

SELECTED JUDGMENT NO.12 OF 2018

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**IN THE CONSTITUTIONAL COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)**

**APPEAL NO. 11 of 2016
2016/CC/A017**

**IN THE MATTER OF: THE PARLIAMENTARY PETITION RELATING TO
NALOLO PARLIAMENTARY CONSTITUENCY ELECTION
HELD IN ZAMBIA ON THE 11TH OF AUGUST 2016.**

AND

**IN THE MATTER OF: ARTICLE 46, 54, 57 AND 73 OF THE CONSTITUTION OF
ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA.**

AND

**IN THE MATTER OF: SECTION 83, 84, AND 97 OF THE ELECTORAL PROCESS
ACT NO. 35 OF 2016.**

AND

IN THE MATTER OF: THE ELECTORAL CODE OF CONDUCT 2016.

BETWEEN:

**MUHALI GEORGE IMBUWA
AND
ENOCK KAYWALA MUNDIA**



APPELLANT

RESPONDENT

**CORAM: Chibomba PC, Mulenga, Mulembe, Mulonda and Munalula JJC on 21st
June, 2017 and 19th March, 2018.**

For the Appellant: Mr. W. Mweemba of Messrs Mweemba and Company

**For the Respondent: Mr. L. E. Eyaa and Ms. D. Mwewa both of Messrs KBF and
Partners**

JUDGMENT

Munalula JC, delivered the judgment of the Court.

Cases referred to:

1. Marcus Kampumba Achiume v Attorney General (1983) Z.R. 1
2. Nkhata and four Others v Attorney General (1966) Z.R. 147
3. Priscilla Kamanga v Attorney General (2008) Z.R. 7
4. Michael Mabenga v Sikota Wina, Mafo Wallace Mafiyo and George Samulela (2003) Z.R. 100
5. Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Others (2005) Z.R. 138
6. Subramaniam v Public Prosecutor [1956] 1 W.L.R. 965
7. Mutambo and 5 Others v The People(1965) Z.R. 15
8. Boniface Chanda Chola, Christopher Nyamonde and Nelson Sichula v The People (1988-89) Z. R. 163
9. Shamwana and Others v The People (1985) Z.R. 41 (S.C.)
10. GDC Hauliers (Zambia) Ltd v Trans Carriers Ltd S.C.Z Judgment No. 7 of 2001
11. Akashambatwa Mbikusita Lewanika and Others v Fredrick Jacob Titus Chiluba (1998) Z. R. 49 (S.C)
12. Saul Zulu v Victoria Kalima S.C.Z Judgment No. 2 of 2014
13. Gastove Kapata v The People (1984) Z.R. 47
14. Batuke Imenda v Alex Cadman Luhilo S.C.Z Judgment No. 3 of 2003
15. Sunday Chitungu Maluba v Rodgers Mwewa and Another C.C.Z Appeal No. 4 of 2017
16. Steven Masumba v Elliot Kamondo Selected C.C.Z Judgment No. 53 of 2017
17. Richwell Siamunene v Sialubalo Gift Selected C.C.Z Judgment No. 58 of 2017
18. Samson Mbavu and others v The People (1963-1964) Z. and N.R.L.R. 164 (C.A.)
19. Wadada Rogers v Sasaga Isaiah Jonny & Electoral Commission Election Petition No.31 of 2011 (Uganda Court of Appeal)
20. DPP v Hester [1972] 3 All E.R. 1056
21. Mwape v The People (1976) Z.R. 160 (S.C.)
22. Simasiku Kalumiana v Geoffrey Lungwangwa and ECZ 2006/HP/EP/17

Legislation referred to:

Electoral Process Act, No. 35 of 2016
The Constitution (Amendment) Act No. 2 of 2016
Electoral Act No. 12 of 2006 (repealed)

Work referred to:

Rupert Cross on Evidence, 1986, 3rd edition.

The Appellant, George Muhali Imbuwa (Respondent in the court below) appeals against the nullification by the High Court of his election that was held on 11th August, 2016, as Member of Parliament for Nalolo Constituency in the Western Province of Zambia. The Appellant had initially campaigned for adoption on the United Party for National Development (UPND) ticket but lost in the primaries. Belinda Moola Lutanga Lweendo was instead adopted as the UPND Nalolo Constituency Parliamentary candidate. The Appellant then opted to contest the Nalolo Constituency Parliamentary election as an Independent Candidate. The Appellant was among several contenders who included Belinda Lweendo of the UPND, Enock Kaywala Mundia of the Patriotic Front (PF), Akoyombokwa Catherine of the Forum for Democracy and Development (FDD), and Imalimbila Namabunga of the United National Independence Party (UNIP). The election was duly held on 11th August 2016.

On 14th August, 2016 the Returning officer, Mr. Kangongo Sladen declared the following results:

George Muhali Imbuwa 5060
Belinda Moola Lutanga Lweendo 4879
Enock Kaywala Mundia 4455
Akoyombokwa Catherine 590
Imalimbila Namabunga 114

The Appellant was declared winner of the Nalolo Parliamentary Constituency seat. Two election petitions were filed shortly thereafter. The first petition No.2016/HP/EP0013 was filed by Enock Kaywala Mundia (the Petitioner in the court below) against the Appellant seeking nullification of the election because of alleged non-compliance with electoral laws and alleged illegal practices which were alleged to have affected the majority of voters concerned and to have prevented them from exercising their freedom to vote for a candidate of their choice.

The petition was founded on a number of grounds. First that although the Appellant stood as an independent, he never left UPND as required by Article 51 of the Constitution; second that he participated in acts of vote

buying while campaigning; third that he engaged in acts of character assassination by falsely accusing the Respondent of being a Satanist among other things. At the end of the trial, the Court found the allegations of UPND membership and vote buying unsubstantiated and dismissed them but found that there was evidence of character assassination. The trial court further found that the allegation of Satanism made by the Appellant in his campaign message was so widespread in Nalolo Constituency that it influenced the majority of voters. The court then declared the Nalolo Constituency election null and void.

The second petition No. 2016/HP/EP/0063 was filed by Belinda Moola Muntanga Lweendo, the UPND candidate against three Respondents; the Appellant herein, Muhali George Imbuwa; Enock Kaywala Mundia; and the Electoral Commission of Zambia (ECZ). It was heard by the same Judge. In her action, the Petitioner sought nullification of the 11th August, 2016 election in Nalolo Constituency, on the basis of the 1st and 2nd Respondents' alleged individual misconduct and the 3rd Respondent's conduct of the election, and further sought recount, verification and scrutiny of the votes cast in order to determine whether she was in fact the true winner. After hearing the petition the Judge dismissed all the allegations against all the Respondents but

