

**IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA**

(Civil Jurisdiction)

**IN THE MATTER OF: ARTICLE 72(1) OF THE
 CONSTITUTION OF THE
 REPUBLIC OF ZAMBIA**

AND

**IN THE MATTER OF: SECTIONS 79 AND 81 TO 86 AND
 95 OF THE ELECTORAL ACT NO.
 12 OF 2006**

AND

**IN THE MATTER OF: THE ELECTORAL CODE OF
 CONDUCT S.I. NO. 52 OF 2011**

AND

**IN THE MATTER OF: SENGA HILL CONSTITUENCY
 PARLIAMENTARY ELECTION
 HELD IN ZAMBIA ON THE 20TH
 DAY OF SEPTEMBER 2011**

BETWEEN:

GILES CHOMBA YAMBAYAMBA

APPELLANT

AND

KAPEMBWA SIMBAO

RESPONDENT

**CORAM: Mwanamwambwa, A/DCJ, Phiri, Wanki,
Hamaundu, JJJS, and Lengalenga A/JS.**

On 24th September, 2013 and on 19th February, 2015.

For the Appellant: Mr. A. Mwansa of AMC Legal Practitioners

For the Respondent: 1) Mr. W. Mutofwe of Douglas and Partners

2) Mr. F. Besa of Besa Legal Practitioners

JUDGMENT

Phiri, JS, delivered the Judgment of the Court

Cases referred to:

- 1. Michael Mabenga -v- Sikota Wina and Others (2003) Z.R. 110**
- 2. Great Yarmouth Borough Case (1906) 50 M & H 225**
- 3. Youghal Election Petition (1869) Z.R. 3 CL 530**
- 4. Sligo Borough Case (1869) 10 M & H**
- 5. Mlewa -v- Eric Wightman (1995/97) Z.R. 171**
- 6. Fiarbain -v- Scottish National Party (1979) SC 393**
- 7. Mazoka and Others -v- Mwanawasa and Others (2005) Z.R. 138**
- 8. Lewanika and Others -v- Chiluba (1998) Z.R. 98**
- 9. Matildah Mutale and Sebico Mukuka - Appeal No. 45/2003**
- 10. Simasiku Namakando -v- Eileen Imbwae - Appeal No. 108/2007.**

Other Materials:

**Halsbury's Laws of England, Volume 15 (4th Edition)
Butterworth & Co. (Publishers) Ltd 1977.**

This is an appeal against the High Court Judgment dismissing the Appellant's petition against the election of the Respondent as Member of Parliament for the Senga Hill Constituency. For convenience, we shall refer to the appellant as the Petitioner while the Respondent will retain that designation.

The brief facts preceding this appeal are that, both the Petitioner and the Respondent were candidates for the Parliamentary and General Elections held on the 20th of September, 2011 for the Senga Hill Parliamentary Constituency. The Petitioner stood on the ticket of the Patriotic Front Party (hereinafter referred to as '**the PF**') while the Respondent stood on the ticket of the Movement for the Multiparty Democracy (hereinafter referred to as '**the MMD**'). At the conclusion of the voting process, the Respondent scored the highest number of votes and was declared duly elected member of Parliament for the Senga Hill Constituency. The total votes cast in that election were as follows:

<u>Name of Candidate</u>	<u>Party</u>	<u>Number of votes scored</u>
1. Simbao Kapembwa	MMD	12,037
2. Yambayamba Giles C.	PF	5,575
3. Green Simutowe	UPND	238

Aggrieved with the result of the election, the Petitioner launched his petition in the High Court seeking to declare the Respondent's election null and void on grounds of false statements, undue influence, bribery, voter intimidation, voter treating, and specified electoral malpractices by the Respondent and his agents, contrary to Sections 79; 82; 86; 93 – 95 of the electoral Act No. 12 of 2006 and the Electoral Code of Conduct, Statutory Instrument No. 52 of 2011.

The Petitioner set out 13 allegations against the Respondent. These are outlined in both the Petition and the Judgment of the court below.

In paragraphs 5(i) – 5(iii) of the Petition, it was alleged that the Respondent did, by himself or his agents, between 20th August, 2011 and 18th September, 2011, make false statements and displayed a portrait of the PF President

defaced with a snake that depicted him as a devil not worthy of being a President of the Republic and stated that whoever voted for the PF and its candidates would be voting for economic, political, social and moral troubles in the country, and that the PF and its candidates were Satanists.

It was also alleged that the Respondent, during the same campaign period, by himself or his agents, did make false statements and distributed a brochure depicting the PF President Mr. Michael Chilufya Sata and PF Male candidates as pro-homosexuals, and if elected into power, would allow homosexuals.

It was further alleged that during the same period, the Respondent by himself or his agents, did make false statements that if the voters voted for the PF and its candidates and the PF won the elections, the PF Government would do away with fertilizer subsidies, withdraw from purchasing maize from farmers and would not pay them for the maize already collected by the Food Reserve Agency for

that Marketing Season, and that those whose maize was stored in MMD manned sheds would simply loose out.

In paragraphs 5(iv), up to 5(vi) of the Petition, it was alleged that between 20th August, 2011 and 18th September, 2011 the Respondent, personally and by his agents, did use, to his advantage, government institutions and departments, namely, the Office of the District Agricultural Coordinator (DACO), the office of the District Education Board Secretary (DEBS), and the Citizen Economic Empowerment Commission (CEEC), to hold meetings with women and youth clubs and promised them that if they voted for the Respondent and the MMD, the latter would distribute free fertilizers and other farm inputs.

It was also alleged that during the same campaign period, the Respondent did by himself or his agents, influence the Citizen Economic Empowerment Commission (CEEC) to fund selected Women and Youth Clubs in the Constituency as an inducement for the members to vote for the Respondent and the MMD.

It was further alleged that during the same period, the Respondent did, by himself or his agents, use Government resources in form of transport and venues for his meetings with women and youth clubs and promised them free distribution of fertilizers and other farm inputs if they voted for himself and the MMD.

In paragraphs 5(vii) and 5(viii) of the Petition, it was alleged that during the campaign period, the Respondent did by himself and his agents, distribute foodstuffs, bicycles and money in cash to the electorate as inducement to obtain their votes on the polling day. It was also alleged that during the same period, the Respondent and/or his agents did slaughter cows at six Polling Stations; namely, Mpande, Chilinde, Matanga, Mambwe, Mikongolo and Sikalembe, and distributed the meat to voters in order to exert undue influence upon the electorate and induce them into voting for him and the MMD.

In paragraph 5(ix) of the Petition, it was alleged that at Chomba Polling Station in Mwiluzi Ward, the Respondent

made derogatory statements at a campaign rally, against the Petitioner, stating that the people of Senga Hill would regret voting for him as he was dismissed from the National Assembly of Zambia as Motel Manager on grounds of theft of money.

In paragraph 5(x) of the Petition, it was alleged that between 20th August, 2011 and 18th September, 2011, the Respondent did, by himself and/or his agents, take details of voters' cards and National Registration Cards of people and intimidated them by threats that he would know if they did not vote for him and the MMD; and that they would not receive farm input packs if they voted otherwise.

In paragraph 5(xi) of the Petition, it was alleged that during the campaign period, the Respondent did, by himself or his agents use acts of violence to intimidate those that were anti-MMD.

In paragraph 5(xii), it was alleged that the Respondent and his Presidential Candidate, Rupiah Bwezani Banda, at

Nondo Polling Station in Mwiluzi Ward, did promise the voters by way of inducing them to vote for them, that they would tar the Mbala/Nakonde road.

In paragraph 5(xiii), it was alleged that at Nasayanga and Mikongolo Polling Stations, on the polling day, the Respondent deployed his agents who intimidated voters and threatened them not to vote for the Petitioner and that if they did so, legal action would be taken against those who had already been given commodities such as mealie meal, salt, cooking oil, beans and money and that pockets of cement and iron sheets that were delivered to Nasayanga School would be withdrawn.

The Petitioner gave sworn evidence and called ten (10) witnesses at the trial.

In defence to the Petition, the Respondent filed an answer in which he denied all the allegations, except the allegations in paragraph 5(viii) of the Petition which he admitted. The Respondent put the Petitioner to strict proof of the allegations which he denied.

In paragraphs seven (7) and eight (8) of his answer, the Respondent admitted that cattle were slaughtered and meat was cooked, but he denied that it was distributed to the voters. He explained that it was given to feed party officials who were working and staying in Wards. He also denied that he distributed foodstuffs and money to the electorate as inducement to obtain their votes. He explained that he distributed bicycles clearly marked with his party symbols, being materials which were given to party ward officials to ride and mobilise party branches. The Respondent testified on oath and called three witnesses in support of his case.

At the conclusion of the trial, the learned trial judge analyzed and evaluated the evidence adduced by both parties to the Petition, and proceeded to make findings of fact and conclusions. She also gave legal reasons for dismissing the Petition.

In relation to allegations in paragraphs 5(i) – 5(iii) of the Petition, the learned trial judge found that the Petitioner failed

to prove that the Respondent did make those false statements and displayed the offending portrait of the PF President Michael Chilufya Sata. According to the learned trial judge, those allegations were based on hearsay evidence which was not admissible. She also found that the offending brochure depicting homosexuals was not produced by the Respondent; but that it was produced by Lightwell Chongo and Mayeya Sichisambwe, District Commissioner and Chinika Ward Councilor respectively; and that the offending statement about the PF being a pro-homosexual party was uttered by Mr. Chongo, the District Commissioner, who was not the Respondent's agent, but a Government official. This occurred at a meeting with Headmen which the two attended at Mpande Village. The learned trial judge also dismissed the allegations relating to the Respondent's threats to withdraw the farm inputs and not pay for the maize already collected; as being based on hearsay evidence from PW2 (Best Musanta) and PW8 (David Mulenga Silondwa). The learned trial judge relied on counsel from the learned authors of Halsburys Laws of

England, 4th Edition, Vol. 15, paragraph 820 where they state as follows:-

“Statements, as distinguished from acts by one agent are not prima facie evidence on the hearing of an election petition against a party for whom he had acted as agent in the election in question”

In relation to the allegations contained in paragraphs 5(iv) – 5(vi) of the Petition, the learned trial judge found that no evidence was adduced in support thereof, and therefore, that the same had not been proved. The lower court also dismissed the allegations that the Respondent used Government resources, on the ground that no evidence was led.

In relation to the allegations of bribery and treating contained in paragraph 5(vii) of the Petition, the trial court found as a fact that the Respondent gave PW4 K10,000; but accepted the Respondent’s explanation that the money was paid to PW4 in appreciation for his hospitality to the Respondent and his campaign team. The trial court further found as a fact that PW9 received K10,000 from Vincent

Zombe, an MMD Candidate in the Ward election, with a request to vote for the Respondent and his party; but held that there was no evidence to prove that this was at the instigation of the Respondent.

The trial court further found that 100 bags of mealie meal were procured and distributed by the Respondent barely two weeks before the close of the campaign period and accepted the evidence given by PW8 that he was given one of the bags of mealie meal. The court, however, stated that there was no evidence that the exhibited bag was given at the instigation of the Respondent in order to induce a favourable vote.

On the allegations contained in paragraph 5(viii) of the Petition, the trial court accepted the evidence that food was procured and cows were slaughtered at Milongolo, Nsokolo, Chandaemba and Matanga Villages; but accepted the Respondent's explanation that the food and the meat was for his foot soldiers. The trial court, however, found that non-foot

soldiers also partook of the meat and nshima at the Respondent's campsites in the named villages.

On the allegations contained in paragraph 5(ix) of the Petition, the learned trial judge found as a fact that derogatory remarks were made against the Petitioner by the Constituency Chairman for which the Respondent apologized to the Petitioner. However, the court found that those derogatory remarks were made at Chomba Polling Station on the 23rd May, 2011, before the campaign period. The allegation was found to have been proved.

The allegation contained in paragraph 5(x) concerning the use of violence and intimidation was found to have no proof and accordingly dismissed.

On the allegations contained in paragraph 5(xi) concerning a fight and the use of videos of movies showing war and famine, the trial court found as a fact that the Respondent was involved in the beating of Putapo (PW3) who had insulted him and his team. The lower court also found as a fact that

the Respondent showed video films of war and famine at his campsites, and that some people other than members of the Respondent's campaign team watched those video films. The court, however, rejected PW4's evidence that the Respondent told the people that they would suffer and run from famine if they did not vote for him.

The allegation contained in paragraph 5(xiii) of the Petition concerned a promise made by MMD party President Mr. Rupiah Banda and the Respondent to tar the Mbala/Nakonde road within a few days after being voted in office. This allegation was dismissed as unproved. The court also refused to accept that the bicycles distributed by the Respondent were meant to induce voters to vote for the Respondent. It accepted the Respondent's explanation that the bicycles were for his campaign team. The court also accepted the Respondent's explanation that the football tournaments were arranged before the campaign period, while the building materials were bought from the CDF funds administered by the local authority.

Having found some of the foregoing facts to have been established, the learned trial judge accepted the Petitioner's submission that the Respondent had been guilty of the electoral malpractices which were proved against him. However, the learned trial court concluded that the offending utterances and the illegal practices or misconduct were not shown to have prevented the majority of voters from electing a candidate of their choice contrary to the Electoral Act No. 12 of 2006. The trial court took the view that no evidence was led by the Petitioner to show the voter turnout and voting pattern and the total number of registered voters in the Constituency. The court also concluded that the number of foot soldiers in the Respondent's camp was large while the number of non-foot soldiers who took part in the treating and watching of video films was unknown; and therefore, that it was not possible to conclude, from the evidence on record, that the majority of voters were prevented from electing a candidate of their own choice. The court also concluded that the "one corrupt practice" in the form of the K10,000 bribe given by the

Respondent's agent to PW9, cannot be said to have so materially affected the outcome of the election such that the same should be nullified. On the basis of the foregoing reasoning, the learned trial judge dismissed the Petition.

The Petitioner filed one main Ground of Appeal with ten related sub-grounds. The main ground of appeal is as follows:-

- 1. The learned trial judge misdirected herself in both law and fact when she held that the Respondent was duly elected and that the parliamentary election for Senga Hill Constituency held on 20th September, 2011 was valid.**

The sub-grounds are best summarized as follows:-

- i. Despite the Appellant proving intimidation on farming inputs and fertilizer subsidies, the trial court erroneously held that there was no evidence adduced to show that the proven allegation affected the election result by preventing the majority of the**

voters in Senga Hill Constituency from electing a candidate whom they preferred.

- ii. Despite proving a corrupt practice on the part of the Respondent when the latter offered transport from Kasama to Chomba Village, the trial court erroneously held that the offer of transport was not intended to benefit individuals but was for the common good and, that the same was a philanthropic gesture and cannot amount to malpractice.
- iii. After finding that non-foot soldiers also took part in eating the food and meat at the Respondent's campsites in six wards, the trial court erred by holding that no meals were consumed at the places where public meetings were held.
- iv. The learned trial judge fell in error by holding that derogatory statements against the Petitioner by the Respondent were

made on 23rd May, 2011 and not during the election campaign period, and the only other proven incident was when derogatory statements were made by the Respondent at Chomba Polling Station.

- v. The learned trial judge fell in error when she held that the showing of war and famine videos did not unduly influence the voters because only those that lived in nearby villages watched the videos.
- vi. The learned trial judge fell in error when she held that there was no evidence of dissemination of the alleged pro-homosexuality of the Petitioner, his President Mr. Michael Chilufya Sata and the PF in the face of the evidence on record.
- vii. The learned trial judge fell in error when she held that the former Republican President Mr. Rupiah Bwezani Banda did not promise the electorate to tar the

Mbala/Nakonde road because there was no recording to prove that the former President said those words despite the Respondent admitting that the former President uttered those words.

viii. The learned trial judge fell in error when she held that the Respondent did not distribute blankets to the electorate during the campaign period but that the same were distributed in May, 2012 and that she expected to see blankets given out in September to be in a better condition than those produced in evidence.

ix. The learned trial judge fell in error when she held that the roofing sheets allegedly donated by the Respondent at Chozi were not delivered by the Respondent, in the face of irrefutable evidence that the Respondent's motor vehicle was used.

The foregoing sub-grounds are mainly on the correctness or otherwise, of the court's assessment of the evidence on record, and assail some of the findings of fact made by the learned trial judge. We must say that we would have been happier if learned Counsel for the Petitioner had arranged his grounds of appeal in the conventional fashion we are all familiar with.

Learned Counsel for both parties filed their written Heads of Argument on which they rely. These are on the record of appeal. We do not intend to repeat or reproduce the arguments, but we shall refer to them as we deal with the sole ground of appeal and the key issues raised thereunder.

We have seriously considered the evidence on record and the judgment of the lower court, as well as the submissions exchanged by the parties and filed on the record of appeal.

It emerges clearly from the record that after analyzing the evidence received, the learned trial judge concluded that only four (4) of the thirteen allegations of electoral malpractices and

misconduct were proved by the Petitioner and his witnesses.

These are as follows:-

1. That during the campaign period, the Respondent caused to be slaughtered six heads of cattle and provided 100 x 25 kg bags of mealie meal at six campsites for his foot soldiers and for an undisclosed number of people from the surrounding villages.
2. That during the campaign period, the Respondent and one Lastone Sichilima made derogatory statements about the Petitioner at Chomba Polling Station.
3. That during the campaign period, the Respondent showed video films depicting war and famine, at his campsites, and that an undisclosed number of people from the surrounding villages did watch those films together with the Respondent's foot soldiers.
4. That during the campaign period, the Respondent bribed Andrew Mulenga (PW9) with K10,000.

Before we come to the effects of the proved electoral malpractices, we must note that in her judgment, the learned

trial judge in her reasoning concerning the allegation of bribery, contradicted herself. At page J61 lines 7 to 9 of the lower court's judgment, the learned trial judge made the following conclusion:

“I therefore do not agree with learned Counsel for the Petitioner that the 1st Respondent was guilty of bribery as the evidence did not so establish.”

A subsequent statement on the same page J61 at lines 10 to 14 reads as follows:

“The only instance of bribery I found was that of K10,000 received by PW9. It has not been established, however, that Vincent Sombe gave the K10,000 at the 1st Respondent's instigation. This one corrupt practice cannot be said to have so materially affected the outcome of the election that the same should be nullified.”

It is apparent from the two statements above that the learned trial judge contradicted herself in her assessment of

the evidence as to whether or not the allegation of bribery had been established. An examination of the evidence given by PW4, PW9 and the Respondent establishes that money in K10,000 cash was given to PW4 and PW9. In fact, the Respondent admitted giving out K10,000 cash to Mr. Simbaya of Mikongolo village in appreciation for hosting his team just before the polling day. We therefore take it that the correct position is that notwithstanding the contradiction, which we acknowledge was a misdirection, the learned trial judge found that the Respondent was guilty of one act of bribery. We must add that appreciation in the form of money in cash on a day before the polling day, amounts to an act of bribery. In the present case, the learned trial judge did accept the evidence of PW9 and did make a further finding that PW9 had confessed to the bribery (at page 54 (J48) of the record).

Having made the foregoing comments, we note that what the learned Counsel termed as sub-grounds of appeal, are matters of fact only, and not matters of law. As such, we are unable to interfere with those findings any further than

showing the contradiction on the allegation of bribery as we have done.

The gist of the Petitioner's argument is that, in terms of paragraph (a) of Section 93(2) of the Electoral Act, an election of a candidate as a member of the National Assembly shall be nullified if it is proven to the satisfaction of the court that any corrupt or illegal practice was committed in connection with the election. Mr. Mwansa submitted that in terms of that paragraph, it does not matter who the wrongdoer is. He called in aid our decision in the case of **Mlewa -v- Eric Wightman**⁽⁵⁾ where we said the following:

“Where it is proved that there is wrong doing of a scale or type that has adversely affected an election, regardless of who the wrongdoer is and even if the candidates personally were not involved, the election may be declared void in terms of S.18(2)(a).”

Section 18(2)(a) referred to in the Mlewa case is the same, word for word, with the current Section 93(2)(a) of the Electoral Act No. 12 of 2006.

Mr. Mwansa further argued that, in terms of paragraph (c) of Section 93(2) of the Act, an election of a candidate as a member of the National Assembly shall be nullified if it is proven to the satisfaction of the Court 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 that candidate's election agent or polling agent.

In relation to this case, Mr. Mwansa submitted that the corrupt and illegal practices that were committed in Senga Hill Constituency were such that they prevented the voters in the constituency from electing a candidate whom they preferred. In support of this proposition, Mr. Mwansa cited our decision in the case of **Mazoka and Others -v- Mwanawasa and Others**⁽⁷⁾, where we held that allegations of illegal and corrupt practices must be indicative that the majority of the voters were prevented from electing the candidate whom they preferred, or that the election was so flawed that the dereliction of duty seriously affected the result which could no

longer reasonably be said to reflect the true choice and free will of the majority of the voters.

In response to the Petitioner's Heads of argument, the learned Counsel for the Respondent filed written heads of argument, the gist of which was that, the Petitioner failed to establish any of the allegations leveled against the Respondent to the requisite standard of proof needed to nullify an election; namely, higher than a mere balance of probabilities. In support of this proposition, learned Counsel cited our decisions in the **Lewanika case**⁽⁸⁾ and the **Mazoka case**⁽⁷⁾.

It was the Respondent's contention that the benchmark for nullification of a parliamentary election was not met by the Petitioner; and therefore, that the lower court was on firm ground in upholding the election of the Respondent.

Concerning the allegation of treating, the learned Counsel for the Respondent acknowledged the fact that the learned trial judge found as a fact that the Respondent slaughtered cows for his foot soldiers and non-foot soldiers

who took part in eating the food. According to learned Counsel, this did not amount to treating in accordance with Section 81 of the Electoral Act No. 12 of 2006 which expressly proscribes the giving, providing and paying of expenses for any food, drink, etc to any person for the purpose of influencing a vote. It was the Respondent's contention that feeding the foot soldiers was part of the legitimate expenses and not meant to corruptly influence the voters; and that he should not have expected to chase the people from the surrounding villages.

In addressing the finding of the lower court on the allegation of treating, we shall also address the allegation of threats through the showing of video movies exhibiting violence and famine. As already stated, the Respondent admitted that he did show those movies at his campsites. He also admitted the slaughter of heads of cattle and the provision of food, and that people from villages surrounding the six campsites also took part. The main issues here to be determined, are the personal participation of the Respondent in the electoral malpractices and the scale of the malpractices.

We have looked at the evidence on record and considered the arguments of the parties. There is no doubt that the two events; namely, the treating and the showing of video movies on war and famine, took place at all the Respondent's six campsites to which many other people, other than the Respondent's foot soldiers, from surrounding villages, were allowed access and took part in those activities during the campaign period leading to the polling day.

The law that deals with the nullification of a parliamentary election on grounds of corrupt and illegal practices is Section 93(2)(a) and (c) of the Electoral Act No. 12 of 2006. In a number of decided cases, we have guided that, that Section carries two provisions that are separate in terms of scope and application.

In Section 93(2)(a) an election can be nullified on account of any corrupt or illegal practice or other misconduct committed in connection with an election by somebody else, other than a candidate himself, or his agent; provided it is

shown that the majority of voters in that Constituency were or may have been prevented from electing a candidate whom they preferred. A study of the lower court's judgment reveals that the lower court applied the test under Section 93(2)(a) of the Electoral Act, and found that the acts of treating and showing the video movies in this case, were not the acts which may have prevented the majority of voters from electing a candidate whom they preferred in that Constituency.

In the present case, the admitted acts of treating and showing video films on war and famine were committed by the Respondent personally, and with his foot soldiers and agents. Clearly, the learned trial judge applied the wrong test to the Petitioner's evidence on the allegations.

The correct test to be applied should have been under Section 93(2)(c) where a candidate is personally penalized for any one or two proven instances of bribery or corruption or illegal practices committed by the candidate, in person; even if those acts of bribery, corruption and illegal practices could not

conceivably have prevented the electorate from choosing their preferred candidate.

In the present case, the lower court accepted the Petitioner's case on allegations of treating and showing of war and famine movies to villagers in six surrounding areas of the rural campsites which the Respondent and his agents set up during the campaign period. In his own evidence, the Respondent conceded treating, and showing of war movies to which other people were able to join his foot soldiers and participate.

The Petitioner pleaded, inter alia, for a declaration that the illegal practices committed by the Respondent and his agents materially so affected the election that the same ought to be nullified. Given this pleading, it was not a misdirection on the part of the learned trial judge, to consider the proven wrongful acts under paragraph (a) of Sub-Section (2) of the Act, and hold that the proven wrongful acts did not affect the election result because they were not widespread.


What was the misdirection on the part of the learned trial judge, was not to consider the proven wrongful acts under Paragraph (c) of Sub-Section 2 of Section 93 (otherwise known as “the strict liability clause”); and then proceed to nullify the election of the Respondent. Under paragraph (c), even one proven wrongful act is sufficient to nullify the election result; and it is not necessary to prove that such an act adversely affected the election result in a given Constituency. And as an appellate court, we are entitled to invoke paragraph (c) and nullify the election of the Respondent.

According to the evidence on record, those activities took place during the campaign period and close to the polling day. While we agree that public philanthropic activity is not prohibited by our electoral law, donations and refreshments provided to numerous people at unrestricted campsites, accompanied by evidence of express requests for votes cannot be within our understanding of philanthropic activity. It amounts to illegal or corrupt acts under Section 93(2)(c) of the Electoral Act.


We find merit in this appeal and we allow it. We declare that the Respondent was not duly elected as Member of Parliament for Senga Hill Constituency in the September, 2011 general elections. This being a Constitutional matter, we order that each party shall bear their own costs in this court and below.



M.S. Mwanamwambwa,
ACTING DEPUTY CHIEF JUSTICE



G.S. Phiri
SUPREME COURT JUDGE



M.E. Wanki
SUPREME COURT JUDGE



E.M. Hamaundu
SUPREME COURT JUDGE



F.M. Lengalenga
ACTING SUPREME COURT JUDGE