

Chisi v Electoral Commission Electoral Case No. 1 of 2014 (High Court) (Principal Registry)

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice D.F. Mwaungulu
Cause Number:	Electoral Case No. 1 of 2014 (High Court)
Date of Judgment:	April 04, 2014
Bar:	Mr. Tomoka, Counsel for the Petitioner Mr. Chalamanda, Counsel for the Respondent

The Applicant, a presidential candidate, petitioned the High Court for a direction that the Electoral Commission accept his nomination papers after they had been rejected. The Applicant had initially presented his papers and they were accepted. However, the Electoral Commission subsequently wrote to the University of Malawi to confirm his employment status and, upon receiving a response that he was no longer employed by the university, rejected his nomination on the grounds that he held a public office. The Applicant's legal practitioners wrote to the Electoral Commission to proceed under section 40 of the Parliamentary and Presidential Elections Act, and the matter was brought

before the High Court. The central legal question for the Court was whether it had original jurisdiction to hear the matter before a determination had been made by the Electoral Commission.

The application was dismissed. The Court held that it lacked the jurisdiction to entertain the matter because the Constitution, specifically section 76, establishes the Electoral Commission as a quasi-judicial body or tribunal with the primary jurisdiction to hear and determine electoral petitions and complaints. The High Court's role is supervisory and appellate, meaning it can only hear a matter on review or appeal *after* the Electoral Commission has first made a determination. The Court further reasoned that the Parliamentary and Presidential Elections Act must conform to the constitutional framework. The Court also noted that section 40 of the Act, which the parties had relied upon, is applicable only to candidates for the National Assembly, not to presidential candidates, and therefore, the procedure followed was incorrect. The Court ordered that the Applicant should first lodge a formal complaint with the Electoral Commission, as required by the Constitution, before seeking recourse in the High Court.