

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
(CONSTITUTIONAL JURISDICTION)
AT LUSAKA

2011 /HP/EP/53

IN THE MATTER OF:

Article 72(1)(a) of the Constitution of the Republic of Zambia
And

IN THE MATTER OF:

Section 93(1) of the Electoral Act, Number 12 of 2006

IN THE MATTER OF:

The Vubwi Parliamentary Constituency Elections held in Zambia on the 20th day September 2011

BETWEEN:

VINCENT ISAIAH MWALE
And

EUSTARCKIO KAZONGA
THE ELECTORAL COMMISSION OF ZAMBIA

Petitioner

1st Respondent
2nd Respondent

Before Hon. Madam Justice Emelia P. Sunkutu

For the Petitioner:

Mr. K. M. G. Chisanga, Messrs K M G Chisanga Advocates

For the 1st Respondent:

Mr. S. Sikota, SC with Mr. C. T. Sinkala, Messrs Central Chambers

For the 2nd Respondent:

Mr. S. K. Nkandu, State Advocate

JUDGMENT

Cases referred to:

1. Sakala Vs Cheelo (1979) ZR at page 99
2. Wisambi Vs Matai (1979) at page 29
3. Mlewa Vs Wightman (1995 – 97) ZR at page 171
4. Batuke Imenda Vs Alex Cadman Luhila Appeal No. 5 of 2003 (SCZ)
5. Levison Mwaba Vs Peter Daka, Appeal No. 8 of 2003 (SCZ)

6. Harry Sinkala and ECZ Vs David M Mukwasa ECZ/180/2002

Legislation referred to:

1. The Constitution, Chapter 1 of the Laws of Zambia
2. The Electoral Act, November 12 of 2006
3. The Electoral (general) Regulations, Statutory Instrument Number 92 of 2006

Works referred to:

1. Blacks' Law Dictionary, 9th Edition
2. Election Officers' Handbook (2011) Electoral Commission of Zambia

This is the Election Petition of Vincent Isaiah Mwale who was a Parliamentary Candidate, under the Patriotic Front, in the Vubwi Constituency election held on 20th September, 2011. The Petitioner is challenging the election of Dr. Eustochio Kazonga, who contested the Vubwi Parliamentary Seat under the Movement for Multiparty Democracy and was declared duly elected by the Electoral Commission of Zambia, which is sued as the second Respondent in this matter. The Petition is made pursuant to Section 93(1) of the Electoral Act, Number 12 of 2006, and alleges the following:

That contrary to the declaration by the Returning Officer that the Respondent was duly elected, the said Respondent was not validly elected for the following reasons, namely:

During the days prior to the polling date, the Respondent so conducted himself in a manner that was designed to promote or procure his own election in contravention of the Regulation made under the Electoral Act, Number 12 of 2006, 4.2 Between 20th August and 16th September, 2011 the Respondent procured the services of the Block Supervisor for Vubwi District to go around the Cooperatives for the sole purpose of campaigning for the Respondent and the Movement for Multiparty Democracy, the party by which the Respondent was sponsored.

The Respondent further abused his privileged position as the former Minister of Agriculture when he and his agents went around the Constituency in the course of making misrepresentations to the electorate that if they did not vote for the Respondents, they would not be given fertilizer for the farming season of 2011/2012.

The Respondent and his campaign team misrepresented the voters around the Constituency that if the Petitioner's party was voted into office, all fertilizer subsidies and the maize buying programme under the then Government would be abolished and that those who had delivered their maize would not receive their payments;

These events greatly placed the Respondent at an advantage as compared to other Candidates because agriculture forms the major economic occupation among the electorate of Vubwi Constituency.

The Respondent, through the members of the MMD, spent a large part of their campaign collecting voters' cards around the Constituency and gave assurance to the people who surrounded their voters' cards that they would have the same returned to them during voting and that for the people who would vote for the MMD, they would return, be handed cash of up to twenty thousand Kwacha (K20,000) per person.

The Petitioner states that in the election referred to in paragraph 1 hereof the following persons, besides himself, there were other candidates namely, the Respondent herein EUSTARCKIO KAZONGA one HERBERT BANDA and one MARGARET MITI and the Returning Officer one MWABA LUBASI declared the Respondent as being duly elected.

The said Returning Officer declared the results of the Parliamentary Elections as follows:

1. Eustachio Kazonga MMD 5,807 votes
2. Herbert Banda UPND 1,114 votes

3. Vincent Mwale PF 826 votes
4. Margaret Miti INDEPENDENT 258 votes

The Petitioner averred that contrary to the declaration by the Returning Officer that the Respondent was duly elected, the said Respondent was not validly elected for the following reasons, namely:

During days prior to the polling date the Respondent so conducted himself in a manner that was designed to promote or procure his own election in contravention of the Regulations made under the Electoral Act Number 12 of 2006;

Between 20th August and 16 September 2011 the Respondent procured the services of the Block Supervisor for Vubwi in the District of go around the Cooperative for the sole purpose of campaigning for the Respondent and the Movement for Multiparty Democracy the part by which the Respondent was sponsored.

The Respondent further abused his privileged position as the former Minister of Agriculture when he and his agents went around the Constituency in the course of making misrepresentations to the electorate that that if they did not vote for the Respondent they would not be given fertilizer for the farming season of 2011/2012;

The Respondent and his campaign team misrepresented to the voters around the Constituency that if the Petitioner's party was voted into Office all fertilizer subsidies and the maize buying programmes under the then current Government would be abolished and that those who had delivered their maize would not receive their payments;

These events greatly placed the Respondent at an advantage as compared to other Candidates because agriculture forms the major economic occupation among the electorates of Vubwi Constituency.

The Respondent through the members of the MMD were spent a large part of their campaign time collecting voters cards around the Constituency and gave assurance to the people who surrendered their voters cards that they would have the same returned to them during voting and that for the people who would vote for the MMD they would in return be handed cash of up to K20,000.00 per person.

On the date of elections the Respondent through the instrumentality of his agents and/or party cadres was involved in practice of handing out chitenge material and cash to voters in exchange of the voters undertaking to cast their votes for the Respondent and the Presidential Candidate for the MMD.

During the course of campaigns the Respondent and his team went round the areas which they perceived were strongholds of other Political Parties, especially the Patriotic Front with threats that they would close the maize collecting depots and these threats only ended when the Petitioner informed the Respondent's agents that the Petitioner would take up the matter with the Electoral Commission but the Petitioner reasonably believed that by the time of his intervention a mindset of fear had already been created among the voters;

On 22nd August 2011 one Nyirenda a District Commissioner for Chadiza made donation of cheque payments to some fourteen women groups in the Constituency and made a specific order on the beneficiaries to cast their votes in favour of the Respondent and the Presidential Candidate for the MMD or else no more moneys would be made to the clubs;

During the campaigns the Respondent and his team repeatedly used inflammatory language when referring to the Petitioner and the Presidential Candidate of the PF.

The Respondent and his team repeatedly urged the electorate to vote for the MMD Candidate because both the Petitioner and the PF Presidential Candidate were foreigners who had

dangerous programmes to bring about war, to annihilate the elderly in Society, to stop the distribution of Anti Retroviral Medication and to introduce homosexuality in the Country.

On the date of elections some voters who were in possession of valid voters' cards were being turned away on the ground that their names were missing in the register;

On the said polling day the Respondent and his team ferrying voters to and from the polling stations in Chipanje and Chisiya wards in a system that was highly selective as voters were being enticed to get onto the MMD vans in exchange of them agreeing to go and cast their votes for the Respondent and his Presidential Candidate;

The Polling Station at Nakoma remained open until about 22.00 hours and this allowed the Respondent who had motor vehicles purchased by his party to ferry voters to the station thereby disadvantaging the Petitioner;

Wrong ballot papers belonging to Chama Polling Station had been delivered to Chigawe Polling Station and this disadvantaged a good number of voters who elected to return home without voting while those who did vote had to endure long hours of waiting.

The Respondent used the Constituency Development Fund to grade roads during the campaign period in a manner and style that was calculated to sway the electorate into thinking that the Respondent had genuine intention to bring development to the Constituency in unison with what almost all MMD Candidates around the Country were doing;

The Respondent knew at the time of engaging in the activities outlined in the foregoing that the acts and speech attributable to him are prohibited by the Electoral Act and the Regulations made thereunder;

The Respondent and his agents employed substantial Government resources then at their disposal to vigorously campaign and this swayed the people's mind leading to failure on the part of the electorate to choose a candidate of their choice.

The Petitioner averred that as a consequence of the aforesaid practices and false statements attributed to the Respondent and his Election Agents and Campaign team the majority of the voters in the affected areas and/or polling stations were prevented from electing a Candidate in the Constituency whom they preferred;

The petitioner prays for the following:

- (a) A declaration that the election of the Respondent as a Member of Parliament for Vubwi Parliamentary Constituency is null and void;
- (b) A declaration that the illegal practice committed by the Respondent and/or his agents so affected the election result that the same ought to be nullified;
- (c) An Order that the costs occasioned by the Petition be borne by the 1st Respondent.

The numbering of the paragraphs above has been retained as presented in the Petition for ease of reference.

The 1st Respondent filed an Answer to the Petition on 20th December, 2011 in which he stated that contrary to the Petitioner's claim in paragraph 4.1 of the Petition, the election was valid and he was the duly elected Member of Parliament for the Vubwi Constituency. In the Answer, the 1st Respondent denied all the allegations contained in the Petition, averring that he would put the Petitioner to strict proof at trial on each allegation. The 1st Respondent prayed for the following:

- a) A declaration that the election was neither void nor a nullity and that the election results be upheld as true and accurate.

- b) A declaration that the 1st Respondent was duly elected as the Member of Parliament for Vubwi Constituency.
- c) That the court finds that the Petitioner is not entitled to any of the reliefs that he seeks and that the Petition be dismissed with costs.

The 2nd Respondent filed an Answer into court on 19th December, 2011 in which it stated that the Vubwi Parliamentary elections held on 20th September, 2011 were contested by Eustrckio Kazonga of the MMD who polled five thousand, eight hundred and seven (5,807) votes, Herbert Banda of the United Party for National Development (UPND) who polled one thousand, one hundred and fourteen (1,114) votes, Vincent Mwale of the Patriotic Front (PF) who polled eight hundred and twenty-six votes and Margaret Miti, an Independent Candidate who polled two hundred and fifty eight thousand votes. According to the 2nd Respondent, there were a total of three hundred and thirty two (332) rejected ballot papers.

The 2nd Respondent stated that the Returning Officer declared the first Respondent Eustarckio Kazonga as the duly elected Member of Parliament for Vubwi Constituency, having received the highest number of votes cast. The 2nd Respondent denied the allegations in paragraph 4 of the Petition, which specifically related to the 1st Respondent. Paragraph 4.8 was also denied by the 2nd Respondent who averred that it would put the Petitioner to strict proof at trial concerning that allegation. Along with paragraph 1, 2 and 3 of the Petition, the 2nd Respondent admitted that Nakoma Polling Station remained open until 22.00 hours, but added that the late opening was due to the fact that some ballot boxes arrived late from Chipata necessitating the Polling Station to be opened at 10.00 hours in the morning, and that the late closure of the Polling Station was to compensate for the late opening and did not favour any particular Candidate. The 2nd Respondent also stated that it would aver, at the trial of the Petition, that nine (09) Parliamentary ballot booklets for Chigwe Polling Station contained Candidate portraits for the Choma North Constituency instead of Candidates for Vubwi Constituency. The nine booklets were withdrawn and correct booklets were obtained from other Polling Stations which had

surplus ballots. This, the 2nd Respondent averred, did not favour or disadvantage any particular Candidate. The 2nd Respondent stated that the Petitioner was not entitled to the reliefs.

The hearing of this Petition took place at Chipata. This was to accord witnesses who may otherwise have been unable to do so to attend at court nearest to the places where they came from. The Petitioner's evidence was that he was adopted as a Candidate, by the Patriotic Front to contest the Vubwi Constituency Parliamentary Seat in the September, 2011 tripartite elections. He told the court that he had brought this action to court in order to air his grievances on what happened during the September 2011 elections. He began by stating that up to Polling day, and a few months before the campaigns, Vubwi Constituency was marred with a lot of malpractices by the 1st Respondent and his campaign team, and that these malpractices started before the campaign period and were calculated to mould the minds of the people to vote for the 1st Respondent.

The Petitioner told the court that the 1st Respondent engaged some civil servants, like the Agriculture Block Supervisor for Zozwe and the office of the District Commissioner in Chadiza to help woo more votes for himself. The 1st Respondent did this by engaging the Block Chairman, through the Constituency Chairman, who was a politician, to give him what were termed developmental programmes to give to one Douglas Mwiing when those programmes were actually campaign ones.

The Petitioner further testified that Vubwi was an agricultural area with a lot of cooperatives and Douglas Mwiinga (PW8 in this matter) was responsible for the distribution and selling of maize to the Food Reserve Agency (FRA). Further, that issues of fertilizer were crucial ones in Vubwi, which was dependent on Agriculture as its mainstay. The 1st Respondent and his team took advantage of this and planned for the campaigns in such a way that Mwiinga could tell the people that if they did not vote for the 1st Respondent, then they would not sell their maize. According to the Petitioner, this strategy had a very strong impact on the people and motivated them to vote for the 1st Respondent. The Petitioner added that by his calculations, there were

about one hundred and two (102) Cooperatives and about fourteen (14) Women's Clubs in the vubwi Constituency and they had very large membership. The Petitioner told the court that when Douglas Mwiinga was going around saying all that to the people, he was funded by the first Respondent.

Moving on, he Petitioner told the court that another malpractice that was carried out was the 1st Respondent gave Village Headmen some money so that they could tell their subjects to vote for him. In particular, the 1st Respondent gave some money to Headman Kalikangwe II, Headman Chikoma II, Headman Menyani, Headman Kwelani, to mention but a few.

Another malpractice by the 1st Respondent and his campaign team was that he used the services of the District Commissioner, through his campaign team, to issue cheques of two million Kwacha (K2,000,000.00) each to Women's Clubs in the Vubwi Constituency. The Petitioner stated that he could not remember the names of the Women's Clubs to whom money had been given. He proceeded with his testimony by stating that when handing out those cheques, the District Commissioner said the money was for developmental programmes, even though he used to be in the company of a group or team of people who would tell the recipients of the cheques to vote for the 1st Respondent. The Petitioner added that in fact, the District Commissioner was in the campaign team of the 1st Respondent which included the MMD Constituency Chairman, Vincent Mbewe and a woman called Rosalyn Daka who was sent to Vubwi, from Lusaka, to campaign for the 1st Respondent. According to the Petitioner even unregistered Clubs were given money by the District Commissioner who was not even the one who should have been making the payments to the Women's Clubs. The person responsible for making the payments was the Assistant Development Officer for Vubwi Robert Chimwamutaba, who was prevented from doing his job by being sent on forced leave at the instigation of the 1st Respondent. The Petitioner told the court that he had intended to complain to the 2nd Respondent, the Electoral Commission of Zambia, about this malpractice but did not do so because his fellow Parliamentary aspirant, Margaret Miti (PW2 in this matter) to whom he spoke about the issue wrote a letter of Complaint over the same to the 2nd Respondent.

The Petitioner told the court that apart from not responding to Margaret Miti's Complaint, the 2nd Respondent made a lot of mistakes during Polling day. For instance, a lot of voters were turned away at Mbozi Polling Station on the ground that they had not had their details updated in the Voters' Register. Secondly, Chigwe Polling Station had the wrong Parliamentary Ballot Papers. As such a lot of voters did not vote at Chigwe and, at Mbozi where the correction of the Voters' Register was done very late. The Petitioner also told the court that the 1st Respondent and his campaign team organized vehicles to carry voters to and from Polling Stations and that the 1st Respondent gave the voters money in exchange for their vote. Another malpractice conducted by the 2nd Respondent was that Nakoma Polling Station opened very late and closed around 22.00 hours, which disadvantaged the Petitioner greatly.

In his further testimony, the Petitioner told the court that Vubwi Constituency was in a rural area where traditional beliefs were very strong and the 1st Respondent and his team campaigned against him on tribal lines saying that he was a Tumbuka from Lundazi who would not bring any development to the area. This was to the detriment of the Petitioner.

Further to this, the 1st Respondent and his campaign team were using the issue of homosexuality, which was very much a taboo in the rural areas, to campaign against the Petitioner. They told the people that the PF party president was preaching homosexuality. The 1st Respondent and his campaign team also told the electorate in Vubwi that there would be war in Vubwi if they voted for the Petitioner and the PF would kill the elderly in society and withdraw the provision of anti-retroviral drugs from those needing them. The Petitioner told the court that all this disadvantaged him, greatly, as a Parliamentary aspirant under the PF, especially because Vubwi had at one time experienced civil war on the border with Mozambique.

The Petitioner concluded his testimony by telling the court that at one time, the 1st Respondent party members were collecting voters' cards for unknown reasons, as per paragraph 4.3 in the

Petition. The Petitioner asked the court to nullify the results of the elections of 20th September, 2011 and prayed for costs.

In cross examination, the Petitioner stated that he emerged second last in the elections and that he did not manage to poll a thousand votes. He also admitted that the votes in his favour were less than ten per cent of the votes cast in the Vubwi Constituency Parliamentary elections and that those were the first elections that he was contesting. The Petitioner stated that he had read the Electoral Code of Conduct and was well versed with it. He further stated that he had an Election Agent and was aware that Election Agents were registered with the 2nd Respondent; and that the 1st Respondent's Agents would have had to be accordingly registered. The Petitioner stated that he was not aware if the District Commissioner was registered as an Election Agent, or whether Douglas Mwiinga was registered as an Election Agent for the 1st Respondent. On further prompting, the Petitioner conceded that the Block Supervisor for Zozwe and the District Commissioner could not both have been registered Electoral Agents. The Petitioner stated that he was aware of the existence of the District Conflict Management Committee but did not lodge any Complaint with that Committee. The Petitioner admitted that bribery was not just an electoral offence but was also a criminal offence. He also admitted that he was not present when any of the alleged conduct occurred but just heard about it some four months or so prior to the start of the campaign period. The Petitioner stated that the person who told him about the happenings in the Vubwi Constituency, which led him to complain about the election of the 1st Respondent, was Margaret Miti, PW2. The Petitioner also heard about some of the alleged misconduct from a Mr. Nicholas Phiri, who was not called as a witness in the matter. On the issue of Village Headmen being given money to persuade their subjects to vote for the 1st Respondent, the Petitioner told the court that he heard about that from Headman Kalikongwe II.

The Petitioner reiterated that he did not complain, to the 2nd Respondent, about the distribution of cheques by the District Commissioner for Chadiza because he was waiting to hear from PW2 as to whether or not the 2nd Respondent had responded to her complaint on

the same issue. The Petitioner stated that wrong ballot papers were never used in the election. He stated that he did not see the 1st Respondent ferrying voters to Polling Stations. The Petitioner conceded that any delay in voting would have equally affected the 1st Respondent.

In re-examination, the Petitioner maintained that he attributed his bad performance in the election to the misconduct of the 1st Respondent and his Agents.

The second witness for the Petitioner, **PW2**, was **Margaret Miti**. Her evidence mainly centered on the injustices she says she suffered at the hands of the 1st Respondent and his party, the MMD, which resulted in her deciding to withdraw her candidature as an Independent candidate in the Vubwi Constituency Parliamentary elections. PW2 told the court that she was previously a member of the MMD but, due to pressure from the electorate for her to contest the Vubwi Parliamentary seat, she successfully filed her nomination as an Independent Candidate on 12th August, 2011. However, after she did that, she was summoned to State House by the then Republican President and was requested to withdraw her candidature in the Vubwi Constituency elections because the 1st Respondent was not a desired candidate in the area and could not successfully contest the election if she also contested. According to the witness, the Head of State was essentially requesting her to support the candidature of the 1st Respondent; in order for him to be elected as Member of Parliament for Vubwi.

It was the further testimony of PW2 that on 6th August, 2011, she received a phone call from her nephew informing her that the Head of State wanted to see her at Mchinji in Malawi. At that time, PW2 was at her mother's village in Vubwi. PW2 told the court that the driver who was sent to collect her was instructed to take her to Chipata and that the vehicle which he was driving had foreign number plates. PW2 was taken to a place on the outskirts of Chipata; where she found the 1st Respondent and some MMD provincial and district party officials, namely Harrison Banda, the MMD Provincial Chairman, Mr. Sam Thole, the MMD Vice-Provincial Chairman and a Mr. Chibisa Banda, a nephew of the former Head of State, waiting for her. PW2 was put under pressure and told not to contest the Vubwi seat but to instead support the

candidature of the 1st Respondent.

When PW2 asked why she had been lied to, that the Republican President wanted to see her, she was told, by Mr. Thole, that the PF was going to be in Vubwi that day and they had information that she was about to defect from the MMD to the PF. That was the reason why she had been summoned by the 1st Respondent and others so that they could impress, upon her, the need to support candidature of the 1st Respondent.

In continuing her testimony, PW2 stated that on the same day, she received a phone call from Major Richard Kachingwe who was the National Secretary for the MMD telling her to go back to Vubwi and support the 1st Respondent. Eventually, PW2 succumbed to those calls. In what she calls circumstances in which she was forced to do so, PW2 joined the campaign team of the 1st Respondent. The witness added that she was told that it was the Republican President who had issued the instructions that she join the 1st Respondent's campaign team. PW2 testified that after she had joined the 1st Respondent's campaign team, she went around the Vubwi Constituency with him, campaigning on his behalf.

PW2 testified that during the campaign meetings, to which she was always accompanied by two women, one of whom was called Regina Phiri and was a member of the MMD, she (PW2) would address the electorate. PW2 told the court that at those meetings, people would be told that if they wanted to vote for PW2, as their preferred candidate, they would have to first vote for the 1st Respondent; and if he won the election, then PW2 would be the one to continue with the projects in Vubwi. According to PW2, these pronouncements were made at places like Mbozi, Chikoka, Vubwi Centre and Chigwe. PW2 informed the court that the 1st Respondent was not allowed to speak at those meetings. He would just greet the people and then sit down and that was always the pattern of the 1st Respondent's campaign meetings. PW2 told the court that when she was a Parliamentary candidate for Vubwi Constituency, she enjoyed massive support but due to the pressure that she received from the 1st Respondent and his

Agents, she decided to withdraw her candidature as an Independent Candidate and to throw her weight behind the candidature of the 1st Respondent, against her will.

It was PW2's further testimony that she received information from Catherine Tembo, PW4, to the effect that the District Commissioner had been issuing out monies to clubs and at those meetings where donations were made, the people were asked to vote for the 1st Respondents and the area Councillor Kennedy Phiri. PW2 added that the donations were made at Kanjuchi, Nyakhoma, Mbulukwa and some other places that she could not remember. PW2 told the court that the donations to the Women's Clubs were made during the campaign period and she complained about these activities to the 2nd Respondent on 25th August, 2001 but she had not received any response up to the time of trial of the Petition. PW2 concluded her testimony by emphasizing that she had been forcibly put on the 1st Respondent's campaign team.

In cross examination, PW2 stated that she withdrew her candidature on 29th August 2011 because she feared for her life, upon which threats had been made. The witness stated that she could not report the threats to her life because she could not report the Head of State who was in charge of the Police. PW2 reiterated that she was summoned to State House and interrogated for four hours and added that she could not report the threats on her life to the Police because they were verbal. She had no tangible evidence upon which to make such a report. Still in cross examination, PW2 told the court that what she called the Chipata Hostage took place on 6th August, 2011 and she was in terrible fear of the events that transpired on that day. PW2 also referred to the fact that she believed that she believed that the position of District Commissioner was one which did not warrant the holder thereof to engage in the activities that he participated in prior to the September 2011 elections.

PW2 told the court that she campaigned for the 1st Respondent from 1st September, 2011 after she had been forcibly asked to do so and that throughout the time that she was campaigning, she was with two women, one of whom was Regina Phiri. These women were guarding her, although they did not sleep in the same house as PW2. The gist of PW2's complaint against those

two women was that she felt imprisoned by their presence around her all the time. PW2 reiterated that cheques were given to the Women's Clubs during the campaign period and that she complained about this to the 2nd Respondent which declined to entertain that complaint. The witness stated that her standing as an Independent Candidate was as a result of pressure from the voters; who had wanted her to contest the Vubwi Parliamentary seat.

PW2 admitted that she withdrew her candidature very late, which did not allow the 2nd Respondent to change the ballot papers. PW2 told the court that she was aware that the ballot papers were printed in South Africa. Pw2 also admitted that her letter of complaint to the 2nd Respondent was not accompanied by any supporting documents.

In re-examination, PW2 stated that she it was difficult for her to tell anybody about her circumstances from 1st September 2011 to 18th September 2011, the period she was campaigning for the 1st Respondent, because she was dealing with the Head of State, who was the head of the security wings and whichever state organ she dealt with was linked to the Head of State. PW2 reiterated that that was the reason why she was scared for her life.

PW3 was Given Miti. He told the court that on 13th August, 2011, late in the afternoon of that day, he attended a meeting at Mbande Basic School, which was addressed by the 1st Respondent. At that meeting, which was opened by the MMD Constituency Chairman, Mr. Vincent Mbewe, the people gathered were told that it was a developmental, and not political, meeting. Mr. Mbewe told the people that he would ask the 1st Respondent to make some remarks and requested the people to be very attentive to what the 1st Respondent would say. After Mr. Mbewe's remarks, the 1st Respondent took the floor and greeted the people. He told them that it was an election year and they should vote for someone who would assist them. PW3 told the court that the 1st Respondent added that, as Minister of Agriculture, issues of fertilizer were in his hands and the people of Vubwi did not need to worry. The 1st Respondent urged the people gathered to vote for him, and not the Petitioner. Thereafter, Mr. Douglas Mwiinga, the Block Supervisor (PW8), was called upon to address the meeting.

Mr. Mwiinga spoke to the people about the concerns that they had, such as the late opening of the maize marketing season, payment modalities to the Food Reserve Agency and whether the Fertilizer Support Programme was still in existence. He told the people that the Government was going to give each farmer four bags of fertilizer instead of eight, which, according to PW3 surprised them because the 1st Respondents had told them that the Government would give them eight bags of fertilizer. Mr. Mwiinga also told the people that the Cooperatives and Women's Clubs should cooperate and work together; so that there could be development in Vubwi. It was PW3's further testimony that Mr. Mwiinga also told the meeting that he had heard that some farmers were complaining that their maize would not be bought. He assured them that Government was buying maize even though the maize storage sheds were full and there were still some stacks of maize from the previous season.

PW3 told the court that after Mr. Mwiinga had spoken, there was a question and answer session, during which the people were invited to ask questions. However, the people were discouraged from asking any questions. This was because of the attitude of Mr. Mbewe, towards one farmer, David Tembo, who wanted to know whether what Mr. Mwiinga had said about Government buying maize was true. According to PW3, when Mr. Tembo asked that question, Mr. Mbewe told him not to ask 'silly questions'. After that, no one else asked any questions.

In cross examination, PW3 told the court that the meeting had mainly discussed developmental issues, but at some point, the 1st Respondent had stood up and asked the people to remember the Government that was assisting them with fertilizer. The 1st Respondent thereafter asked the people to vote for himself, as Member of Parliament, for Mr. Rupiah Banda as President and for the area Councilor, Kennedy Phiri.

The next witness, **PW4**, was **Catherine Tembo**. She was called to testify on the allegation of the donation of cheques to Women's Clubs. PW4 told the court that on 25th August, 2011, she attended a meeting, which was convened by the District Commissioner for Chadiza. At that

meeting, the people were informed that there were some visitors, belonging to the MMD, in attendance and one of them, Rosaria Ngoma, would address the meeting. When Ms Ngoma was invited to speak to the people, she told them that the Government had decided to give the women some money since they were struggling with their husbands. Ms Ngoma asked the people to vote for the Ruling Party and for the 1st Respondent and Mr. Rupiah Banda. Ms Ngoma further stated that the people should not to vote for Mr. Michael Sata because, if they did so, there would be war in the country and women would start marrying other women while men would marry other men. Further, that there would be no fertilizer available to the people of Vubwi. Ms Ngoma urged the people to vote for the Government which already had fertilizer. After Ms Ngoma's address, the District Commissioner stood up, spoke to the women and then donated cheques, to the Women's Clubs, in the sum of two million Kwacha (K2,000,000) each. PW4 collected a cheque for the Good Hope Women's Club in her capacity as the club's Treasurer.

In cross examination, PW4 reiterated that the people at the meeting convened by the District Commissioner were told not to vote for the PF because there would be war and homosexuality if they did so.

The next witness, **PW5**, was **Irene Banda**. Her evidence was similar to that of PW4 in that she told the court that she attended a meeting which was convened by the District Commissioner and addressed by Mr. Mbewe. According to this witness the meeting was also attended by MMD officials such as Ms Susan Ngoma, Mr. Graciano Mbewe, Ms Rosalyn Daka and Mr. Kennedy Phiri. Mr. Vincent Mbewe told the people that the meeting was a developmental and not political one. After he had spoken, Ms Ngoma also spoke to the people. She told them that women should be willing to engage themselves in developmental issues as the Government had given the women money in the sum of two million Kwacha (K2,000,000) to use in their clubs.

It was PW5's further testimony that after Ms Ngoma finished speaking, Rosalyn Daka also addressed the meeting. She told the people that if they voted for the PF, there would be

problems in Vubwi. Ms Daka added that if the people voted for the Petitioner or Mr. Sata, there would be war in the country and the women would suffer because they would have to flee with young children. Ms Daka urged the people to vote for the 1st Respondent, Mr. Rupiah Banda and Mr. Kennedy Phiri. It was PW5's further testimony that Ms Daka also told the people that if they voted for the PF, there would be homosexuality, which was a taboo. After MS Daka had finished speaking, the District Commissioner presented cheques to Women's Clubs.

In cross examination, PW5 stated that she had not attended any other meeting at which the District Commissioner gave out cheques.

The next witness for the Petitioner, **PW5**, was **Sipilato Mvula**, also known as **Headman Menyani**. His evidence was that in September, 2011, he attended a meeting at Mlabe Basic School. That meeting was convened by the 1st respondent. PW6 told the court that when the meeting started, the 1st Respondent asked for forgiveness from the people for not visiting them often. He also asked for their vote. PW6 told the court that after the meeting, the 1st Respondent asked to see the Headmen separately in one of the classrooms at the school. The Headmen, twenty in number, duly met with the 1st Respondent after the meeting. When he met the Headmen, the 1st Respondent pleaded for their forgiveness and then produced some money, four hundred thousand Kwacha (K400,000) to be exact. The Headmen shared that money equally amongst themselves, getting twenty thousand Kwacha (K20,000) a piece. PW6 told the court that he personally received the four hundred thousand Kwacha from the 1st Respondent and that some of the Headmen who received that money included Headman Moffat and Headman Chimulobwa.

In cross examination PW6 refuted having gone to Radio Breeze, with other Headmen of Vubwi, to denounce the 1st Respondent. He did, however admit that he had asked the MMD leadership to consider fielding the Petitioner as a Parliamentary candidate for the Vubwi Constituency, and not the 1st Respondent. PW6 stated that he did this because there was no development going on in the area. He added that since the 1st Respondent went to Lusaka after being elected

Member of Parliament, he only returned to Vubwi to ask for forgiveness and to campaign for re-election. The witness added that he preferred the Petitioner as a Parliamentary candidate because the 1st Respondent had frightened him by saying there would be no fertilizer in Vubwi if people voted for the PF. PW6 further stated that he still strongly believed that there would be development and things would improve in Vubwi if the Petitioner were to be the area Member of Parliament and that he could do anything in his power to ensure that the Petitioner became member of Parliament.

PW6 was uncertain as to when exactly he attended the meeting convened by the 1st Respondent, at one point contradicting himself by stating that he spoke to the Petitioner in August, 2011 about the September 2011 meeting that he had attended. The witness eventually conceded that his memory was not very good and that he could remember neither the date of the meeting nor any of the people who were present at that meeting, except Headmen Moffat and Chimulombwa. In further cross examination, PW6 stated that he told his subjects to vote for the 1st Respondent not because he was the preferred candidate, but because of the threat that there would be no fertilizer distributed to Vubwi if the people did not vote for him.

PW7 was Robert Chimwamtaba. He testified that he was the Community Development Assistant (CDA) in the Ministry of community development and Social Services; Mother and Child Health Services and that his role, among others was to facilitate Gender and Development activities. He explained that the facilitation of those activities included mobilizing the women to form clubs for social and economic empowerment. PW7 told the court that he also facilitated under the self Help Programme and the Food security Pack Programme. In relation to this Petition, PW7 stated that on 26th July, 2011 he went to Chipata to assist the Nyakhoma Women's Club to deposit a cheque in the sum of five million Kwacha (K5,00,000), which was donated to them by the Ministry of Community Development and Social services.

PW7 further testified that on his way back to Vubwi, the car that he was travelling in developed a mechanical fault near Shanganani in Chief Mpezeni's area. As the car was being attended to,

another vehicle came and stopped nearby. In that vehicle, whose registration number was GRZ 609 CF, was Mr. Peter Nyirenda, the District Commissioner for Chadiza, Ms Mweeba the District Intelligence Officer, Mr. Christon Ngoma, the Acting District Social Welfare Officer for Chadiza and Ms Susan Mumba, the District Community Development Officer (DCDO), who was also PW7's supervisor, among others. Ms Ngoma called PW7 to their vehicle and told him that the 1st Respondent was not happy with his conduct and that he (PW7) should appear before the people that were in that vehicle, in Chadiza without fail. On 20th August 2011, PW7 has a meeting with Ms Susan Mumba, Ms Catherine Lungu and Mr. Christon Ngoma. At that meeting Ms Mumba informed PW7 that the 1st Respondent had telephoned her and told her that PW7 was not doing well in the area and ought to be removed from the Vubwi Constituency. Ms Lungu similarly informed PW7 that she, too, had received a telephone call from the 1st Respondent telling her that he was annoyed with PW7, who was conducting himself very badly. Ms Lungu added that she too was told that PW7 should be moved out of Vubwi immediately.

PW7 told the court that in that meeting, he recalled threats earlier issued to him by the 1st Respondent; at a meeting he had convened on 23rd March, 2011. At that meeting, the 1st Respondent had told PW7 that he had been tracking him for some four months and had discovered that he was 'doing politics' and that if he did not stop his activities in the Vubwi sub centre, the 1st respondent would flush him out of the Constituency. PW7 told the court that, on instructions from the 1st Respondent, he was intimidated by his superiors and was eventually forced to go on leave. PW7 to PW7, he duly enquired as to why he was being given twenty nine (29) days' leave when he did not qualify for leave at that time and was told, by Ms Mumba that it was important that he proceed on leave because his life was in danger. PW7 was advised to take leave on the pretext that he was going to study at the National Institute of Public Administration (NIPA) in Lusaka. PW7 told the court that he carried out the instruction to proceed on leave under threat to his life.

Continuing with his testimony, PW7 told the court that the threats he experienced took various forms. In one incident, he woke up to find four posters stuck on some *Melina* trees which were

at the entrance to his home. The posters, which were professionally written, carried messages denouncing the 1st Respondent. According to PW7, whoever stuck those posters outside his home wanted it to appear as he had put them up. PW7 reported that incident to the Police. PW7 told the court that the 'political threats' continued with two women who were members of the MMD approached him, purporting to be members of Women's Clubs. PW7 told the court that it was at that point that he saw that the situation of threats was getting out of hand and decided to seek refuge with in Lundazi at Emusa Sub - Centre. He only returned to Vubwi after the election results, on 23rd September, 2011.

In cross examination, PW7 stated that he was not responsible for the registration of Women's Clubs, but reiterated that he was responsible for facilitating the formation of Women's Clubs in Vubwi and had to ensure that the Clubs applied for Registration Certificates. He did, also, maintain that the Women's Clubs had to go through his office for registration formalities, and that that explained his association with the Women's Clubs and what he was doing in Chipata on 26th July, 2011. PW7 denied having taken part in politics or conducting himself in a manner unbecoming a civil servant.

PW7 stated that he reported the 1st Respondent's threats to his supervisor and not to the union to which he belonged. The witness told the court that he made a verbal report of the intimidation, but the person that he reported to did not tell him what they did about the report. PW7 indicated that he did not know whether any of the people that he had referred to in his testimony would be called to court as witnesses.

The next witness for the Petitioner, **PW8**, was **Douglas Mwiinga** who was the District Agricultural Block Supervisor for Vubwi. He testified that his duty was to supervise Camp Officers in the Block. These Officers were Government employees who used to train farmers to conduct agricultural field days and shows. PW8 told the court that on 13th August, 2011, he attended two meetings which were addresses by the 1st Respondent. One of the meetings was to take place at Chikoka and the other one at Mbande. PW8 stated that he had received

communication, earlier, about the two meetings from Mr. Vincent Mbewe, the MMD constituency Chairperson for Vubwi. At the first meeting at Chikoka, Mr. Mbewe told the people gathered that the meeting was a developmental and not a political one and that the people were free to air any concerns that they had concerning the development in the Vubwi. He added that any questions pertaining to agricultural activities would be answered by PW8.

PW8 told the meeting that when Mr. Mbewe had finished speaking, the floor was handed over to the area Councillor who spoke about the developmental projects that were being undertaken in the area and also some challenges relating to agriculture. The challenges spoken of included the delay in opening the maize marketing season, the payment modalities to the FRA and whether the fertilizer Support Programme was still on going and the number of bags of fertilizer that each farmer was supposed to get that farming season. When the Councillor concluded his address, the 1st Respondent also spoke to the people gathered. He spoke generally on developmental issues, that were raised by the area Councillor, such as agricultural development and other challenges affecting the people. When the 1st Respondent had concluded his address to the people, PW8 was surprised to hear him make some political remarks to the effect that the people should not forget the Government that was looking after them and that they should vote for the 1st Respondent, the Republican President and the area Councillor. PW8 told the court that this made him very uncomfortable because the people had been told that the meeting was a developmental and not a political one. When the 1st Respondent finished his address, PW8 was called upon to address some of the people's concerns. He spoke about the changes that had been made during the 2011 maize marketing season, especially regarding payments to farmers and the efforts to assist small scale farmers.

PW8 testified that the meeting at Mbande took the same format. The speakers spoke in like order with Mr. Mbewe opening the meeting, which, he assured the people was a developmental and not political one. The 1st Respondent spoke about these developmental issues, mainly concerning agriculture. PW8 added that when the 1st Respondent finished speaking, just before resuming his seat, he reminded the people of the need to vote for their

own, that is to say himself and the area Councillor in order for the development of the area to go on. It was PW8's further testimony that a question and answer session followed the 1st Respondents and the people asked questions; mainly about agriculture. Just as had been the case at the meeting at Chikoka, the people raised concern about maize marketing modalities, the Fertilizer Support Programme and also the registration of Co-operatives Societies.

In cross examination, PW8 reiterated that the political statements, made by the 1st Respondent, made him uncomfortable because as far as he was concerned, those meetings of 13th August, 2011 should have been developmental ones. After having made an earlier statement to the contrary, PW8 told the court that he was aware that Civil Servants were not supposed to engage in politics. The witness stated that he did not prepare reports on the two meetings as he did not find it necessary to do so and the reason for this was that he was not forced to attend the meetings, which he did not believe, initially, would be political. PW8 categorically denied having been engaged or procured by the 1st Respondent to go around Vubwi Constituency campaigning for him. PW8 reiterated that after the meetings, he informed Mr. Mbewe that he was uncomfortable with the remarks that had been made, by the 1st Respondent because they would give a general view or impression that he had been campaigning for the 1st Respondent; when in fact not.

PW9 was **Alex Sakala**, also **Headman Chikoma II**. He testified that in September, 2011, the 1st Respondent convened a meeting in Chikoma II Village. Present with him were two women, whom he (PW9) could only remember as Regina and Abigail. PW9 further testified that after that meeting, the 1st Respondent requested to see the Village Headmen separately and, since the meeting had been held in his village, PW9 offered his house as the venue for the meeting with the Headmen. At that meeting, which was attended by twenty (20) Village Headmen, the 1st Respondent told the Headmen that he had come to ask for their vote as they had seen the development that he had spearheaded in the area, particularly in agriculture. The 1st Respondent also appealed to the Headmen to mobilize their subjects to vote for him. Thereafter, he produced an envelope, which contained the sum of four hundred thousand

Kwacha (K400, 000), and gave it to Headman Kalikongwe II. The money was shared equally among the Headmen who were present at that meeting, with each getting twenty thousand Kwach (K20,000).

In cross examination PW9 stated that those who attended the separate meeting for Headmen included Headman Kalikongwe I, Headman Chimpunga, Headman kamusekelo, Headman Tenje, Headman Mbonjera and Headman Mukundika II and that they were present when the money handed out by the 1st Respondent was distributed. PW9 also stated that he was among the Headmen who went to Radio Breeze to complain about the adoption of the 1st Respondent as a Parliamentary Candidate for the Vubwi Constituency. He added that the Headmen gave many reasons why they did not want the 1st Respondent to be adopted as a Parliamentary Candidate but that they did not suggest PW2 or any other names to the MMD for adoption. PW9 told the court that his position had now changed and that he now wanted the 1st Respondent to be the area Member of Parliament. Rather belligerently, PW9 stated that there was no reason why he had changed his mind about wanting the 1st Respondent to be the Member of Parliament for Vubwi.

Still in cross examination, PW9 stated that Village Headmen were supposed to non-partisan; but he and the other Headmen had gone to Radio Breeze to complain about the 1st Respondent's candidature at the request of their subjects, who were complaining that the 1st respondent was not assisting them as their Member of Parliament. PW9 further stated that the headmen wanted the MMD to adopt someone other than the 1st Respondent to be a Parliamentary Candidate because he never used to visit Vubwi. PW9 added that he could not recall the date of the meeting at his house, and neither was there a record of that meeting.

The next witness for the Petitioner, **PW10**, was **Christopher Phiri**, also known as Headman Kalikongwe II. His evidence was similar to that of PW9. He told the court that sometime in September, 20ii, on a date that he could not recall, he attended a meeting, at Chikoma II Village, convened by the 1st Respondent and that after that meeting, Headmen were given

some money by the 1st Respondent. As PW9 had done, this witness told the court that the 1st Respondent held a meeting for Village Headmen, at the house of Headman Chikoma II. The Headmen who attended that meeting included Tenje, Moffat II, Kalabe, Mukundika , Chikoma I, Kamnyenga I, Kamnyenga II, Chimpunga, Meja, Muzebe, Kalikongwe I, Kalikongwe II and Chitimbe II.

Continuing with his testimony, P10 told the court that during that meeting, the 1st Respondent asked the Headmen for their vote and also requested them to ask their subjects to vote for him, as one of their own. Thereafter, the 1st Respondent produced the sum of four hundred thousand Kwacha, from an envelope, and gave it to PW10 to distribute equally among the Headmen who were present at that meeting.

In cross examination, PW10 stated that he could not remember the date when the meeting at which the 1st Respondent gave money to the Headmen took place. All he could remember was that it was during the campaign period in September, 2011. The witness also stated that he was one of the people who went to denounce the 1st Respondent at Radio Breeze and Radio Maria and that he and the other Headmen, who went to those two Radio Stations urged the MMD not to adopt the 1st Respondent as a Parliamentary Candidate for Vubwi. He added that he was compelled to urge the MMD not to field the 1st Respondent as a Parliamentary Candidate at the request of his subjects. PW10 also stated that he could not recall when the people of his village gathered to complain about the 1st Respondent not assisting them. PW10 told the court that on his part, he went and told his subjects to vote for the 1st Respondent after he had received the money that was distributed to the Headmen. PW10 further stated that he put the money that he had been given by the 1st Respondent to his own use and did not give any of it to his subjects.

The last witness for the Petitioner, **PW11**, was **Assan Ziwa**, also known as **Headman Mphonde**. His evidence also related to the allegation that the 1st Respondent distributed money to Village Headmen in Vubwi. PW11 testified that in September, 2011, he attended a meeting convened

by the 1st Respondent at Chipanje Basic School. At that meeting, the 1st Respondent told the people gathered that if they did not vote for him, then they would not receive any fertilizer. Further, that if the people voted for Mr. Sata, they would be voting for war and homosexuality and that people on anti-retroviral treatment would not be availed the drugs. It was PW11's further testimony that, after the meeting, the 1st Respondent called the Headmen that were present at that meeting aside, into a classroom. There, he knelt down, asked for the Headmen's forgiveness and begged them to solicit for votes, for him, from their subjects. At the end of the meeting, the 1st Respondent produced the sum of four hundred thousand Kwacha (K400,000), which he gave to the Headmen to share equally amongst themselves. The 1st Respondent thereafter left. PW11 concluded his testimony by stating that, after he had received the money that the 1st Respondent gave to the Headmen, he went back to his village and asked his subjects to vote for the 1st Respondent.

In cross examination, PW11 maintained that the 1st Respondent held a meeting at Chipanje Basic School in September, 2011. He added that that meeting was attended by nineteen (19) Headmen who included Milimbo, Nyumbu, Mbambara, Chimuzimu, Mpwayi, Kapandula, Kondwani, Kalumphe, Kavilaba and Chimwendo. He stated that he told his subjects to vote for the 1st Respondent on a date different from that of the meeting at Chipanje. PW11 also maintained that the 1st Respondent had told the people at the meeting at Chipanje that if they voted for the PF, then there would be homosexuality, HIV/AIDs drugs would not be available and, in addition to that, there would be no fertilizer available in Vubwi. The evidence of PW11 marked the close of the case for the Petitioner.

The 1st Respondent took the stand as **RW1**. His testimony was that he applied to re-contest the Vubwi Constituency Parliamentary seat under the sponsorship of the Movement for Multi - party Democracy and that he was formally adopted as such on 19th July, 2011 by the National Executive Committee (NEC) of the MMD. The 1st Respondent told the court that on 12th August, 2011, he successfully filed in his nomination to contest the Vubwi Constituency Parliamentary seat.

It was the 1st Respondent's further testimony that, to his knowledge, he conducted his election campaign, together with his campaign agents, within the Electoral Code of Conduct. The 1st respondent told the court that he had a manifesto to sell to the electorate of Vubwi and that among the many issues that he discussed was the social delivery system of the MMD, that is to say, education, health and infra structure. Another issue discussed, which was close to the hearts of the people of Vubwi, was agriculture. The 1st Respondent told the court that he believed that he and his campaign team followed the provisions of the Electoral Code of Conduct, since his campaign was generally issue based. He added that, during his campaigns, he talked about what the MMD had done, what it was doing and what it would do if voted back into office.

The 1st Respondent further testified that his campaign team comprised Election Agents, Polling Agents and MMD Party Officials. In the 1st Respondent's campaign team were Mr. Katola Mwale, an Election Agent and Mr. Gabriel Mvula, another Election Agent. The senior party MMD party officials included Mr. Vincent Mbewe, Ms Regina Phiri, Mr. Philip Phiri and Mr. Paul Zulu. The 1st Respondent added that he also worked closely with local teams at Ward level. He told the court that Vubwi Constituency comprised ten wards, divided into two, namely the eastern side and the western side. Explaining further, the 1st Respondent stated that the eastern side was made up of Mbozi, Vubwi, Zozwe, Chimpanje and Chisiya Wards while the western side comprised Mwangazi, Khuma, Kavumo and Ambidzi Wards.

The 1st Respondent refuted all the allegations of corrupt practices and illegal practices alleged in the Petition. He told the court that the allegation under 4.1 was totally untrue because on 13th August 2011, he was in Chipata attending a rally that was addressed by the then Republican President. At that rally, all the MMD Parliamentary Candidates, for the Eastern Province, including the 1st Respondent were introduced to the electorate. The 1st Respondent told the court that he could not, therefore, have been at the meetings that the Petitioner's witnesses were alleging he addressed on that date.

The 1st Respondent denied having procured the District Agricultural Block Supervisor, PW8, to campaign for him. The 1st Respondent added that it was not unusual for him to be seen with PW8 because, as Minister of Agriculture and Cooperatives, he used to visit Zozwe Agricultural Block and would invite PW8 to meetings to talk about agriculture. The 1st Respondent testified that as soon as Parliament and Cabinet were dissolved and the election campaigns began, he did not involve PW8 in any of the campaign meetings that he held.

As regards the allegation that he distributed money to Village Headmen, the 1st Respondent told the court that, indeed, he held a meeting at Chikoma II Village in September, 2011. However, the meeting ended late, after 1800 hours and, because he had concluded his business there, the 1st Respondent was advised to leave immediately. The 1st Respondent told the court that since it was getting dark and he had to leave quickly, the allegation that he held a meeting with Village Headmen at Chikoma II Village was not true.

The 1st Respondent also totally refuted the allegation that he committed any malpractices at Chipanje Basic School. He told the court that he only held one campaign meeting in Mbozi Ward, where Chipanje Basic School is located; and that meeting was in September, 2011. The 1st Respondent, however, added that on 19th February, 2011, he held a public meeting at Chipanje Basic School; while he was still Minister of Agriculture and Cooperatives and it was clear, from his testimony, that PW11 had confused the two meetings. The 1st Respondent told the court that that was similarly the case with the meeting that he allegedly held at Mlabe Basic School. He categorically denied having held a meeting at that school during the campaign period, emphasizing that the only meeting he held there was in the early part of 2011, as part of his tours as a Minister. The 1st Respondent added that that was long before the dissolution of Parliament.

The 1st Respondent also refuted PW2's evidence that she had been forcibly placed on his campaign team, adding that she had a choice whether or not to accept to be part of his

campaign team. The 1st Respondent insisted that no one forced PW2 to join him on his campaign trail. The 1st Respondent told the court that he thought that PW2 believed in him as the choice of the MMD National Executive Committee for Parliamentary Candidate for Vubwi, and that was why she supported his campaign.

Regarding the evidence of PW7, which he similarly refuted, the 1st Respondent told the court that that witness' evidence had no basis because he (1st Respondent) had no control over Civil Servants and could not have orchestrated his going on leave, as alleged. Before concluding his testimony, the 1st Respondent told the court that the Petition allege that there were widespread election malpractices and yet, from the evidence of the Petitioner's witnesses, the allegations only concerned Mbozi Ward, Vubwi Ward and Mlabe Ward and three out of ten wards cannot be said to be widespread.

The 1st Respondent, in sum, told the court that he and his Agents conducted his campaign within the confines of the applicable electoral laws, and refuted all the allegations raised by the Petitioner.

In cross examination, the 1st Respondent told the court that he was re-contesting the Vubwi Parliamentary seat in the September, 2011 elections. He maintained that on 13th August, 2011, he was at a rally where he was introduced to the electorate as the MMD Vubwi Constituency Parliamentary candidate. The 1st Respondent parried any suggestion that he could have travelled from Chipata to Mbande and Chikoka after attending the Presidential Rally in Chipata on 13th August, 2011. The 1st Respondent also challenged PW8's evidence that he convened meetings at Mbande and Chikoka on 13th August, 2011; maintaining that after the dissolution of Parliament, he never involved PW8 in any meetings. The 1st Respondent also refuted the evidence of PW3 that and denied the allegation that he gave money to Village Headmen in order for them to solicit votes on his behalf. The 1st Respondent stated that he did not know why PW9 and PW10 had lied to the court in that regard.

Still under cross examination, the 1st Respondent maintained that had only held a meeting at Mlabe Basic School. He, however, revealed that he assisted Headmen at Mlabe with the sum of four hundred thousand Kwacha, and that soap and salt were distributed handed out to the people who attended the meeting he addressed at Mlabe, earlier in 2011 and prior to the dissolution of Parliament. The 1st Respondent maintained that PW2 was neither forced to withdraw her candidature as an Independent, nor forced to join his campaign. He reiterated that he had no control over PW7, but only advised him not to engage in politics as a Civil Servant. The 1st Respondent admitted that PW2 was a strong contender at the time of his adoption as Parliamentary Candidate for Vubwi Constituency.

In re-examination, the 1st Respondent basically re-affirmed the salient aspect of his evidence - in- chief and denied being involved, either by himself or his Agents, in any corrupt or illegal activities prior to or during the 20th September, 2011 elections.

The second witness, **RW2**, was **Regina Phiri**. She was called upon to counter the allegations under paragraph 4.1 of the Petition and also to testify on some general allegations, such as the meeting at Chikoma II. RW2 told the court that she was a member of the MMD and the National Executive Committee and that some time in August, 2011, she received a telephone call from PW2, requesting her to find a way of helping her to campaign for the MMD and the 1st Respondent. At the time of receiving the call, RW2 was at her farm and PW2 insisted that she needed to talk to her in person. So RW2 invited PW2 to her farm, which invitation PW2 took up. When she arrived at RW2's farm, PW2 restated her request for help in campaigning for the 1st Respondent. RW2 advise PW2 that she could not make any response to her request without consulting the MMD party leadership.

RW2 testified that she consulted the MMD National Secretary, Major Richard Kachingwe, about PW2's request and at some point, PW2 and RW2 travelled to Chipata; where they met with the MMD Provincial Chairman, Mr. Kennedy Phiri. Upon learning of PW2's desire to campaign for the MMD and the 1st Respondent, Mr. Phiri advised PW2 to write a letter to the 2nd Respondent

to communicate her withdrawal as an Independent Candidate for the Vubwi Constituency, which she did. Eventually PW2 started to campaign for the MMD and the 1st Respondent, in the company of RW2.

It was RW2's evidence that PW2 hosted her at her mother's village for the entire period that she was on the campaign trail with the 1st Respondent and she was, therefore, very surprised at the allegation that she had held PW2 hostage when, in fact PW2 was the one hosting her. RW2 refuted the allegation that PW2 was forced to join the 1st Respondent's campaign team, adding that she spoke well for the MMD and the 1st Respondent.

Regarding the meeting at Chikoma II, RW2 told the court that it was true that the 1st Respondent held a meeting at Chikoma II sometime between August and September, 2011 and that apart from the 1st Respondent she and PW2 also addressed that meeting. RW2 told the court that that meeting started quite late, at around 1600 hours. She added that the environment in which the meeting was held was not too conducive as some people appeared to be drunk. Consequently, the 1st Respondent was advised to leave soon after the end of the meeting at about 1800 hours. RW2 told the court that she did not remember the 1st Respondent holding any other meeting, with Village Headmen, after the close of the meeting at 1800 hours.

In cross examination, RW2 reiterated that PW2 asked for her help to rejoin the MMD and to campaign for the 1st Respondent, but refuted the allegation that PW2 was held hostage, that she was not free as she campaigned with the 1st Respondent and that PW2 had women guarding her during the campaign period. RW2 admitted being with PW2 during the campaign period but insisted that it was at the behest of PW2 herself, especially since PW2 offered her mother's home as a base from which to conduct campaigns on behalf of the MMD and the 1st Respondent. RW2 reiterated that PW2 was not forced to withdraw from the Parliamentary elections in Vubwi Constituency.

The next witness, **RW3**, was **Harold Tembo**. He was also called to counter the allegations under paragraph 4.1 of the Petition. This witness, who was the Head Teacher at Chipanje Basic School, told the court that the 1st Respondent did not hold any meeting at Chipanje Basic School in September, 2011. According to the witness, the last meeting that the 1st Respondent held at the school was on 19th February, 2011. He told the court that had there been a meeting in September, 2011, he would have known, because the school kept a record of all its visitors. RW3 added that he had brought the Visitors' Book to court as evidence that there was no record of a visit, to Chipanje Basic School, by the 1st Respondent in September, 2011. However, that book was not admitted in evidence as it was not formally before the court.

In cross examination, RW3 reiterated that the school maintained a Visitors' Book and kept a record of the names and the dates when people visited. RW3 maintained that there was no meeting held at the school by the 1st respondent because there would have been a record of his visit in the Visitors' Book.

RW4 was **Stephen Banda**, also known as **Headman Chigwe**. His evidence pertained to paragraph 4.1 of the Petition. He told the court that there was no meeting convened by the 1st Respondent, at Mlabe Basic School in September, 2011, but one had been held in February, 2011. RW4 testified that the meeting of February, 2011 had been about agricultural development and not politics. RW4 further testified that if anyone told the court that there was a meeting at Mlabe in September, 2011, at which the 1st Respondent gave money to Village Headmen, then that person would be telling lies. RW4 told the court that the February 2011 meeting was attended by some Headmen. He named them as Headmen Chimulomba, Sipani, Chithumba, Zalila, Moffat, Mphalephale, Nyamalinda, Msiya, Menyani, Pembamoyo, Suse, Chithonje, Mukundika, Jairos, Ndeketeya, Kabelenga, Mugulura, Chitsulo and RW4, himself.

In cross examination, RW4 maintained that there was no meeting at Mlabe Basic School in September. There had only been one in February, 2011 and that was a developmental and not a campaign meeting. RW4 told the court that the February meeting was the one that PW6 had

told the court about. RW4 told the court that he received the sum of nineteen thousand Kwacha (K19,000) from the 1st Respondent at the February, 2011 meeting. He added that the money was not just offered to him. He actually requested the 1st Respondent for it. RW4 explained that he asked for that money, which was given to him through Mr. Vincent Mbewe, because the Headmen who attended the meeting had complained of hunger as they had been at the meeting since morning. RW4 told the court that when he received the money, he distributed it among the twenty-one Headmen who attended that meeting and each got the sum of nineteen thousand Kwacha (19,000).

RW5 was Kingsley Zulu, also known as **Headman Kalikongwe I**. His evidence pertained to the allegations under paragraph 4.1 of the Petition, specifically the meeting at Chikoma II Village. He testified that some time in September, 2011, but on a date that he could not remember, he and some other Headmen attended a meeting at Chikoma II Village. The meeting started late in the afternoon and as he and the others were waiting, Headman Chikoma II, PW9, in whose village the meeting was held, asked the Headmen present, who were twenty (20) in number to go and wait at his home as it was not good for them to be waiting where they were. RW5 and the other Headmen accepted that invitation and went to PW9's home. At some point, they were informed that the 1st Respondent had arrived to address the meeting.

RW5 further testified that the meeting was opened by Mr. Vincent Mbewe, the MMD Constituency Chairman, who introduced some visitors to the area. Those introduced were RW2, PW2 and the 1st Respondent spoke first. She introduced the 1st Respondent as the MMD Parliamentary Candidate for the Vubwi Constituency. The next speaker was PW2. She told the people that she had withdrawn from contesting the Vubwi Parliamentary election as an Independent Candidate and had rejoined the MMD. After PW2's address, there was a Question and Answer session and by that time, the sun was setting. The meeting was closed shortly after that.

It was RW5's further testimony that after the meeting, the Headmen asked Mr. Vincent Mbewe if they could have audience with the 1st Respondent. Mr. Mbewe denied the Headmen the

audience sought; citing lack of time as the reason why could not see the 1st Respondent. RW5 told the court that when the Headmen were denied the opportunity to see the 1st Respondent, they all dispersed. He conclude his testimony by telling the court that if anyone told the court that the 1st Respondent held a separate meeting with Headmen at Chikoma II Village, and gave them some money, then that person would be telling lies.

In cross examination, RW5 confirmed that PW9 and PW10 attended the meeting at Chioma II Village. He also confirmed that PW2, RW2, Mr. Vincent Mbewe and the 1st Respondent all addressed the meeting, but that the 1st Respondent just spoke for a short while, only telling the people that he was the MMD Parliamentary Candidate for Vubwi. RW5 also stated that the meeting started at around 1600 hours and ended at around 1800 hours, as the sun was setting. RW5 reiterated that the Headmen requested to see the 1st Respondent after the meeting ended but were not allowed to do so. He added that the Headmen had wanted to see the 1st Respondent because he was an important visitor to the area and they had deemed it proper to ay good bye to him in person after the meeting.

Still under cross examination, RW5 stated that the 1st Respondent did not tell the Headmen to ask their subjects to vote for him. As RW2 had done, RW5 disclosed that some people at that meeting appeared to have been drunk, but added that there was police presence at that meeting and peace prevailed until the close of the meeting.

The next witness, **RW6**, was **Vincent Mbewe**. His evidence related to the allegations under paragraphs 4.1 and 4.2 of the Petition. The witness testified that he was a member of the MMD and had held the position of Vubwi Constituency Chairman for thirteen (13) years. He told the court that on 13th August, 2011, he received information from the MMD District Chairman, Mr. Harrison Banda, to the effect that he and the 1st Respondent were required to be in Chipata, on that day, because the Republican President was going to address a rally at which he would introduce all the MMD Parliamentary Candidates for the Eastern Province to the electorate. RW6 and the 1st Respondent duly attended that rally which was held at the Chipata Golf

Grounds. RW6 told the court that that meeting started at around 1600 hours and ended at about 1800 hours. According to RW6, the Republican President introduced all the MMD Parliamentary candidates for the Eastern Province, including the 1st Respondent.

Regarding the allegation that the District Commissioner for Chadiza had held a meeting during the campaign period, at which RW6 had spoken and the cheques had been distributed to Women's Clubs, RW6 told the court that he was never invited to any meeting convened by the District Commissioner. The witness stated that he had just happened upon a meeting on his way from seeing a patient at Chafulu Farms in Vubwi. RW6 narrated that as he was returning from Chafulu Farms, he met some women near the Police Station and asked them where they were going. They replied that they were going to attend collect some cheques from the District Commissioner and that the cheques had come from the Ministry of Community Development and Social Services. RW6 told the court that he decided to join the women as they collected the said cheques and that was how he found himself at that meeting, which was a developmental one. RW6 told the court that the meeting was held at Vubwi Basic School and was addressed by the District Commissioner, who told the women gathered that there would be a workshop to teach them how to use the money that they had received. RW6 recalled that one of the Women's Clubs that received a cheque from the District Commissioner was Nyakhoma and that the meeting ended between 1200 hours and 1300 hours. RW6 testified that if anyone told he court that he hand the District Commissioner had been campaigning for the 1st Respondent, the that person would not be telling the truth.

There were written submissions tendered on behalf of all the parties in this matter. I have very carefully considered the viva voce evidence of all the witnesses that testified in this election. I have read the documents that are on record, as well as the submissions filed into court on behalf of the Petitioner and the Respondents and I wish to express my gratitude to Counsel for tendering in written submissions for my attention.

It is a fact that the Petitioner and the 1st Respondent were both Parliamentary Candidates in the Vubwi Constituency Parliamentary Elections held on 20th September, 2011. It is also a fact that the Petitioner contested that Seat under the Patriotic Front (PF), a Political Party, while the 1st Respondent was a Candidate for the Movement for Multiparty Democracy (MMD), also a Political Party. It is similarly a fact that the 1st Respondent was declared the duly elected Member of Parliament for the Vubwi Constituency and it is that election that the Petitioner challenges.

I will, for the sake of clarity and sequence, address the allegations in the Petition in order of presentation. To this end, the numbering of the paragraphs will remain unchanged.

Perusal of the Petition shows that the allegations against the 1st Respondent are outlined in paragraph 4 of the Petition. The Petitioner alleges that during the days prior to the polling date, the 1st Respondent so conducted himself in a manner that was designed to promote or procure his own election contravention of the Regulations made under the Electoral Act, number 12 of 2006. The Petitioner, submits, that Sections 93(2)(a) and (c) of the Act of material importance to the Petition before this court. This Section provides as follows:

“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 –

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;
That any corrupt or illegal practice was committed in connection with the election by or with the knowledge and consent or approval of the Candidate or of the Candidate’s election agent or polling agent.

The general allegation referred to above is contained in paragraph 4.1 of the Petition. The specific allegations begin from paragraph 4.2 onwards. That paragraph states that between 20th August and 16th September, 2011 the Respondent procured the services of the Block Supervisor for Vubwi District to go around the Cooperatives for the sole purpose of campaigning for the 1st Respondent and the Movement for Multiparty Democracy, the party by which the Respondent was sponsored.

Evidence to support this allegation was led from the Petitioner, PW3 and PW8. The Petitioner testified that the 1st Respondent engaged himself in malpractices, together with his campaign team and engaged some civil servants like the Agriculture Block Supervisor for Zozwe, the among others, to help woo voters. Further that the 1st Respondent used to engage the Block Chairman, through the Constituency Chairman, who is a Politician, and give him developmental programmes to give to PW8 when in actual fact those developmental programmes were campaigns.

Expanding on this allegation, the Petitioner told the court that Vubwi was an agricultural area with a lot of Cooperatives. PW8 was responsible for the distribution and selling of maize to the food reserve Agency. Further, issues of fertilizer were of critical importance in Vubwi, since the area was dependent on agriculture for sustainability of their livelihoods. Because of this, the 1st Respondent and his team took advantage of the situation by procuring PW8 to tell the people of Vubwi that if they did not vote for the 1st Respondent, then they would not get any fertilizer, and neither would they be able to sell their maize to the FRA. The Petitioner contended that this had a very strong impact on the voters and motivated them to vote for the 1st Respondent. The Petitioner also alleged that when PW8 was going around the Vubwi Constituency saying all that, he was being funded by the 1st Respondent.

In cross examination, the Petitioner revealed that he was not personally present when the alleged misconduct of the 1st Respondent's use of the Block Supervisor to Campaign. He stated that he learnt about the Block Supervisor going round and campaigning some few months

before the campaign period; about four to five months prior to the start of the campaign period. The Petitioner told the court that PW2 was the person who informed him about the Block Supervisor going around the Vubwi Constituency campaigning for the 1st Respondent. He also gleaned this information from one Nicholas Phiri, who was not a witness in this Petition. Notably, PW2 made no reference to this allegation in her evidence in chief.

PW3's testimony was that he attended a meeting at Mbande Basic School on 13th August, 2011. The 1st Respondent was present at that meeting, as was PW8. That meeting started at 16.49 hours and ended at 18.00 hours and was opened by Mr. Vincent Mbewe, the MMD Chairperson for Vubwi Constituency. He welcomed the people and told them that the meeting was not about politics, but was about development. He added that PW8 and the 1st Respondent would address the meeting, after which he invited the 1st Respondent to speak. The 1st Respondent addressed the meeting and told the people not to vote for the Petitioner, but for him especially as he had been given the power to handle fertilizer.

PW3 further testified that after the 1st Respondent had spoken, PW8 also addressed the meeting on three issues. The first was that the Government was going to give each farmer four bags of maize, which surprised the people because the 1st Respondent had said they would be given enough fertilizer.

PW8 urged the Cooperatives and the Women's Clubs to work together in order to develop their area. Lastly, he assured the people who had complained that their maize was not being bought that Government was still buying maize from the FRA despite the maize storage sheds being full. PW3 told the court that one farmer asked PW8 whether the meeting was a political one but was told not to ask a silly question. According to PW3 the question was promoted by the fact that both the 1st Respondent and PW8 had spoken at that meeting which was dubbed a developmental one.

In cross examination, PW3 stated he informed the Petitioner about that meeting. He reiterated that there were just three speakers at that meeting, namely Mr. Vincent Mbewe, the 1st Respondent and PW8

The evidence of PW8, concerning the allegation under paragraph 4.2 that on 10th August, 2011 he was given a programme, by RW6, concerning the visit of the 1st respondent to Vubwi. RW6 informed him that the 1st Respondent would hold two meetings on 13th August and that he (PW8) should attend those meetings like he usually did. PW8 attended a meeting at Chikoka, where he met the 1st Respondent. Prior to that meeting PW8 had a discussion, with the 1st Respondent, concerning agricultural activities in Vubwi.

When the meeting started, RW6 informed the people gathered that the meeting was a developmental and not a political one; and that all questions pertaining to agriculture would be answered by PW8. According to PW8 various issues concerning agriculture were discussed at that meeting. These included the delay in opening the maize marketing season and the procurement of fertilizer under the Fertilizer Support Programme. PW8 testified that at some point during the meeting, the 1st respondent addressed the meeting. He spoke about developmental issues in general and also about the challenges that the area was facing. However, after he had finished speaking, the 1st Respondent reminded the people at that meeting that it was a year of elections and they were all supposed to support their own President, in reference to the then Republican President, Mr. Rupiah Bwezani Banda, who came from the east and also to support the Area Councillor so that development could continue. PW8 told the court that that statement made him uncomfortable because in his opening remarks, RW6 had indicated that that was a developmental meeting; and not a political meeting.

PW8 testified that after that meeting, RW6, the 1st Respondent and himself proceeded to Mbande. The 1st Respondent and RW6 travelled together in the 1st Respondent's vehicle while PW8 used his motor cycle. At Mbande, the meeting took the same format as the one at

Chikoka, with RW6 opening the meeting and assuring the people that it was a developmental and not a political one. The 1st Respondent addressed the people next and, as he had done at Chikoka, spoke about the developmental projects that were going on in that area. At the close of the address, the 1st Respondent spoke to the people on the need to vote for their own, that is to say the President, himself and the Area Councillor if development was to continue. After the 1st Respondent had spoken, PW8 took the floor and spoke about maize marketing modalities, the fertilizer Support Programme and the formation and registration of Cooperatives which were issues of concern raised by farmers in the area.

After the meeting, on his way back to Zozwe, PW8 told RW6 that he was not comfortable with the statements that were made at the meeting by the 1st Respondent. He added that the statements should not have been made as they gave the impression that he was on the 1st Respondent's campaign team and was campaigning for him.

In cross examination, PW8 stated that he considered the meeting to be political because of the statements that were issued and that was the reason why he did not make any report on the two meetings. He added that he did not write a report that he was faced or duped into attending a meeting because initially he was not forced. Those were mature meetings which he used to attend with the 1st Respondent and he took it that the meetings of 15th August 2011 would be like the previous ones. PW8 further stated that he was not aware, at the time that civil servants were not allowed to engage in politics, but he was very uncomfortable because he knew that civil servants were not supposed to engage in.

When pressed as to why he was making contradictory statements about his knowledge of Civil Servants not being allowed to engage in politics, PW8 stated that he had not explained that position clearly. The fact was that he was fully aware that they were not supposed to engage in politics (Civil Servants that is).

Still under cross examination, PW8 told the court that he attended the meetings in his capacity as Agriculture Block Supervisor. He also told the court that when the Petitioner approached him and told him that he had Petitioned the election of the 1st Respondent and that one of the issues was that he (PW8) Had been going round campaigning for the 1st Respondent, (PW8) he categorically denied having gone around campaigning with the 1st Respondent. PW8 added that if somebody alleged that between 20th August and 16th September, 2011 the 1st Respondent had gotten him to go round campaigning for him, then that person would be lying.

The allegation under paragraph 4.2 is very specific, and having outlined the evidence in support of that allegation, can it be said that the allegation has been proven to the required legal standard?

There are some celebrated cases which outline the standard of proof required to be met by the challenger of an election. In the case of Akashambatwa Mbikusita Lewanika, Evaristo Hicuunga Kambaila, Dean Namulya Mung'mba, Sebastian Saizi Zulu and Jennifer Mwaba Phiri Vs Frederick Titus Chiluba (1999) ZR, the Supreme Court said the following:

".....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 same principle was espoused in the case of Michael Mabenga Vs Sikota Wina, Wallace Mafo and George Samulela (2003) ZR at page 43 wherein the Supreme Court stated that:

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

A third case that gives very clear guidance on the standard of proof required for election petitions is that of Webster Chipili Vs David Nyirenda SCZ Appeal Judgment No. 35 of 2003 in which the Supreme Court said:

“.....the allegations of unimpropriety attributable to a Respondent in a Parliamentary election evidence before a court requires to be proved to a standard higher than a mere balance of probability”.

In the case in hand, the evidence of the Petitioner concerning paragraph 4.2 is all secondary. He did not witness the misconduct that is alleged. He was merely informed of that allegation by PW2, who makes no reference to that allegation in her evidence. It is thus clear that the evidence of the Petitioner on this allegation cannot be relied out of itself.

PW3 states that he was present at the meeting at Mbande School but he does not make mention of PW8 having been procured by the 1st Respondent to go around the Cooperatives in Vubwi for the sole purpose of campaigning for the Respondent. It must be noted, as I have observed, that this allegation is very specific. Witnesses would have to show how the 1st Respondent procured PW8 to tour Cooperatives solely to campaign for him. A scrutiny of the evidence of PW3, which I have considered quite thoroughly, does not support the allegation under 4.2.

It is not in dispute that the 1st Respondent and PW8 were together at the meeting at Mbande, whatever the confusion about the date; and it is similarly not in dispute that both the 1st Respondent and PW8 spoke at that meeting. However, RW3 does not state that he heard PW8 speak in the behalf of the 1st Respondent at that meeting, which would satisfy the allegation that he was campaigning for him, unless PW3 meant the court to take it that the more physical presence of PW8 at that meeting translated into him campaigning for the 1st Respondent. The standard of proof for election petitions being higher than that of ordinary civil cases, it follows that the evidence to support an allegation must meet that higher standard, which is not the

case for him or as PW3 put it to vote for someone who would assist the people'. May well be true, even though PW3 omits the name of this someone, especially since PW8 confirms that the 1st Respondent asked the people to vote for him the then President and the area Councillor at both meetings. However, since the allegation is that PW8 campaigned for the 1st Respondent, it makes it difficult to see how he could have achieved this without saying anything. PW3 as I have observed, does not say that PW8 said anything to support the 1st Respondent's request for a vote from the people. In fact, it is the evidence of PW3 that PW8 essentially poured cold water on the 1st Respondent's promise that Government would give the farmers more fertilizer; when PW8 told the farmers that they would each get four bags of fertilizer instead of the anticipated eight bags. It is clear that PW8's statement went against that of the 1st Respondent who had told the people that they would get more fertilizer only to have PW8 dash their hopes by telling them that they would get less.

It does not take any genius to figure out that the pronouncement that farmers would get less fertilizer could not have made them happy, considering the evidence that the mainstay of Vubwi is agriculture. Flowing from this, it cannot be said that PW8's statement boosted the 1st Respondent's campaign for election as Member of Parliament. In short, PW3's evidence does not prove that PW8 was campaigning for the 1st Respondent at Mbande. The 1st Respondent may certainly have been deemed to have been campaigning when he made the statements that caused discomfort to PW8 and from the evidence on record, I am inclined to accept that he did in fact make statements to that effect, but the allegation is that the 1st Respondent procured PW8 to campaign for him, which has not been proved from the evidence of the Petitioner and PW3.

As for PW8, himself, the record shows that he categorically denied having been procured to campaign for the 1st Respondent. He even adds that anyone who told the court that he campaigned for the 1st Respondent would be lying. The other issue that PW8 similarly categorical about is the fact that he was uncomfortable about the 1st Respondent's political statements at the close of his remarks on developmental issues. PW8 stated that he expressed

his discomfort to RW6 and told him that the 1st Respondent should not have made those remarks as it would give the impression that he was campaigning for the first Respondent. Having carefully weighed the evidence of PW8 in this regard, it is quite clear that he does not in any way admit to having campaigned for the 1st Respondent. He fears that his being at the two meetings where the 1st Respondent made political statements may have created the impression that he was campaigning. Needless to say that it cannot be said that actually campaigning and creating the impression that one is campaigning are one and the same thing. In this case, I find that PW8 did not campaign for the 1st Respondent within the confines of paragraph 4.2 of the Petition. This court is constrained to make a finding that PW8 was procured to campaign for the 1st Respondent when there is no evidence on record to make such a finding.

Still under paragraph 4.2, it is alleged that the 1st Respondent used his privileged position as the former Minister of Agriculture when he and his agents went round the Constituency and made representations to the electorate that if they did not vote for the 1st Respondent, they would not be given fertilizer for the farming season. It is further alleged that the 1st Respondent and his campaign team misrepresented to the voters around the Constituency that if the Petitioner's party was voted into office, all the fertilizer subsidies and the maize buying programmes under the Government then would be abolished and those who had delivered their maize would not receive their payments.

A look at the evidence of the witnesses specifically called to testify on paragraph 4.2 shows that their evidence does not prove these two allegations. Neither PW3 nor PW8 mention that they heard the 1st Respondent tell the electorate that those who voted for the Petitioner would not be given fertilizer for the 2011/2012 farming season. The Petitioner attested that the 1st Respondent took advantage of the issue of fertilizer so that PW8 could tell the people that if they did not vote for the 1st Respondent they would not get any fertilizer. This evidence is not substantiated and PW8, himself, did not refer to the allegation. All he said was that the farmers at the two meetings at Chikoka and Mbande were concerned about the delay in opening the maize marketing season and the payment modalities; and PW8's explanation appeared to have

been satisfactory as there is no evidence that anyone took issue with the same. PW8 told the court that the farmers wanted to know whether the Fertilizer Support Programme was still on, but he did not give the background to this concern and neither did he testify that the farmers at the two meetings told him that the FSP had been abolished or would be abolished if they voted for the Petitioner. As this allegation stands, it remains just that – an allegation which has not been substantiated.

The last part of paragraph 4.2 states that these events greatly advantaged the 1st Respondent as compared to the other Candidates because agriculture forms the major economic occupation among the electorate. I have already observed that the allegations under this heading have not been proven by the three witnesses called upon to give evidence in support thereof and, as such, the claim that the events greatly advantaged the 1st Respondent is untenable. Furthermore, the Petitioner refers to other Candidates, which he should not do as this is specifically his Petition before court.

Paragraph 4.3 alleges that the Respondent, through the Member of the MMD, spent a large part of his campaign collecting voters' cards around the Constituency and gave assurance to the people why they surrendered their voters' cards that they would have the same returned to them during voting and that for the people who would vote for the MMD, they would in return be handed cash of up to twenty thousand Kwacha (K20,000) per person.

Apart from the Petitioner, no one else testified that the 1st Respondent and his Agents collected voters' cards, but even then, the Petitioner makes a blanket allegation without referring to any particular individual. The lack of evidence to support this particular aspect of paragraph 4.3 means that it must immediately fail.

The second part of paragraph 4.3 alleges that people who would vote for the MMD after their voters' cards were returned would be given up to K20,000 per person.

In support of this, evidence was led from PW6, Headman Mponde. The evidence of all these Headmen was that they received some money from the 1st Respondent. PW6 told the court that the 1st Respondent dished out the sum of K400,000 to Headman in Mlabe Ward to be shared among twenty of them. He personally received the money from the 1st Respondent. PW9 testified that the 1st Respondent gave him and some other Headmen some money to share. According to this witness, the 1st Respondent gave PW10 the sum of K400,000 to distribute to the Headmen who attended a meeting at Chikoma II Village. PW10 told the court that the 1st Respondent held a meeting at Chikoma II Village and gave him K400,000 to distribute to the Headmen gathered there who included PW9. PW11 also told the court that the 1st Respondent gave some Headmen who attended a meeting that he convened at Chipanje School the sum of K400,000 to share.

None of these witnesses, however, testified that they were given that money after their Voters' Cards had been returned to them and they had voted for the MMD. This lapse alone renders it irrelevant for me to give any further consideration to paragraph 4.3 which I have observed is in two parts. Close scrutiny of this allegation reveals that the giving of the K20,000 according to the first part of 4.3 was dependant upon the recipients having voted for the MMD which, in turn, was consequent to their voters' cards having been collected by the 1st Respondent and his agents and then being returned. In short, my interpretation is that the 'gift' of K20,000 should have been an appreciation of a vote and since the meetings at which the said monies were given out took place before polling date, then it begs understanding how 4.3 can be sustained. I would ordinarily give careful analysis to all the evidence supporting an allegation, but as I have mentioned, it is not necessary to do so for this allegation which is unproven. The Petitioner has split hairs while overlooking the fact that an allegation must be considered and proven holistically. It serves no purpose to prove one part of an allegation leaving the remainder of it hanging and in this instance, the allegation is couched in such a way that for as long as the first part is not proven, then the second part of the allegation falls away.

Under paragraph 4.4 it is alleged that on the date of elections, the 1st Respondent, through the instrumentality of his Agents and/or party cadres, was involved in the practice of handing out chitenge material and cash to voters in exchange of the voters undertaking to cast their votes for the 1st respondent and the Presidential Candidate for the MMD.

Perusal of this record shows that there is not a single witness that was called to testify on this allegation and as such it remains an unsubstantiated allegation which deserves no consideration and must fail.

The Petition alleges, under paragraph 4.5, that during the course of campaigns, the Respondent and his team went around the areas which they perceived were the strongholds of other political parties, especially the Patriotic Front with threats that they would close the maize collecting depots and these threats only ended when the Petitioner informed the 1st Respondent's Agents that the Petitioner would take up the matter with the 2nd Respondent but the Petitioner reasonably believed that by the time of his intervention, a mindset of fear had already been created among the voters.

The only witness called to support this allegation was PW3. However, a close scrutiny of his evidence reveals that it makes no suggestion that Mbande, the place where the 1st Respondent held a meeting on 13th August, 2011 (even though date is in dispute) was a PF stronghold.

I take the liberty to observe that even if the said area party laws that preclude members of political parties from visiting areas in which their opponents have a dominant presence or popularity. Zambia is a free country, people are free to move from place to place unless they are specially prevented from doing so by reason of having broken the law.

Returning to the issue in hand, PW3 does not mention, in his evidence, that he heard anyone complain or state that the 1st Respondent had threatened to close down maize collecting depots. PW3 only told the court that when PW8 addressed the people, he told them that he

had heard that some farmers had been complaining that their maize was not being bought. PW8 had assured the people, in response, that Government was still buying maize. A Mr. David Tembo had then asked the 1st Respondent whether PW8 was telling the truth about Government still buying maize and the 1st Respondent had responded that it was true. From the foregoing, it is quite clear that PW3's evidence does not support the allegation under paragraph 4.5. Further, the Petitioner has not adduced any evidence to show that he conveyed his concerns about threats of closure of collecting depots to the 1st Respondent's Agents. In his evidence, he does not even mention the name of the person who he told that he would report the allegation threats to the 2nd Respondent. Lastly, the Petitioner has not demonstrated, through way of his witnesses how a mindset of fear had been created among the voters because of the said threats; and this being the case, I find that the allegation under paragraph 4.5 has not been proven and it fails.

In paragraph 4.6 of the Petition, it is alleged that on 22nd August, 2011 one Nyirenda, a District Commissioner for Chadiza made a donation of cheque payments to some fourteen women groups in the Constituency and made a specific order on the beneficiaries to cast their votes in favour of the 1st Respondent and the Presidential Candidate for the MMD or else no more monies would be made (available) to the Clubs.

The evidence to support this allegation was led from PW2, PW4 and PW5. The evidence of PW2, in relation to this allegation, is that she received information from one Catherine Tembo PW4 to the effect that the District Commissioner for Vubwi was distributing cheques for Women Clubs in Vubwi. PW2's informer was the Vice Chairperson of the Good Hope Club and she told PW8 that she received a cheque in the sum of two million Kwacha (K2,000,000) from the DC. PW2 told the court PW4 told her that she was concerned by the political pronouncement that was made during the distribution of the cheques in Chadiza. PW2 was informed that the recipients of the cheques were told to vote for the 1st Respondent, Mr. Rupiah Banda and the Councillors, a Government that was caring and had not forgotten them. These pronouncement, it was added, were made by a Mr. Vincent Mwale.

Upon hearing this, PW2 wrote a letter of complaint about this activity to the 2nd Respondent on 25th August, 2011. She then approached the District Community Development Officer (DCDO) and obtained deposit slips for the Donations. The Women's Clubs who received cheques included Good Hope, Kanjuci, Nyakhoom and Mbulukwa. PW8 was referred to pages 4, 5, 9, 10, 11 and 12 of the Petitioner's Bundle of Documents filed into court on 4th January, 2012 at which were exhibited her letter to the 2nd Respondent at pages 6 to 8 and the cheques complained of at pages 4 and 5 and 9 to 12 thereof. PW2 added that the donation was made during the campaign period. She added that the 2nd Respondent never replied to her letter.

The evidence of PW4 was that on 25th August, 2011 she attended a meeting convened by the District Commissioner for Vubwi. Also present at that meeting were RW6, a woman called Rosana Ngoma and another called Susan. RW6 told the people gathered that Ms Ngoma had come to visit them and would address them. Ms Ngoma addressed PW4 and the others. She told them that Government had decided to give the Women of Vubwi some money since they were struggling with their husbands. PW4 did not elaborate what these struggles were but one can only assume she meant hardships relating to poverty. Ms Ngoma then told the gathering to vote for the Ruling Party as that was the Government of the day. She then said the people should vote for the 1st Respondent and Mr. Rupiah Banda and not for Mr. Sata and the Petitioner. Ms Ngoma added that there would be war in the country if the women voted for Mr. Sata and that women would be marrying women and men would be marrying men. Further, there would be no fertilizer. As such the women should vote for the Government which already had fertilizer. PW4 told the court that it was after Ms Ngoma's address that the District Commissioner gave out the cheques to the Women's Clubs in the sum of K2,000,000 each.

The evidence of PW5 was very similar to that of PW4. She told the court that she attended a meeting at Vubwi Centre on 25th August, 2011. That meeting was convened by the District Commissioner for Vubwi. Also in attendance were Susan Ngoma, RW6, Graciano Mbewe,

Rosalyn Daka and Kennedy Phiri. At that meeting Rosalyn Daka addressed the people gathered and told them that she had been sent to Vubwi Constituency by the President to campaign and that they should vote for the Government and not for Mr. Sata because if they voted for Mr. Sata they would be war in the country and the women would suffer, having to run with children. She also told the people that there would be homosexuality in the country if they voted for Mr. Sata. Rosalyn urged the people to vote for the 1st Respondent and Mr. Rupiah Banda and also for Kennedy Phiri. The District Commissioner then distributed the cheques for the Women's Clubs.

Having revisited the evidence of PW2, PW4 and PW5, can it be said that it proves the allegation under 4.6 to the required legal standard?

Firstly, I have no difficulty in accepting that meetings took place at which the District Commissioner distributed cheques. I also accept that political sentiments may have been expressed at those meetings, as alleged by PW4 and PW5. What I have difficulties with is that none of the three witnesses mention that the 1st Respondent personally had anything to do with the actual distribution of the cheques and the words attributed to the speakers at those meetings. It is of import to note that Section 93 (2) (i) of the Electoral Act No. 12 of 2006 clearly stipulates that any corrupt practice or illegal practice was committed in connection with the election by or with the knowledge and consent or approval of the Candidate or of that Candidate's election agent or polling agent.

In this allegation, there has been no evidence adduced to show that the acts complained of were carried out with the full knowledge and approval of the 1st Respondent and none of the three witnesses mentions that the 1st Respondent was anywhere within the vicinity of the area where the donations were made. The District Commissioner was not an Agent for the 1st Respondent as per the law relating to Polling and Election Agents. In his evidence, the 1st Respondent testified that his campaign team comprised his election Agents, Polling Agents and Party officials, and the team included Mr. Katola Mwale, his Election Agent, Mr. Gabriel Mvula,

another Election Agent and some Senior Party Members who included RW2, RW6, Mr. Philip Phiri and Mr. Paul Zulu.

From the evidence of PW2, PW4 and PW5, it is a fact that RW6 was present at those meetings. However, since there is no evidence from any of the witnesses, not even the 1st Respondent himself, that RW6 was his election agent or polling agent within the confines of Section 93 (2) ©, of Election Act then it makes it difficult to see how the political pronouncements made by Rosana Ngoma or Rosalyn Daka who could well be the same person can constitute misconduct or a malpractice for which the 1st Respondent may be held liable.

Furthermore, 4.6 alleges that the District Commissioner donated cheques to Women's groups and made a specific order on the beneficiaries to cast their votes in favour of the 1st Respondent and the Presidential Candidate for MMD, but none of the witnesses called in support of this allegation mentioned that the District Commissioner made a specific order to the beneficiaries to vote for the 1st Respondent. In fact, one of the witnesses state that they heard the District Commissioner personally telling the people to vote for the 1st Respondent, which punches holes in the allegation under paragraph 4.6. Here again, I take the liberty to mention that the law on the standard of proof in election petitions is very clear. It is not enough to make wild allegations, concrete evidence must accompany allegations made. Apart from the District Commissioner personally not having asked the voters to vote for the 1st Respondent, no witness has mentioned that the Women's Club Members were told that there would be no more money available to the Clubs if they did not vote for the 1st Respondent and the MMD. Consequently, I am constrained to find that the evidence adduced proves the allegation under paragraph 4.6 of the Petition.

Under paragraph 4.7, it is alleged that during the campaigns, he 1st Respondent and his team repeatedly used inflammatory language when referring to the Petitioner and the Presidential Candidate of the PF. It is further alleged that the first Respondent and his team urged the

electorate to vote for the 1st Respondent because both the Petitioner and the PF Presidential Candidate were foreigners who had dangerous programmes to bring about war, to annihilate the elderly in society, to stop the distribution of anti-retroviral medication and to introduce homosexuality in the country. PW3 was called upon to give evidence in support of this allegation. However, I note that it is in fact that PW4 and PW5 who mention that they heard Rosalyn Daka and Rosaria Ngoma speak about war breaking out in the country if the people voted for Mr. Sata and the Petitioner. I have carefully considered the evidence of PW3 and I am not satisfied that it proves the allegation under paragraph 4.7. This is because he makes no mention whatsoever of the electorate being cautioned against voting for the Petitioner and Mr. Sata on the grounds that they would introduce homosexuality in the country or that their election into office would trigger war. PW3 gave details about the meeting at Mbande School which, from both his and the evidence of PW8, was centred around issues on agriculture. PW8 told the court that the 1st Respondent urged the people at the two meetings held at Chikoka and Mbande to vote for him, the area Councillor and the then Republican President, but makes absolutely no mention of inflammatory language having been used or, indeed, any claims that the Petitioner and Mr. Sata were both foreigners with dangerous programmes. The Petitioner, himself, is the one who alleges that the 1st Respondent and his campaign team were campaigning against him on tribal lines, on the basis that he was a Tumbuka from Lundazi and would not bring any development to Vubwi. None of the Petitioner's witnesses support this evidence and, as such, I can only hold the same to be unsubstantiated.

PW4 and PW5 testified that they were told that if they voted for the 1st Respondent and Mr. Sata, they would be war in this country. They do not, however, mentioned what impact these statements had on them and their ability to vote for a Candidate of their choice. In fact, even if the statements, unpleasant and alarming as they were, had any effect on PW4 and PW5 there is no evidence to show that the two witnesses went and spread that negative message to others, causing them not to vote for the Petitioner. Section 93(2)(a) of the Electoral Act clearly states that the corrupt practice or illegal practice complained of must have the effect of preventing the majority of voters from electing the Candidate in the Constituency whom they preferred.

The Supreme Court also ably laid down the same principle in the case of Mlavi Vs Wightman, (1995/1997) ZR at page 171; that the scale of the malpractice determines its impact or effect on the electorate.

The Petitioner, under 4.7, has not shown how the allegation prevented the majority of the people in the Vubwi Constituency from voting for him particularly as he in fact emerged third in the race to Parliament after the 1st Respondent and Mr. Herbert Banda of the UPND who polled 1,114 as against the Petitioner's 826 votes and who himself did not petition the election of the 1st Respondent. I hasten to add that emerging third in the election did not curb the Petitioner's right to seek legal redress, however, the onus is upon him to prove the allegations in his Petition to the required standard.

It is noteworthy that none of the witnesses in this Petition spoke of the 1st Respondent and his campaign team having told the electorate that the elderly in society would be annihilated (or destroyed) if they voted for the Petitioner. Curiously, not even the Petitioner himself mentions that in his evidence and, as such, the allegations under paragraph 4.7 must fail.

Under paragraph 4.8, it is alleged that on the date of elections, some voters who were in possession of valid voters' cards were being turned away on the ground that their names were missing from the register and that the Respondent and his team were ferrying voters to and from polling stations at Chipanje and Chisiya Wards in a system that was highly selective as voters were being enticed to get onto the MMD vans in exchange for their agreeing to go and cast their votes for the Respondent and his Presidential Candidate.

It is further alleged that the Polling Station at Nyakhom remained open until about 22.00 hours, and this allowed the 1st Respondent, who had motor vehicles purchased by his party to ferry voters to the Station, thereby disadvantaging the Petitioner. Another allegation under paragraph 4.8 is that Wrong ballot papers belonging to Chama Polling Station had been

delivered to Chigwe Polling Station and this disadvantaged a good number of voters who elected to return home without voting, while those who did vote had to endure long hours of waiting.

Perusal of the record shows that the Petitioner did not call any witnesses at all to support this allegation in its entirety and as such, I find it unnecessary to devote any particular energy to analyzing the allegation. For what it is worth, however, I take the liberty to point out that if voters were turned away from the Polling Stations because their names were missing from the voters' register, then that would also have been a disadvantage to the 1st Respondent as there is a possibility that some of those turned away may have cast a vote in his favour. The late hours observed by the 2nd Respondent at Nyakoma Polling Station may well have been an inconvenience to voters registered there, but that single act at one Polling Station cannot be said to have the majority of the Voters in Vubwi from electing a Candidate of their choice. As for the delivery of wrong ballot papers, that too would not have disadvantaged the Petitioner alone. The 1st Respondent would similarly have been affected and, in any case, that anomaly was rectified by the 2nd Respondent. All in all, this allegation fails for want of proof.

Under paragraph 4.9, it is alleged that the 1st Respondent used Constituency Development funds to grade roads during the campaign period in a manner and style that was calculated to sway the electorate into thinking that the Respondent had genuine intentions of bringing development to the Constituency in union with what almost all MMD Candidates around the country were doing.

With regard to this allegation, PW2 is the only witness that was called upon to provide the supporting evidence. However, perusal of the record shows that her evidence is devoid of any reference to the allegation. In fact, most of the evidence of PW2 revolves around the injustices she says she suffered at the hands of the then Ruling Party, which she says forced her to be part of the 1st Respondent's team. Needless to say that that does still not show how the electorate were prevented from electing a Candidate of their choice. I therefore find that this allegation

must fail and I dismiss it. I am also compelled to keep on reiterating that proving an allegation in an election petition must be done to the required legal standard if the challenger is to succeed. Sentiment, emotion or conjecture serve little purpose in matters as serious as election petitions.

In paragraph 4.10 it is alleged that the Respondent knew, at the time of engaging in the activities outlined in the foregoing, that the acts and speech attributable to him are prohibited by the Electoral Act and the Regulations made thereunder. From my findings on the allegations at 4.1 to 4.9, I make no additional observations to 4.10 as it is not necessary to do so.

In paragraph 4.11 of the Petition, it is alleged that the Respondent and his Agents employed substantial Government resources than at their disposal to vigorously campaign and this swayed the people's minds leading to the failure on the part of the electorate to choose a Candidate of their choice. To support this allegation, evidence was led from PW4, PW5, PW6, PW8, PW9, PW10 and PW12. I have already analyzed the evidence of PW4 and PW5 concerning the monies they received for the Women's Clubs and I would not say that the cheques of two million Kwacha each, received by the 14 or so Clubs would amount to being substantial Government resources. Further, I have already found that the allegations against the 1st Respondent concerning the donations to Women's Clubs have not been proven. It may have seemed like a convenient coincidence that the Women's Clubs received monies during the campaign period, but the evidence does not personally link the Respondent to those donations and the allegation cannot, therefore, be substantial.

The evidence of the Headmen, PW6, PW9, PW10 and PW11 that they received the sum of K400,000 to share amongst themselves and other Headmen in the sum of K20,000 a piece, does not prove that the money was from Constituency Development funds and neither can the sum of K800,000 or K1,200,000 one million, two hundred thousand Kwacha be considered to be a substantial Government resource. Further, there is no evidence to show that the Headmen went and vigorously campaigned for the 1st Respondent's election. Even though PW10 testified

that he went and told the people of his village to vote for the 1st Respondent, there was no witness from his village who was called to come and verify that claim. As for PW8, he makes no mention of the allegation, which too must fail.

I have taken utmost care to weigh the evidence on record and, on the totality thereof, I find that the Petitioner has failed to prove his case to the required standard set by the law of this land. This Petition lacks merit and is dismissed.

Before I conclude my judgment I wish to emphasize that challenges to Election ...themselves with cogent evidence, as required by the law, if they are to be successful in challenging election results. It is not enough to bring actions to court on a whim or in ill preparedness as that just results in petitions being an exercise in futility and a waste of time and resources.

From some of the evidence on record, such as that of PW8, I am compelled, at the risk of stretching my mandate for the purposes of this hearing, to urge the relevant authorities to improve the Communication system in this country.

It was saddening to hear, I this day and age, that some people in certain parts of Vubwi do not receive news from Zambia. They depend on Malawian news on the radio and watch Malawian television stations. Some people are even on the Malawian Cellular phone network, as was attested to by PW8.

This is a worrying status of affairs because information is an absolutely necessary tool in these times. People living in Zambia need to be informed about events that are happening in their country and should not have to rely on foreign news by necessity and not choice.

Returning to this Petition, I condemn the Petitioner in Costs, to be taxed in default of agreement.

Leave to appeal is granted.

Delivered in Open Court at Lusaka this 30th day of March, 2012.

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Emelia P. Sunkutu
High Court Judge