they attended meetings at which the 1st Respondent told people that he was responsible for securing that maize and that the people should, therefore, vote for him. PW10 told the court that he found relief maize at numerous Polling Stations in his area; which maize had been delivered by the 1st Respondent and his team. The Petitioner submits that PW10's evidence went unchallenged, in cross examination, and the 1st Respondent's witnesses said nothing to rebut this position; which proves the allegation at paragraph 7(p) of the Petition to a reasonable degree of convincing clarity.

It is the Petitioner's submission that the 1st Respondent offended sections 82 (1) (c) (iii) and (iv) of the Electoral Act by instructing Headmen to write letters to supporters of the PF, telling them that they would be banished from the area if they continued to support the PF; and this allegation was proved by the evidence of PW16 who testified that he was scared when he

received the letter from RW7, who was senior to him in hierarchy. According to the Petitioner, what consolidates the proof of the allegation of intimidation and undue influence from RW7, as Headman of Kalondolondo, is that the 1st Respondent polled fifty-six (56) votes at Kalondolondo, while the Petitioner polled only thirty (30) votes; and this was despite the 1st Respondent, by his own admission, not having campaigned in Kalondolondo. The Petitioner asks the court to hold RW7 to be an untruthful witness because he initially denied any relationship with Hastings Malikana Twembuci, but when asked who had delivered the letter to PW16; PW7's answer was that it was his son Maybin Twembuci. In the same vein, when RW7 was asked who had delivered the second letter to PW16, he told the court that it was his other son, Joseph Kakulekule; which answer was given after he had realized that he had given away his relationship to the Twembuci family.

It was submitted that a review of the evidence in this matter shows that the 1st Respondent was, indeed, culpable in that the election was marred with the corrupt and illegal practices outlined in the Petition, which the 1st Respondent and his team committed. It was further contended that there was no cogent evidence to refute the evidence of the Petitioner's witnesses. In canvassing the point that the Petitioner's witnesses were credible, the case of **Simasiku Namakando Vs Eileen Imbwa 2006/HP/EP/0002**, was cited for my attention. In that case, the learned Honourable Mr. Justice Phillip Musonda, High Court Judge as he then was, observed that that case hinged on the credibility of the witnesses and it was imperative to put their credibility under scrutiny.

Regarding the allegation on mismanagement of the election by the 2nd Respondent, it was submitted that the election in Lukulu West was not held in a manner that conforms to the law and practice governing elections. This was because the elections at Sipuma, Katebe and Kalumbwa Polling Stations took place on 21st September, 2011 which was not the official polling day; and the unexplained change in the date disenfranchised the voters who, as a result, were prevented from electing a candidate of their choice. The Petitioner submitted that the reason advanced, by the 2nd Respondent, that the polling date was changed because of the breakdown

of motor vehicles was not valid at law because the instances when voting at a Polling Station could be postponed were clearly stipulated in Section 29 of the Electoral Act.

It was contended that the 2nd Respondent was aware of the election date and was familiar with the terrain in Lukulu and that since that was not the first time that there was an election being held in Lukulu West, then it followed that there was a serious dereliction of duty on the part of the 2nd Respondent in failing to comply with the mandatory nature of the provisions of Section 29 aforementioned. In buttressing this argument, the Petitioner cited the case of **Akashambatwa Mbikusita Lewanika, Hichunga Evaristo Kambaila, Dean Namulya Mung'omba, Sebastian Saizi Zulu and Jennifer Mwaba Vs Frederick Jacob Titus Chiluba (1998)ZR at page 84** where the Supreme Court stated that:

“.....the flaws, by their very nature went to the general integrity of the system. The elections were not held in substantial conformity with the law and practice governing elections”.

The Petitioner submitted that in failing to comply with Section 29 of the Electoral Act, the 2nd Respondent's action went to the general integrity of the system that affected the result of the election and it cannot, therefore, be said that the election was free and fair. In conclusion, the Petitioner contended that the Parliamentary election in Lukulu West was not free and fair and that she had met the standard set by section 93(2) of the Electoral Act which provides that:

‘ 1. The election of a Candidate as a Member of the National Assembly shall be void on any of the following grounds which is proved to the satisfaction of the High Court upon the trial of an election petition, that is to say:

(a) That by reason of any corrupt practice or illegal practice committed in connection with the election or by reason of other misconduct, 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), that 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’;

The Petitioner submits that she has proved her case to the standard of proof set by the case of **Anderson K. Mazoka Vs Levy Mwanawasa, Electoral Commission of Zambia and Attorney General (2005) ZR at page 138** in which the Supreme Court stated that the evidence adduced must establish the issues to a fairly high degree of convincing clarity. The Petitioner submits that she has met the required legal standard of proof for Election Petitions because she has proved that the Parliamentary Election in Lukulu West was marred with corrupt and/or illegal practices committed by the 1st Respondent and/or his campaign team and that she has equally proved that the 2nd Respondent failed to comply with the provisions of the Electoral Act relating to the conduct of elections; which non-compliance affected the result of the election.

The Petitioner called the Court’s attention to the case of **Michael Mabenga Vs Sikota Wina, Wallace Mafo and George Samulela (2003) ZR at page 43** where the Supreme Court stated that:

‘Satisfactory proof of any one corrupt act, illegal practice or misconduct in an election is sufficient to nullify an election’.

Relying on that case, the Petitioner has urged this court to nullify the election of the 1st Respondent as Member of Parliament for Lukulu West and to grant the Petitioner the relief that she seeks.

For the 1st Respondent, it was submitted that the Petitioner’s case rests on her claims, or allegations, that there were a number of supposed illegal and corrupt practices in the Parliamentary Elections of 20th September, 2011 in the Lukulu West Constituency in which the 1st Respondent was duly elected Member of Parliament and, as such, his election should be declared null and void. It is submitted that in order for the Petitioner to succeed in her claims, she must prove each and every ingredient alleged in her Petition; and that this must not be on a preponderance of probabilities but on a standard higher than in a civil matter, although less

than the standard required in a criminal case. This principle was laid down in the case of **Akashambatwa Mbikusita Lewanika and Others Vs FTJ Chiluba (1998) ZR at page 79** where the Supreme Court stated that::

“.....it cannot be seriously disputed that Parliamentary Election Petitions have generally long required to be proved to a standard higher than a mere balance of probability”.

The 1st Respondent further submitted that the case of **Michael Mabenga Vs Sikota Wina and Others (2003) ZR** also sets out the same principle on the standard of proof required in Election Petitions in the following terms:

“An election petition is like any civil claim that depends on pleadings and the burden of proof is on the challenger to the election to prove a standard higher than that on a balance of probability issues raised are required to be established to a fairly high degree of convincing clarity”.

An additional case cited on the question of the standard of proof required in Election Petitions was that of **Webster Chipili Vs David Nyirenda SCZ Appeal Judgment No. 35 of 2003** which stated that on allegations of impropriety attributable to a Respondent in a Parliamentary Election, the evidence before a Judge required to be proved to a standard higher than a mere balance of probability. The 1st Respondent also submitted that the wrong doing alleged against a Respondent should be of the scale and type to adversely affect the election, and should have prevented the majority of voters in a Constituency from electing the candidate whom they preferred, as per section 93 (2) (a) of the Electoral Act of Zambia. In this regard, the 1st Respondent cited the case of **Jere Vs Ngoma (1989) ZR at page 106** in which the election was nullified on the basis of the misconduct of the supporters of the Respondent, which misconduct involved threats of violence and actual violence. Also cited for the court’s attention was the case of **Mlewa Vs Wightman (1995) ZR at page 171** in which the Respondent’s election was nullified due to the large scale of the distribution of exercise books and T-Shirts by the Respondent’s Party in the Constituency.

The third leg of the 1st Respondent's submission is that the allegations made by the Petitioner have not been proved to the requisite standards set out in the cases referred to above, namely Akashambatwa Mbikusita Lewanika and Others Vs FJT Chiluba, Michaela Mabenga Vs Sikota Wina and Others and Chipili Vs Nyirenda. The 1st Respondent contends that the Petitioner has not proved, in her evidence, that he distributed and circulated the letter at pages 1 and 2 of her Bundle of Documents dated 13th January, 2012, to the majority of voters at the numerous campaign meetings that he conducted. The 1st Respondent adds that the Petitioner's evidence was based on hearsay and was highly contradictory, and that she admitted, in cross examination, that she did not see the Respondent distribute the said letter, but only heard, from others, that he did so. It is the 1st Respondent's further submission that with the exception of PW2, none of the Petitioner's other witnesses said that they saw the said letter. They all claimed that they had heard about that letter, but could not ascertain its contents. Furthermore, the Petitioner polled the highest at Muyondoti, which was the only place where the subject letter was said to have been produced. As such, the Petitioner was claiming that she was defamed in an area where she got the highest number of votes. The 1st Respondent submitted that the allegation of his distribution of a defamatory letter must fail for want of merit.

The 1st Respondent also submitted that the Petitioner had not proved her claim that he gave money to the majority of the electorate in the Lukulu West Constituency. This was because her evidence on this allegation remained hearsay; since all of her witnesses' testimonies were unreliable. For instance the evidence of PW3 that he saw money being given to his young brother, Chipango Kakoma, cannot be sustained because that man never came to court to confirm the allegation and RW4 denied having received the sum of one hundred thousand Kwacha from the 1st Respondent. It is submitted that , unlike that of PW3, the testimony of RW4 was reliable.

The 1st Respondent dismisses the evidence of PW4 and PW5 as being highly contradictory in terms of the denominations of money that the 1st Respondent is alleged to have produced at Mitete. One witness claimed that the money in five thousand Kwacha (K5,000) notes while the

other witness told the court that the 1st Respondent produced fifty thousand Kwacha (K50,000) notes. The 1st Respondent additionally submitted that PW8 and PW10's evidence about being given money was untenable in view of the fact that Mr. Lombanya, who PW8 alleged was given the sum of two hundred thousand Kwacha (K200,000) was never called as a witness for the Petitioner. As for the testimony of PW11, the Respondent submits that RW10 rebutted the evidence that Headman Makwangala was given the sum of one hundred and fifty thousand Kwacha (K150,000). Furthermore, PW14 did not state that the Respondent distributed money for campaign purposes.

With regard to the allegation that he distributed relief maize to the voters, the 1st Respondent submitted that the Petitioner failed to prove that allegation as that activity was attributable to the then President of the Republic of Zambia. Turning to the allegation that he instructed Headmen to write letters intended to intimidate voters, the 1st Respondent submitted that the letter written to PW16, by RW7, cannot constitute intimidation and neither can it conceivably be regarded as a threat. The 1st Respondent added that that communication cannot be deemed to have prevented the majority of voters from voting.

The 1st Respondent pointed out that no witness was called to support the allegation that he had told the electorate that the Petitioner was out of the country. In conclusion, the 1st Respondent urged this court, based on the reasons advanced in his submissions, to dismiss this Election Petition with costs because it lacked merit and the Petitioner merely wished to use the court to impeach a duly elected Member of Parliament.

I have very critically considered the *viva voce* evidence of all the witnesses that testified in this Election Petition. I have also read the documents that were filed into court pertaining to this Petition; namely the Petitioner's Bundle of Documents dated 13th January, 2012, the 1st Respondent's Bundle of Documents dated 30th December, 2011 and the written submissions of the Petitioner and the 1st Respondent dated 10th February, 2012 and 24th February, 2012. I am grateful to Counsel for the Petitioner and the 1st Respondent for the written submissions. The 2nd and 3rd Respondents neither filed any Bundles of Documents nor tendered written submissions into court.

It is a fact that the Petitioner and the 1st Respondent were both Parliamentary candidates in the Lukulu West Constituency in the elections held on 20th September, 2011. It is also a fact that the Petitioner contested that seat under the auspices of the Patriotic Front, a political party, while the 1st Respondent contested the Lukulu West Constituency Parliamentary seat under the auspices of the Movement for Multi-party Democracy, also a political party. It is equally a fact that the 1st Respondent was declared the duly elected Member of Parliament for the Lukulu West Constituency and that it is that election that the Petitioner now challenges. Having carefully considered the evidence before me, I find it prudent to address the issues raised in the order that they are presented in the Petition as doing this will not only make reference easier, but will allow for the presentation of a logical sequence of events.

Perusal of the Petition shows that the Petitioner's allegations against the Respondents are set forth in paragraph seven thereof and I, therefore, focus on the said paragraph. The Petition avers that the voters in Lukulu West were prevented from electing the candidate that they preferred by reason of electoral offences, intimidation and threats which were committed by the 1st Respondent and his Agents. The Petitioner contends that the election of the 1st Respondent as Member of Parliament for Lukulu West is void for the following reasons:

(a) That during the campaign period, the 1st Respondent held numerous meetings during which he produced a letter written by the Petitioner in 2006 requesting funds and the 1st Respondent alleged that the said funds were stolen by the Petitioner, when in fact not, contrary to Section 83 (2) of the Electoral Act. Section 83 (2) aforementioned provides as follows:

'Any person who, before or during an election, publishes any false statement of fact in relation to the personal character or conduct of a Candidate in that election shall be guilty of an illegal practice, unless that person can show that that person had reasonable grounds for believing and did, in fact believe, the statement to be true'.

In support of this allegation, the Petitioner's own evidence was that letters were circulated alleging that she had stolen money. As a result of this, she was called a thief in many places that she went to within the Lukulu West Constituency, which shattered her integrity and diminished her confidence to go round to the electorate. The Petitioner admitted that she did not hear the Respondent call her a thief, but was informed by her supporters that he was holding campaign meetings during which he was producing a letter which he alleged was evidence that she was a thief. This caused people to refer to the Petitioner as a thief.

PW2 confirmed the story that the Petitioner had been called a thief at the 1st Respondent's campaign meetings. He told the court that he had personally attended one such meeting, at Muyondoti School, and had been given a copy of the letter that the Petitioner complains of. Further, that PW2 testified that he personally heard the 1st Respondent refer to the Petitioner as a thief when he was asking the people to vote for him. According to PW2, the 1st Respondent had asked the people at that meeting to vote for him, because he was their son, and not for Imbwae (Petitioner), a thief, who had stolen money meant for boreholes or wells. PW2 added that throughout that meeting, the talk by the 1st Respondent and his Agents was mainly about the stealing of money for boreholes.

Another witness, PW8, also testified that the 1st Respondent referred to the Petitioner as a thief. This was at a meeting that was held at Lwee Community School, which meeting was addressed by the 1st Respondent, RW5 and RW6. At that meeting, the 1st Respondent is said to have asked the people if they knew the amount of money meant for drilling boreholes in Muyondoti and Nyala Wards; after which he told them that the money was signed for by the Petitioner and that she had stolen it from the people. At that same meeting, the 1st Respondent also mentioned that he had shown people copies of the letter pertaining to Ms Imbwae's theft and that if the people did not believe him, they could go to Muyondoti and see, for themselves, a copy of the letter that he was talking about. In cross examination, PW8 told the court that the 1st Respondent did not produce a copy of the letter he alleged was proof of the Petitioner's theft, he just mentioned it and said he had left a copy of that letter with PW2 at Muyondoti, and that whoever wanted to go and see that letter was free to go there and see it. From the

evidence of PW8, which supports that of PW2, it is quite clear, at least, that there was definitely a letter involved in the 1st Respondent's campaign meetings, whatever the contents of that letter. The difference in the evidence of these two witnesses is that one states that the subject letter was produced and given to him, while the other one states that the letter was only mentioned.

Confirming the Petitioner's evidence that funds for developmental projects were released a long time after her letter of 17th November, 2006, PW8 told the court that the boreholes in Lukulu West were sunk about two weeks or so after the election of 2011. Still on the distribution of the letter, PW13 also told the court that on 15th September, 2011, he attended a meeting, convened by the 1st Respondent, at Lindole Village and that during his address to the people, the 1st Respondent asked them to vote for him as they all knew him. Later in his address, the 1st Respondent is said to have told the people gathered that the lady who claimed to be a Member of Parliament was nothing but a thief and that he would explain how she was a thief. According to PW13, the 1st Respondent then opened a file from which he got a letter and gave it to someone called Kayombo Sakasema to read out to the people. That man read the letter which, he said, stated that the people of Lindole were supposed to have a borehole worth twenty-five million Kwacha while those at Nangongo should also have had one of a similar value. For the people at Mitete, there should have been a Mothers' Shelter worth two hundred million Kwacha built at Mitete Health Centre. When Sakasema had finished reading the letter, PW13 heard the 1st Respondent ask the people gathered if they were going to vote for a person who had squandered that much money. The news that the Petitioner had squandered money meant for projects upset the people at that meeting and they proceeded to call her a thief. This evidence supports that of the Petitioner, herself, PW2, PW3 and other witnesses whose evidence is also on record.

PW15 also testified that the 1st Respondent convened a meeting at Mbangweta School on 24th July, 2011 at which he told the people, among other things, that there should have been some boreholes sunk in Nyala Ward, but there were none, since the money for that project had been misused and that is why the people should vote for him. He added that he had left a letter at

Muyondoti School which letter explained about the boreholes that should have been sunk in Nyala Ward. The 1st Respondent also told the people that the money meant for drilling boreholes had been pocketed by the Petitioner, which information riled the people who then stated that they had voted for a thief and there was no need for them to vote for one. They would, instead, vote for the 1st Respondent whom they all knew.

The last witness for the Petitioner, PW17, also attended a meeting at Sitwala School on 29th August, 2011. That meeting was addressed by the 1st Respondent, RW6 and RW5. At that meeting, PW17 heard the 1st Respondent telling the people that they should not vote for the Petitioner as she had squandered their money which was meant for the sinking of boreholes. A man called Dickson Situmbeko stood up and stated that the people would not vote for the Petitioner as she was a thief. In cross examination PW17 said he did not go to verify the claim that the Petitioner had squandered the money for boreholes because he believed what the 1st Respondent said. On his part, the 1st Respondent categorically denied referring to the Petitioner as a thief at any of his campaign meetings. RW2, RW3, RW4, RW5, RW6, RW9 and RW11 all confirm that the 1st Respondent conducted meetings at Muyondoti Basic School, Lindole, and Lwee Community School, but they all refute the specific evidence that the Petitioner was referred to as a thief at any of those meetings which is quite curious but obvious due to the fact that their evidence is in support of the 1st Respondent's case.

Weighing all the evidence on the allegation that the 1st Respondent published a false statement to the effect that the Petitioner was a thief, and there being no evidence before the court of an official record of any of the meetings referred to by the witnesses, I find myself in the position of having to deal with this allegation on the basis of credibility alone. I had the privilege to observe the demeanour of the witnesses that testified in this matter and, with regard to this specific allegation, I find the testimonies of the Petitioner's witnesses to be more credible than those of the Respondent's witnesses. My finding is based on the fact that there are too many inconsistencies and selective gaps in the evidence of the 1st Respondents' witnesses concerning this allegation. In making my finding on the credibility of the Petitioner's witnesses, I have

gratefully drawn upon the guidance in the case of Chizande Vs The People which the Petitioner cited for my attention.

About five witnesses, namely PW2, PW8, PW13, PW15 and PW17 all gave accounts of how they had heard the Petitioner called a thief at the various meetings held by the Respondent. PW2 was even the recipient of a letter which the 1st Respondent claimed was evidence of the Petitioner's thieving ways. From his testimony that he was unable to read, but believed that the letter said that the Petitioner was a thief, it is quite apparent that PW2 is of humble education, if any at all and from the evidence before me, the 1st Respondent most deviously used the lack of education by PW2, and other people in the villages in Lukulu West Constituency, to his advantage. In short, it appears to me that the 1st Respondent capitalized on the people's illiteracy to besmirch and smear the Petitioner's reputation; by claiming that that letter, regardless of its contents, was proof that she had stolen money; which he should not have done. In my humble opinion, that was a callous and underhand way to campaign and certainly disadvantaged the Petitioner.

There is a feeble attempt to redeem the 1st Respondent's method of campaign, which I can only describe as devious with regard to this allegation, in the submission that the Petitioner won the election in an area where she claims the letter was used to defame her and that Muyondoti was the only place where the said letter was produced. While I find it to be true that the Petitioner polled higher than the 1st Respondent at Muyondoti, the issue of the distribution of that letter was insignificant because there is unchallenged evidence on the record to the effect that the 1st Respondent kept on making reference to that letter at places like Lwee, Lindole and Mbangweta, even going so far as to invite people to go to Muyondoti and see the letter for themselves if they did not believe him. It is, from that evidence, that I am of the view that that infamous letter had wider influence than at the place at which it was circulated. This is confirmed by the fact that the Petitioner did not perform well at places like Lindole and Mitete where the news that she was a thief had also reached, in spite of there being no evidence that the said letter was produced or distributed in those places.

I must add that I have to agree with the Petitioner's submissions that the evidence of the Respondent's witnesses is fraught with inconsistencies and is, therefore, not so plausible for the purposes of rebutting this particular allegation. For example, RW2, RW3 and RW4 all mention that the Petitioner's name never came up at that meeting while RW5 concedes that her name came up as does RW6. Further, the length of the meetings is quite suggestive of the fact that a lot more than the introduction of the 1st Respondent, his asking for the people's vote and the '*mutu*' song sung by RW5 went on. The evidence of RW4, Justin Musoka is that he attended a meeting on 14th September, 2011 at Lindole School. That meeting was convened by the 1st Respondent and, according to RW4, lasted about four hours. At that meeting RW5 spoke, sang, about votes for a few minutes, then RW6 was given the floor after which the 1st Respondent spoke to solicit for the people's vote. This being the case, it boggles the mind that it would take almost four hours, from 10.00 hours to 14.00 hours, just for the 1st Respondent and his team to perform those three short functions of being introduced, of singing a song and of asking people for their vote. Another inconsistency that impales me to cast doubt on the reliability of some of the evidence adduced on behalf of the 1st Respondent is the evidence of the 1st Respondent, himself, to the effect that he did not know the first names of his campaign Agents, RW5 and RW6. That evidence was contradicted by RW5, who told the court that anyone who said that the 1st Respondent, who was his nephew, did not know his first name would be telling lies.

As it turned out, it was the 1st Respondent himself, no less, who told the court that he did not know RW5's first name. This makes me fully agree with the Petitioner's submission that if the 1st Respondents can lie about a thing like that, then one wonders what else he is capable of lying about to the court. It is these inconsistencies that support the contention that the witnesses for the 1st Respondent were quite economical with the truth; and that a lot more was said at the 1st Respondents' campaign meetings than was stated in court. Further, the inconsistencies observed consolidate my view that there are selective gaps in the evidence of the 1st Respondent's witnesses.

It is not the duty of the court to speculate or adjudicate on issues which have not been pleaded or tabled or before it, but the court is duly entitled to draw an inference from the evidence that is presented before it and, in this case, I have no difficulties in concluding that there was much more said at the 1st Respondent's meetings than he and his witnesses are letting on. It is simply inconceivable that the 1st Respondent and his Agents spent four long hours singing, introducing the 1st Respondent and talking about rice growing alone. Like I said, there is no formal record of any of the meetings of either the Petitioner or the Respondent that has been presented before this court and my decision to believe the Petitioner's witnesses is based solely on their credibility in court as I saw it. That is the reason why I have had to go to some length to scrutinize their individual evidence regarding the allegation of the Petitioner having been called a thief.

On the totality of the evidence supporting this allegation, I am satisfied that the Petitioner has proved that allegation to the standard required for Election Petitions. Her witnesses, in my view, were telling the truth. I note that PW2 identified a letter in court, although he is unable to read it, by its date and the name of the Petitioner, which letter was given to him by the Respondent, which the 1st Respondent has not disputed, as evidence, or proof that the Petitioner was a thief. Being uneducated, the witness took what the 1st Respondent said about the contents of that letter to be the truth as, from the evidence on record, did the other people to whom that falsehood was peddled.

Another point I must make is that I hold the Petitioner's witnesses to be largely truthful because being uneducated does entail that one is not capable of telling the truth. The 1st Respondent, in his submissions states that, with the exception of PW2, none of the other witnesses said they saw the letter. They all claimed to have heard of its contents which they could not ascertain. The view that I take, from the evidence before me, is that it would not have made any difference even if the people had seen that letter, as it is quite apparent that the education levels of some of the people at whom that letter was flashed, or who had sight of it, were low. As such, they relied more on what they heard, rather than what they saw, if the indignation that is said to have been expressed by people like Dickson Situmbeko, when he

heard that the Petitioner had squandered money meant for development projects, is to be a yardstick.

My finding that the 1st Respondent contravened section 83(2) of the Electoral Act is fortified by the decision of the Supreme Court in the case of **Batuke Imenda Vs Alex Cadman Luhila, SCZ Appeal No. 5 of 2003**, in which the Court upheld the finding of my learned elder brother the Honourable Mr. Justice S. Munthali, High Court Judge as he then was, that the Appellant had committed the illegal practice of publishing a false statement in that he had told voters at three public meetings, which he addressed, that the Respondent had stolen the sum of one billion Kwacha and fertilizer. I stand gratefully guided by that authority in accepting that the 1st Respondent in this matter published a false statement that the Petitioner was a thief. He had no basis for doing so other than, in my humble view, an unhealthy desire, for whatever reason, to bring the name of his opponent into disrepute. I say this because there is no evidence to suggest that the Petitioner was ever tried and convicted for the offence of theft, by a court of competent jurisdiction in order to warrant her being called a thief by the 1st Respondent or anyone else.

Paragraph 7 (b) of the Petition alleges that the 1st Respondent held numerous meetings in Lindole, where he falsely told voters that the Petitioner had pulled out of the race and travelled to China. The allegation is also made pursuant to section 83(2) aforementioned. Having considered the evidence adduced, I do not find that there is any meaningful evidence, on record, to support this allegation. The Petitioner, herself, makes no mention of this allegation in her evidence. Only PW13 refers to it in cross examination when he stated that the people of Lukulu did not believe that the Petitioner was out in Lusaka or China. Needless to say that PW13 was not competent to testify on what other people believed. As such, this allegation has not been proven to the required standard and it fails. Paragraph 7 (c) which states that the 1st Respondent was aware that the statements at (a) and (b) above were false and he made them with the sole aim of preventing the voters from electing the Petitioners to the National Assembly and/or procuring his election at the expense of the Petitioner only succeeds to the extent that it holds true for (a) above, which the Petitioner has successfully proven.

In paragraph 7(d) of this Petition, it is alleged that on 18th September, 2011, after the close of the campaign period, the 1st Respondent went from door to door campaigning and distributing money ranging from five thousand Kwacha to one hundred thousand Kwacha which was, in and of itself, an illegal or corrupt practice as it amounted to bribery. The allegation in paragraph 7 (e) is almost to the same effect. It states that the 1st Respondent distributed money to voters at a campaign meeting at Sitwala School in order to secure their votes. I have looked at the two allegations under one umbrella and the allegation is premised on section 79(1)(a) and (b) of the Electoral Act.

The evidence to support these two allegations came from PW3, PW4, PW5, who is related to the 1st Respondent, PW10, PW11, PW13 and PW15. PW14 testified on the donation of money to Women's Clubs. I am compelled, regarding these two allegations, to once again point out that I am relying, for my decision, on the credibility of the witness since there is no formal evidence of receipts or other concrete documentary proof on the record, save for the word of the witnesses. The closest formal evidence on this allegation, is that of PW14, who is not conversant with numbers, for illiteracy, who testified that the Women's Clubs received the sum of K1,900,000 from the 1st Respondent through a Ms Mikosa and that that money was deposited into account. That notwithstanding, there were no bank records produced before the court to formally ascertain or verify this assertion, which brings us back to the issue of credibility of the witnesses.

The evidence of PW3 is that the 1st Respondent donated one hundred thousand Kwacha towards the construction of Lindole School, which donation was handed to RW4, who squandered it. RW4 was called as a witness and denied having received that money as alleged by PW3. The same witness, PW3, told the court that the 1st Respondent promised to make another donation, in like sum, after RW4 had squandered the first donation. The 1st Respondent does not challenge this particular aspect of PW3's evidence, leaving room for the benefit of doubt to be given to PW3. Chipango Kakoma, the young brother to PW3 is alleged to have been given money by the 1st Respondent, in the sum of K5,000 but since that person was

never called as a witness, the doubt regarding this particular claim has to be resolved in favour of the 1st Respondent. Added to this, is the fact that the Petitioner has not shown how the donation to one Women's Club for whom PW4 was the Treasurer affected the majority of the voters in the Lukulu West Constituency.

The evidence of PW4 is that she was given K25, 000 by the Respondent while her mother and her aunt were given K5,000 Kwacha and K10,000 respectively at Mitete. In cross examination, PW4 stated that the 1st Respondent told her that he had not seen PW4 and her relatives at his camping village and that was why he had followed them to their village, because he loved the entire village. PW4 further testified that after giving her and her relatives money, the 1st Respondent told them to vote for him, the son of Chief Situmbeko, on polling day. A perusal of the 1st Respondent's evidence shows that he makes a blanket denial of the Petitioner's allegations in her Petition while remaining mute on the very specific allegations such as those raised by PW4 that she and her relatives were given money at their village in Mitete, which confirms the allegation that the 1st Respondent conducted door to door campaigns during which he distributed money to voters to solicit their vote.

PW5 also makes reference to specific recipients of money such as Sangezo who was given K50,000. PW5, himself, stated that he received the sum of K20,000, Tuma received the sum of K20,000 while a Mrs. Mulyata benefited in the sum of K20,000. Although people mentioned were never called as witnesses, from my observance of PW5's demeanour, he did not strike me as being shrewd or astute enough to concoct and sustain a lie about the breakdown of the monies that were allegedly given to the named persons by the 1st Respondent. I therefore accept his evidence to be the truth. My view in this regard is consolidated by the fact that PW5 had no difficulty in admitting, in cross examination, that he was aware that receiving money to vote was wrong; but he still went ahead and received the money from the 1st Respondent, who was his uncle, because he (PW5) was a poor person. When asked why he did not report that act of bribery to the ECZ officials, this witness explained that it was because they wanted to fight with him. The evidence of RW13 that he met PW5 on his way home, and that there was some animosity exhibited by PW5 who appeared to be drunk, lends credence to PW5's claim that he

almost fought with the ECZ officials, if nothing else. Further, I find that the admission by the 1st Respondent and PW5 that they are relatives removes, unless for reasons not explained to the court, the motive for PW5 to lie about having received money, to vote, from the 1st Respondent, who is his relative.

The evidence of PW10 is that he was informed, by Headman Makwangala, that the 1st Respondent gave him some money in the sum of K150,000, on 16th September, 2011, to distribute to the voters who were in his village. This evidence was not confirmed by Headman Makwangala who, as the 1st Respondent rightly observes, was not called as a witness in this matter; and since PW10 was, himself, not a recipient of any money, I will not attach too much weight to this particular testimony. PW11 attended a meeting at Makwangala Village where he actually saw RW10, Twembuci Malikana, give K50,000 to some women and K100,000 to Headman Makwangala. This puts PW11 in better standing than PW10, who just heard from the said Headman Makwangala, that the 1st Respondent had distributed money. Since PW11 was actually present at the meeting where the said money was distributed, I am inclined to accept his evidence as being truthful, especially as this witness' further evidence is that he was even given a piece of paper, by RW10, on which to write the names of the women who had not benefited from the K50,000 that was distributed, which RW10 has not satisfactorily challenged.

PW13 is another witness who testified that the 1st Respondent produced the sum of one hundred thousand Kwacha and gave it to some Headmen at Lindole. Headman Samukumbi allegedly received K20,000 as did Headman Lindole, Headman Bernard Kandolo and Headman Amos Kandolo . The remaining K20,000 was said to have been saved for Headman Amon Kamboyi, who did not attend the meeting. The 1st Respondent does not challenge this evidence, or that of the other witnesses who testified that he had distributed money, with any measure of vigour. Even the evidence of PW5 is not categorically refuted; as all that the 1st Respondent did was to evasively state that he could not give his relative money to vote for him, and that he had many relatives in Mitete. The evidence of PW15 also pertains to the distribution of money by the 1st Respondent at Mbangweta School. The amount of money

distributed is not mentioned; but that does not take away the fact of the distribution, which the 1st Respondent's witnesses have failed to successfully rebut.

By and large, I am satisfied that the Petitioner has proved the allegation of bribery as a corrupt practice undertaken by the 1st Respondent in the run up to the September 20th elections of 2011. Although the 1st Respondent has canvassed the issue that his was referred to as '*campaign ya njala*' or a '*hungry campaign*' in Cinyanja, it turns out, from the evidence on record that his campaign was not that 'hungry' after all, if he could afford to dish out money, however small the denomination, in a bid to win votes or buy the electorates' favour as testified by the Petitioner's witnesses. Notably, the 1st Respondent is the only one who has referred to his campaign as such, in his evidence. It is also curious, confirming that the 1st Respondent paid money to solicit people's votes in the Lukulu West Constituency, that none of the witnesses in this Petition have alluded to the Petitioner having given out money to the electorate. This status quo lends weight to the Petitioner's claim that unlike the 1st Respondent, she played fair in her campaigns. I am satisfied that the 1st Respondent offended section 79 1(a) and (c) of the Electoral Act.

Moving onto the other allegations in the Petition, paragraphs 7 (f), (h), (i), (s) (l) and (t) which allege mismanagement of the election by the 2nd Respondent, the record clearly shows that the 2nd Respondent concedes that voting commenced late in some Polling Stations; such as Kalumbwa and Sipuma but states that voting hours were duly extended to make up for the late start. This evidence has not been disputed by the Petitioner or any of her witnesses. Furthermore, the 2nd Respondent equally concedes that voting took place on 21st September in most parts of the Lukulu West Constituency; but that this was undertaken within the confines of Section 29 of the Electoral Act which allows for the postponement of election dates.

The view that I take of this is that while it may have had a negative impact on the Petitioner, the same is true about the 1st Respondent. He also suffered the same inconvenience in that regard. Any delay or postponement of the election also affected the 1st Respondent; and since the Petitioner has not adduced any evidence to show, in what specific way those developments, or that dereliction of duty affected her, I find myself constrained to sustain this

allegation. It is not enough to complain that people who turned up to vote on 20th September 2011 left and never returned to vote the next day, without showing how this was a particular disadvantage to the Petitioner. A vote is secret and there is no way of knowing or telling that the people who abstained or stayed away from voting would all have voted for the Petitioner. I, therefore find that this allegation must fail; as the Petitioner has failed to prove the specific and particular individual disadvantage that she suffered as a result of the late voting at some Polling Stations, or, indeed the postponement of elections to the following day which was 21st September.

I also note that the Petitioner complained that the voting was re-scheduled to days which were not Public Holidays and that this disenfranchised some voters as they had to return to work. There is no evidence on record proving or suggesting that the majority of the voters in the Lukulu West Constituency were in formal employment and, as such, failed to vote on a working day. Further, it is quite improbable, in my view, that a person in formal employment would face instant dismissal upon showing proof that they were exercising their constitutional right to vote.

The best remedy, for lack of a better term, that I can offer is simply to urge the 2nd Respondent to put its house in order and to learn, from past mistakes, how to conduct elections with more efficiency in those parts of the country where there are challenges such as remoteness, the nature of the terrain and other reasons, some of which I am sure the 2nd Respondent is aware of. I would have to agree with the Petitioner's observation that the 2nd Respondent was very much aware of the nature of the terrain in Lukulu West and, having conducted elections in that area before, it should have been more prepared in terms of logistics such as transport. Having said that, I do not find that these flaws or lapses by the 2nd Respondent amounted to conducting the election outside of the law, or that they went to the general integrity of the system as laid down in the Akashambatwa Mbikusita Lewanika and Others Vs FTJ Chiluba case.

The Petitioner has not adduced any evidence in support of paragraph 7(f) of the Petition, which is that the 2nd Respondent only distributed ballot papers and polling materials in areas where the 1st Respondent had distributed money and maize, such as at Mbumi, Mitete, Kakulunda and

Chinonwe Polling Stations and, as such this allegation also fails. With regard to paragraph 7 (g), PW12 conceded that his papers were of accreditation were not in order. The Petitioner, in cross examination, also conceded that it is not the duty of the 2nd Respondent to ensure accreditation of Polling Agents. This being the case, it is difficult to appreciate how the Petitioner can hold the 2nd Respondent liable for the failing of her Agent to produce proper documentation to perform the functions of a Polling Agent; especially since PW12 did not attend any of the Workshops organized the 2nd Respondent to enlighten people of their expected duties as Polling Agents. I take cognizance of the fact that it was submitted that this witness came from a remote area, and that the only Commissioners of Oaths were the Election Officials who were only available on the election date. It is, however, still my considered view that had this witness attended any of the 2nd Respondent's workshops, he would have been better placed to know what his rights and obligations as a Polling Agent were. This allegation cannot, therefore, be sustained.

The allegation at paragraph 7(j) of the Petition has not been proved either, from the glaring lack of evidence in that regard. The Petitioner has not mentioned who was involved in the alleged campaign and instructing of voters to vote for the 1st Respondent only, contrary to section 88 (1) (e) of the Electoral Act, making it difficult for this court to attach weight to this allegation. Of the Petitioner's witnesses, it was only PW6 who testified that he heard some noises coming from outside Katebe Polling Station, which sounded like '*chwee chwee chwee*', which was the MMD's campaign slogan. But even he did not see who it was that made those sounds, hence the failure of this allegation. Paragraph 7 (k) has not been proved and neither has paragraph 7 (l). Even though evidence has been led, with regard to paragraph 7 (k), to the effect that PW5 saw RW13 with a Voters' Register barely hundred metres away from Katebe Polling Station, that evidence does not show or prove how that disadvantaged the Petitioner. The same goes for paragraph 7 (l).

It is alleged that eleven voters were assisted, by the 1st Respondent, to cast their votes, but the people who were inside the Polling Station do not confirm this. All there is on record is that the 1st Respondent was allowed into Polling Station to take food to his supporters. PW6 testified

that he saw the Polling Assistant assisting eleven people to vote, but he does not state that he saw the 1st Respondent do that, as alleged in paragraph 7 (l), which, too, must fail. Paragraph 7 (m) of the Petition has not been substantiated as the evidence on record does not suggest that the majority of voters were told that the 1st Respondent was the son of Chief Situmbeko; nor does the evidence on record show that the people voted for the 1st Respondent by reason of his claimed parentage. Indeed, even if PW4 stated that she believed Mr. Lemba when he said that the 1st Respondent was the son of the Chief, hers cannot be said, from the evidence on record, to be a representative opinion of the large majority of the voters in Lukulu West and neither can that claim be said to have disadvantaged the Petitioner. Furthermore, the Petitioner, herself, in her evidence testified that the 1st Respondent's claim that he was the Chief's son was not true, since to her knowledge, he just came from that area. Interestingly, the Petitioner, herself, did not refute the allegation that she had links to Chief Akabati, meaning that even she could have been said to have had an advantage of being linked to royalty. In this regard I take comfort in the case of **Simasiku Namakando Vs Eileen Imbwaie Appeal No. 108 2007** in which the Supreme Court refused to upset the judgment of the lower court disregarding an allegation that the Petitioner had been paraded as the daughter of Chief Akabati, as the disadvantage to the Appellant was not proved. I therefore find that this particular allegation did little to change the course of events in that regard, and must fail.

The Petitioner alleged under paragraph 7 (n) of the Petition, that the 1st Respondent instructed Headmen to write letters to voters telling them that they would be banished from the area if they voted for the PF. This evidence was supported by PW16. Further, there are letters exhibited at pages 17 to 29 of the Petitioner's Bundle of Documents written in Luvale. The English versions of those letters, which are at pages 22 – 25 of the same Bundle of Documents are very strongly worded and express quite unflattering sentiments about the Petitioner. Significantly, the Respondent made no overt denial of PW16's evidence and, having observed the belligerent and almost hostile demeanour of RW7, Headman Geoffrey Kakulekule, as he admitted to having authored the subject letters, I have no doubt in my mind that he intimidated PW16 and had undue influence on him and other persons, in his area, deemed to

be sympathetic to the Patriotic Front at the time of the election, if the subject letters are anything to go by.

RW7 being a Village Headman and senior in hierarchy to PW16 and his subjects, the evidence of PW16 that he was scared into ceasing his activities of setting up PF branches in Kalondolondo cannot be outrightly dismissed as being without substance. The fact that the 1st Respondent polled more votes than the Petitioner in Kalondolondo serves to give credence to the fact that the fears of PW16 and his subjects were not unfounded. I must point out that although this allegation is not baseless, I do not hold it to have affected the majority of the electorate in Lukulu West because the evidence that has been adduced is specific to a particular area, namely Kalondolondo.

Paragraphs 7 (o), (r), (u) and (v) of the Petition have not been proved by the evidence on record and I therefore find it to be unnecessary to analyze them in any depth as that would be academic and of no consequence. I am, however obliged to comment on paragraph 7 (p) which the Petitioner and other witnesses mentioned in their testimony. The Petitioner stated that the distribution of maize by the 1st Respondent and his Agents greatly disadvantaged her in that the playing field was not level, but was tilted in favour of the 1st Respondent who was a member of the then Ruling Party. Several witnesses mention the distribution of relief maize and, having weighed the evidence before me, it is my view that indeed the Petitioner and her supporters had every right to be alarmed at what can only be called the 'sudden generosity' of Government in distributing relief maize three times to the Lukulu West Constituency which received relief maize once a year, according to the evidence on record, if it was fortunate or sometimes not at all.

However, the letters accompanying the distribution of that relief maize, which were authored by the then District Commissioner for Lukulu, Mr. Siisii, make no mention of the 1st Respondent and neither do the witnesses mention seeing the 1st Respondent personally distributing the maize. I accept that the 1st Respondent told the voters at some of his campaign meetings, such as at Mbangweta School, as per the evidence of PW15 and that of PW13 at Lindole, that he was

responsible for the distribution of relief maize and that he even mentioned the number of bags of maize that had been delivered to some areas in Lukulu West.

I also accept that it is very easy to dangle the bait of food to hungry people in order to win a vote from them. However, the lack of evidence showing the personal involvement of the 1st Respondent makes it difficult for this court to sustain this allegation. The view that I take of this evidence is that MMD, to which the 1st Respondent belonged, used its powers of incumbency to try and secure votes in Lukulu West, by distributing relief maize which it had the mandate and machinery to do, three times. This was a clever ruse and one would stretch it to say, perhaps, a cheap tactic employed by the MMD to use the delivery of relief maize as election bait on people who were in desperate and genuine need of food. Telling the voters that the Republican President loved them and that they should vote for the MMD on polling day was just an extension of the whole ruse. However, this does not entail that the 1st Respondent should be held personally accountable, seemingly unjust as this may be, for the collective wrongdoing of his political party because the issues before me do not pertain to the MMD as a whole during the election. The allegations are specific to the 1st Respondent as an individual member of the MMD, as was evident from the allegation of maize distribution. I say this bearing in mind some of the observations of the Supreme Court in the case of *Akashambatwa Mbikusita Lewanika and Others Vs FJT Chiluba* regarding the general integrity of elections.

Having carefully and critically considered the evidence before me, and drawing guidance from the case of *Michael Mabenga Vs Sikota Wina and others*, I find that the Petitioner has successfully proven the allegation of the illegal practice, by the 1st Respondent, of publishing a false statement and the corrupt practice, by the 1st Respondent, of buying of votes or bribery to the required legal standard for Election Petitions. Having found this, I ask myself whether the conduct complained of by the Petitioner is such that it prevented the majority of the electorate from voting for a candidate of their choice and so affected the result of the election to warrant the same to be nullified, and I find that I must answer this question in the affirmative. Being branded a thief to the electorate, when there is no justifiable cause for so doing is injurious and can certainly influence the electorate to withhold their vote against a person so accused. It

does not need to be emphasized that trust is a fragile commodity which once shattered, may never be fully regained. I offer the unsolicited advice that assuming office through backstabbing, character assassination and any other unorthodox means deserves to be frowned upon and discouraged in the strongest terms. This kind of conduct is an affront to democracy, good governance and moral decency and any person who assumes office through such means deserves no respect. Indeed, any person who vies for political office must be upright, fair minded and must legitimately earn the trust and confidence of the people who he or she intends to represent and serve.

On the strength of the Mabenga Vs Sikota Wina and Others case, I find merit in this Petition and I annul the election of the 1st Respondent as Member of Parliament for Lukulu West on the basis that the election was not free and fair, on account of the illegal and corrupt practices carried out by the 1st Respondent and/or his Agents, which the Petitioner has successfully proven. The reliefs sought by the Petitioner, as outlined in her Petition all succeed, save for that for a scrutiny of the ballots cast in the poll; which is inconsequential under the circumstances. Because the Petitioner's allegations against the 2nd Respondent have not been proved to the required legal standard, I condemn only the 1st Respondent in costs, to be taxed in default of agreement. Leave to Appeal is granted.

Delivered in Open Court at Lusaka this 22nd day of March, 2012

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Emelia P. Sunkutu
High Court Judge

