

# Francis Renso v Malawi Electoral Commission & Walter Nyamirandu Manda

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<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	Honourable Justice Mandala D. Mambulasa
<b>Cause Number:</b>	Election Petition No. 54 OF 2025
<b>Date of Judgment:</b>	November 07, 2025
<b>Bar:</b>	Mr. Clement Masauko Mwala, Counsel for the Petitioner Mr. Emmanuel Chapo, Counsel for the 1st Respondent Mr. Bob Mavuto Chimkango, Counsel for the 2nd Respondent Mr. Steven Mponda, counsel for the 2nd Respondent

## Head Notes

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**Law Of Evidence** – Standard of proof in election petition – Degree of probability – On balance of probabilities.

**Law Of Evidence** – Burden of proof in election matters- Lies upon the Petitioner to discharge initial burden – Fixed at the beginning of trial – shifts to the Commission upon establishment of Petitioner's case.

**Electoral Law** – MEC Complaint Handling – Criminal matters – Commission's duty – limited to referral to competent enforcement agency, does not extend to investigation and prosecution.

**Electoral Law** – Void election – Irregularity – An irregularity must affect the outcome of the election for an election to be void.

## Summary

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The Petitioner, an unsuccessful independent candidate, brought an electoral petition under section 100 of the *Presidential, Parliamentary and Local Government Elections Act , 2023*, to the High Court, Principal Registry, seeking to void the election of the 2nd Respondent as the winning Member of Parliament for Nsanje South West Constituency following the tripartite elections held on 16th September, 2025. He sought a declaration that the election was void due to the corrupt practice of influencing voters and campaigning outside the prescribed official campaign period , which he alleged was committed by the 2nd Respondent and his agents through the distribution of money on the eve of and on polling day. Two of the 2nd Respondent's agents were arrested by the Malawi Defence Force for the same conduct on the polling day, and they were on bail as the petition herein was being held. The Petitioner contended that he filed a formal complaint with the 1st Respondent, the Malawi Electoral Commission, however, the commission failed to consider and determine the complaint before the declaration of results on 30th September, 2025. The Petitioner further contended that the Malawi Electoral Commission's subsequent failure to consider and determine his formal complaint regarding this corrupt practice before the results were declared was unlawful. The 1st and 2nd Respondents opposed the petition, denying the allegations and asserting the election was conducted lawfully. Further, the 1st Respondent raised a preliminary issue asking the Court to dismiss the

petition on the basis that the Petitioner had sued the 1st respondent as “Electoral Commission” instead of the “Malawi Electoral Commission”, however, the Court declined to dismiss the entire petition on that technicality, deeming the error correctable. .

The principal legal questions for the Court's determination were twofold; whether or not the election of the 2nd respondent was void for corruptly influencing voters in their voting and whether or not the failure of the 1st respondent to consider and determine the petitioner's complaint was unlawful.

On the first issue, the Court found the Petitioner's version of events more credible and was satisfied, on the evidence, that the 2nd Respondent and his agents had indeed distributed monetary handouts to potential voters, thereby committing an irregularity contrary to section 41(5) of the *Political Parties Act* as read together with section 2 of the *Presidential, Parliamentary and Local Government Elections Act*. However, the Court was not satisfied that this irregularity had demonstrably affected the result of the election as the Petitioner failed to discharge the initial burden of proof on a *prima facie* standard, to satisfy the Court that actual registered voters were targeted by the alleged corrupt practices. The decisive rationale was the Petitioner's failure to establish the requisite causal link between the irregularity and the final outcome as required by the law. On the second principal issue, the Court held that the 1st Respondent was not obliged to determine the Petitioner's complaint, as the facts alleged were criminal in nature and the matter was already under investigation by law enforcement authorities, which included the 2nd Respondent's agents being arrested and undergoing prosecution. The Court reasoned that the First Respondent's mandate does not extend to prosecuting or determining such criminal matters, only to referring

them to mandated authorities; consequently, its failure to deal with the complaint did not amount to an irregularity affecting the election results and it acted within its lawful mandate. The petition was, therefore, dismissed.

The Court observed in passing that section 100 of the *Presidential, Parliamentary and Local Government Elections Act* cannot be relied upon by a petitioner in the absence of a preceding final decision by the Commission confirming or rejecting the existence of an irregularity, however, it avoided using this observation in the determination of this petition because it never raised and argued by the parties. The Court awarded the costs of the petition to the successful Respondents, to be assessed by the Registrar in default of agreement between the parties.

## **Legislation Construed**

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### **Statutes**

Constitution of the Republic of Malawi (Ss. 21, 75, and 76).

Malawi Electoral Commission Act, Cap. 2:03 of the Laws of Malawi (Ss. 1 and 8).

Political Parties Act, Act No. 1 of 2018 (s 41 (5)).

Presidential, Parliamentary and Local Government Elections Act, 2023. Act No. 10 of 2023 (Ss. 2, 100, 101 and 115 (b) (iii))

### **Subsidiary**

Code of Conduct for Election Campaign, 2025 ( rule 11 (4) (c)).

## Judgment

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### Introduction

[1] Malawi went to the polls on 16th September, 2025 to elect a president, members of parliament and ward councilors.

[2] On or about 30th September, 2025 the 1st respondent, Malawi Electoral Commission, declared results for parliamentary elections.

[3] The 1st respondent declared the 2nd respondent, Walter Nyamirandu Manda, as a winner for the parliamentary election for Nsanje South West Constituency.

[4] The petitioner, Francis Renso, was one of the eight candidates in the parliamentary election for Nsanje South West Constituency. He stood as an independent candidate.

[5] On 3rd October, 2025 the petitioner filed a petition with the High Court of Malawi, Principal Registry, alleging that the election of the 2nd respondent should be voided.

[6] The petitioner sought the following remedies:

6.1 A declaration that the 2nd respondent's election was void for corruptly influencing voters in their voting;

6.2 A declaration that the 1st respondent's failure to consider and determine the petitioner's complaint was unlawful;

6.3 Any other order that the court may deem fit and just in the circumstances; and

6.4 An order for costs of the proceedings.

### **Issues for Determination**

[7] There are two issues to be determined by the Court.

7.1 First, whether or not the election of the 2nd respondent is void for corruptly influencing voters in their voting?

7.2 Second, whether or not the failure of the 1st respondent to consider and determine the petitioner's complaint is unlawful?

### **The Petitioner's Case**

[8] The petitioner states that he is a Malawian politician of full age.

[9] The 1st respondent is a constitutional public body established under section 75 of the Constitution and section 8 of the Malawi Electoral Commission Act.

[10] The 2nd respondent is a Malawian politician who has been declared a winner in the parliamentary election for Nsanje South West Constituency.

[11] The petitioner contested for the position of member of parliament as an independent candidate for Nsanje South West Constituency during the 16th September, 2025 tripartite elections that were conducted by the 1st respondent.

[12] After the close of the campaign period, the 2nd respondent was seen at Mkotamo Village around 10:00 p.m. on 15th September, 2025 conducting a campaign and distributing money to potential voters.

[13] On the polling day, the 2nd respondent's agents one, Sinthani Chisoni Benja and Farook Ackim, were caught telling voters on the voting line to vote for the 2nd respondent and promising each voter money amounting to MK2,000.00 (Two Thousand Kwacha) each.

[14] The said agents were arrested by officers of the Malawi Defence Force and taken to Nsanje police station.

[15] The agents of the 2nd respondent were granted bail and released from custody after two days.

[16] The Police recorded statements from political party and candidate representatives on the concerned polling centres.

[17] The petitioner immediately filed a complaint with the 1st respondent.

[18] The petitioner avers that the 2nd respondent's conduct amounts to corruptly influencing voters in their voting contrary to the electoral law.

[19] The petitioner further avers that the 2nd respondent's conduct is contrary to the code of conduct.

[20] The 1st respondent has however declared the 2nd respondent as winner of the parliamentary election for Nsanje South West Constituency despite the said breaches of the electoral law.

[21] The 1st respondent never considered and determined the petitioner's complaint, neither did they respond to the petitioner's complaint.

[22] The petition was supported by seven sworn statements that were made by Francis Renso, Flora Peterson, Marita Store, Samuel Kaswada, Ndaziona Samu, Bingala Tchale and Sinthani Chisoni Benja.

[23] The first sworn statement was made by Francis Renso. He deposes that he is an adult Malawian national and a petitioner in this matter.

[24] He states that he depones to matters within his own knowledge and those on information from Bingala Tchale, Samuel Kaswada, Flora Peterson, Maria Store, Ndaziona Samu and Sinthani Chisoni Benja and verily believes the same to be true.

### **Sufficient interest**

[25] Francis Renso was a parliamentary candidate for Nsanje South West Constituency in the just ended presidential, parliamentary and local government elections.

[26] He avers that he had his candidate representatives in all polling stations in the said constituency.

[27] There were eight (8) candidates in the race for the parliamentary seat, namely, Walter Nyamirandu Manda, Chester Thete, Eurita Ntiza, Davies Ndakoiwa, Francis Renso, Madalo Goba Zero, Mwakula Mwatha and Maclean Ndafakale.

[28] On the night of 15th September, 2025 after the campaign had been officially closed, candidate Walter Nyamirandu Manda still conducted campaign at Mkotamo Village and distributed money to potential voters.

[29] On the day of voting, candidate Walter Nyamirandu Manda sent agents namely, Sinthani Chisoni Benja and Farook Ackim who told people at the polling station to vote for Walter Nyamirandu Manda. The said agents were promising the voters MK2000 (Two Thousand Kwacha) each.

[30] The said agents of Walter Nyamirandu Manda were arrested by Malawi Defence Force officers and were taken to Nsanje Police Station.

[31] The agents were released on bail after 2 days and statements were recorded from political party and candidate representatives from the concerned polling stations.

[32] He reasonably believes that this was an irregularity that influenced the results of the votes.

[33] The petitioner further reasonably believes that candidate Walter Nyamirandu Manda who was declared winner of the parliamentary election breached the electoral law and the code of conduct to his advantage.

### **Complaint to the Malawi Electoral Commission**

[34] Francis Renso filed a formal complaint with the Malawi Electoral Commission. A copy of the complaint was exhibited and marked as, "FR 1".

[35] Despite his complaint, the Malawi Electoral Commission proceeded to declare candidate Walter Nyamirandu Manda as the winner of the parliamentary election and did not consider and determine his complaint herein. Neither did the Malawi Electoral Commission respond to his complaint.

[36] He reasonably believes that the breach of electoral law and code of conduct amounts to an irregularity in that the voters were corruptly influenced in their voting in favour of candidate Walter Nyamirandu Manda.

[37] It will be fair that the election of candidate Walter Nyamirandu Manda be declared void and that fresh parliamentary elections be conducted in the constituency.

[38] The second sworn statement in support of the petition was filed by Marita Store. She depones that she was a candidate representative for Eurita Valeta who was an independent candidate for member of parliament for the constituency in issue.

[39] On the polling day, on 16th September, 2025 at around 9:00 a.m. as she performed her duties as a candidate representative at Dinde Primary School, she was on station 1 and whilst there saw a young man standing by a tree and recognised him as a Sinthani Chisoni Benja.

[40] Sinthani Chisoni Benja then approached the voting line around 12:00 p.m. and was telling voters that they must vote for candidate Walter Nyamirandu Manda and that he would give each one of them MK2,000 (Two Thousand Kwacha).

[41] She and other political party and candidate representatives informed the presiding officer and as they were with the presiding officer, officers of the Malawi

Defence Force came and took the said Sinthani Chisoni Benja to Nsanje Police Station.

[42] Sinthani Chisoni Benja was an agent for candidate Walter Nyamirandu Manda because one of the representatives whom she knew as Fyness stated later in the afternoon after they had been requested to go to have statements recorded at the police that she would not go because she was also a representative for candidate Walter Nyamirandu Manda and that it was not going to be proper for her to give evidence against a man working for the same candidate.

[43] On 18th September, 2025 she had her statement recorded at Nsanje Police Station.

[44] The third sworn statement was made by Ndaziona Samu. He depones that he was a candidate representative for Francis Renso an independent candidate in the race for parliamentary elections in the constituency.

[45] On the night of 15th September, 2025 at around 10:00 p.m. he was at Mkotamo Village and he saw candidate Walter Nyamirandu Manda in his motor vehicle come to their village and took turn at Mkotamo Catholic Church.

[46] The said candidate Walter Nyamirandu Manda parked at another church called, Pastor Tomee Church, where a lot of people from the area had congregated.

[47] Walter Nyamirandu Manda started distributing money personally to the people that had gathered.

[48] He was distributing MK2,000 notes to every person there and then when the money was running out started giving out MK1,000 notes to every person and telling them to vote for him the next day. [49] The people that gathered there were a lot and according to his estimation were over 1000 (One Thousand).

[50] The fourth sworn statement in support of the petition was made by Flora Peterson. She depones that she was a candidate representative for Francis Renso and that she was stationed at Dinde Primary School. She was on station 1.

[51] The contents of her sworn statement were similar to that of Marita Store. However, she states that at around 16:00 hours on 16th September, 2025 they were called by the police. The police wanted them to give their statement.

[52] They were busy with the elections and reported to the police on 18th September, 2025 and had their statements recorded.

[53] The candidate representative for candidate Walter Nyamirandu Manda refused to go with them because she said she was Walter Nyamirandu Manda's representative.

[54] The fifth sworn statement in support of the petition was made by Samuel Kaswada. He depones that he bakes doughnuts near Nyamadzere Primary School which was one of the polling centres in the constituency.

[55] He cast his vote at Nyamadzere Primary School around 10:00 a.m. and returned to his place of business, baking doughnuts.

[56] Whilst there, he saw Malawi Defence Force soldiers pouring water on Farook Ackim and Sinthani Chisoni Benja and later took them to police for distributing money on behalf of Walter Nyamirandu Manda on polling stations.

[57] The sixth sworn statement in support of the petition was made by Bingala Tchale. He depones that he is a personal assistant to candidate Eurita Valeta of Nsanje South West Constituency.

[58] On 16th September, 2025 he received a phone call from Group Village Headman Mphenzi that a man was distributing money at Nsanje Catholic Primary School polling centre.

[59] Group Village Headman Mphenzi chased him using a motorcycle.

[60] He then drove there and heard that the man had gone to Red Valley Lodge and found him there.

[61] He recognized him as Farooq Ackim who was assisting candidate Walter Nyamirandu Manda and the candidate was lodging at the said lodge.

[62] He warned him and later in the day he was arrested by Malawi Defence Force officers.

### **The 1st Respondent's**

#### **Case**

[63] The 1st respondent filed a reply to the petition.

[64] Paragraphs 7, 8, 9 and 10 of the petition above were admitted.

[65] The 1st respondent referred to paragraph 11 of the petition and denied receiving a complaint relating to this incident. The 1st respondent therefore denied any allegation of failure to resolve a complaint relating to this incident.

[66] The 1st respondent referred to paragraphs 12 to 20 of the petition and stated as follows:

66.1 The 1st respondent admitted that the complaint relating to this incident was lodged with its constituency returning officer.

66.2 At the time when the complaint was lodged with the 1st respondent, law enforcement agents were already seized with the matter. Thus, there was

no further role for the 1st respondent to play in the investigation or resolution of the same.

[67] Campaigning outside the prescribed campaign period constitutes an offence under the Presidential, Parliamentary and Local Government Elections Act, 2023 (the Act) and under the Code of Conduct for Election Campaign, 2025 (the “Code”) as promulgated under the Act, the law envisages that criminal offences must be dealt with by following due process of the law involving law enforcement agencies.

[68] Handouts are prohibited under the Political Parties Act which makes the conduct an offence. The power to receive, investigate and resolve complaints relating to handouts vests in the office of the Registrar of Political Parties and not the 1st respondent.

[69] In the circumstances at all material times the alleged incidents of contravention of the law by the 2nd respondent and or his agents were subject of or ought to have been subject of a due process before the relevant law enforcement agencies thus could not be used by the 1st respondent to affect the results of the parliamentary election for Nsanje South West Constituency.

[70] The petition should be dismissed with costs.

[71] The sworn statement in support of reply to the petition was made by Advocate David Matumika Banda, director of legal services and secretary to the Malawi Electoral Commission.

[72] He depones that he read the petition of Mr. Francis Renso dated 5th day of October, 2025 (the “Petition”) signed by Mr. Clement Masauko Mwala, the legal practitioner for the petitioner.

[73] He also read through the following sworn statements which have been filed in support of the petition—

- (i) By Marita Store;
- (ii) By Flora Peterson;
- (iii) By Samuel Kaswada;
- (iv) By Bingala Tchale;
- (v) By Ndaziona Samu; and
- (vi) By Francis Renso.

[74] Advocate David Matumika Banda observed that in accordance with the petition, the petitioner is seeking the following court reliefs:

- (i) A declaration that the 2nd respondent’s election is void for corruptly influencing voters;

(ii) A declaration that the 1st respondent's failure to consider and determine the petition's complaint is unlawful.

[75] He verily believed that the petition does not have any merit to warrant the granting of the mentioned reliefs.

### **Electoral Offences**

[76] Advocate David Matumika Banda verily believed that the alleged incidents referred to in the sworn statements in support of the petition relating to handouts or vote buying and campaigning outside the prescribed campaign period are electoral offences.

[77] He stated that under the Presidential, Parliamentary and Local Government Elections Act, 2023 (the Act) and under the Code of Conduct for Election Campaign, 2025 (the "Code") as promulgated under the Act, the law envisages that criminal offences must be dealt with by following due process of the law.

[78] Under paragraph 11 of the Code of Conduct it is stated that the Commission shall have the power to regulate its own procedure for enforcement and handling of complaints relating to breach of the Code and that the Commission may, upon receiving a complaint, refer the complaint to an appropriate law enforcement authority.

[79] The deponent referred to paragraph 33 of the petitioner's sworn statement in support and the attached exhibit, "FR1" and observed that only the incident alleging handouts or vote buying was lodged as a complaint to the 1st respondent's constituency returning officer. The alleged complaint relating to campaigning outside the prescribed campaign period by the 2nd respondent was not lodged with the 1st respondent.

[80] At the time of lodging the complaint the matter was already in the hands of law enforcement agency, namely, the Police.

[81] Further, the law has placed the mandate to receive, investigate and resolve complaints relating to handouts in the office of the Registrar of Political Parties and not the 1st respondent.

[82] Therefore, he verily believes that the referral of the complaints to the Police or to the Registrar of Political Parties does not constitute unlawfulness on the part of the 1st respondent or as an electoral irregularity that should invalidate the election at this point as alleged by the petitioner.

[83] The petitioner has the right to continue to pursue the alleged incidents with the relevant law enforcement agencies and may get the remedies being sought after the due process has been fully exhausted.

## Conclusion

[84] In view of the foregoing, he verily believed that the parliamentary election for Nsanje South West Constituency was conducted in compliance with the applicable electoral laws and procedures, and that the results as announced and published by the Malawi Electoral Commission represent the true will of the voters in the constituency.

[85] He further verily believed that the petition lacks merit both in law and in fact and should be dismissed with costs.

[86] The second sworn statement verifying the reply and in response to the petition was made by Justice Annabel Mtalimanja, chairperson of the Malawi Electoral Commission.

[87] She stated that she read the petition and the sworn statements in support of the petition and that she is aware of the reliefs that are being sought by the petitioner.

[88] She further stated that she also read the sworn statement of Advocate David Matumika Banda which was filed in reply and in response to the petition.

[89] She adopted the said sworn statement in its entirety as the true and fair record of how the results for the parliamentary election in the constituency were determined by the Commission.

[90] In view of the foregoing, she verily believed that the petition does not have any merit, is misconceived, lacks factual and legal foundation, and does not disclose any valid ground to warrant the granting of the reliefs sought.

[91] She prayed that the court dismisses the petition with costs.

### **The 2nd Respondent's Case**

[92] The 2nd respondent made a sworn statement in response to the petition.

[93] He deponed that he contested as a parliamentary candidate for Nsanje South West Constituency during the tripartite elections held on 16th September, 2025.

[94] Following the conduct of the election and the official tallying of results, he was duly declared a winner by the 1st respondent on 30th September, 2025 having obtained the highest number of valid votes cast.

[95] He verily believed that the results declared by the 1st respondent reflected the free and genuine will of the people of Nsanje South West Constituency, who lawfully and peacefully exercised their democratic right to vote.

[96] Mr. Walter Nyamirandu Manda categorically denied all allegations of irregularities, improprieties, and illegalities made by the petitioner in his sworn statement and petition. According to him, the said allegations are false, misleading, and designed to distort the credibility of an election that was conducted in an open, transparent, and lawful manner.

### **Alleged unlawful campaign**

#### **and handouts**

[97] Throughout the campaign period, he was based at Red Valley Lodge in Nsanje, which is approximately about 9 to 10 kilometres away from his voting centre.

[98] On 13th September, 2025, he attended a soccer and pool tournament final as part of the official campaign close.

[99] On 14th September, 2025 he travelled to Machinga for church service, returning to Nsanje on 15th September, 2025 around 16:00 hours, after which he remained at the lodge until he went to cast his vote on 16th September, 2025 at Khuluvi Primary School.

[100] On the night of 15th September, 2025, the eve of polling, he was at Red Valley Lodge together with his wife. He did not leave the premises at any point during the night.

[101] After voting, he returned to the lodge where he remained indoors, receiving reports of arrests and unrest at some polling centers.

[102] He categorically denied the allegations that he went to Mkotamo Village or distributed money to any voters. He stated that he has never even set foot at Mkotamo Catholic Church.

[103] He is aware that the petitioner only lodged his complaint on 18th of September, 2025, after the tallying process had shown that he was leading in the results.

[104] No complaint was filed with MEC on the day of the alleged events and on the polling day.

[105] The absence of any such complaint contemporaneous to the voting and counting process demonstrates that this allegation was an afterthought, invented after the results were declared and are afterthoughts intended to mislead the court.

[106] The failure to timely report the issues demonstrate or shows that no events occurred and that the allegations are fabricated and baseless.

[107] The absence of any such contemporaneous complaint clearly shows that these claims are afterthoughts intended to mislead the court.

[108] He stated that he believes that the allegations have been fabricated to discredit a free and fair election result and to unjustly void his victory.

### **Alleged campaign misconduct by alleged agents**

[109] The petitioner alleges that his (2nd respondent's) two boys, described as his agents were apprehended by Malawi Defence Force (MDF) officers for unlawfully campaigning for him.

[110] He was informed that two individuals had indeed been detained by MDF officers on polling day for allegedly distributing money to voters on his behalf, but he had no prior knowledge of, nor any connection with them.

[111] He states that these two individuals were not his agents, representatives, or campaign team members.

[112] He had his campaign team that handled his campaign affairs, and he can duly confirm that none of them was involved in any irregularities or unlawful conduct.

[113] He categorically denied that any unlawful campaign activity occurred on his behalf or with his knowledge. His campaign was conducted peacefully, transparently, and in accordance with all electoral procedures.

## **General conduct of the election**

[114] Throughout the campaign, polling and counting process, the election in Nsanje South West Constituency was peaceful, transparent, and well administered.

[115] At every polling station, the process was observed by representatives representing all candidates, including the petitioner, and the results were publicly displayed.

[116] The allegations made by the petitioner are false, unsubstantiated, and motivated by dissatisfaction with the lawful outcome of the election.

[117] The allegations by the petitioner are not only false but also an attempt to frustrate the democratic will of the people who freely choose their representative.

[118] The election was conducted in full compliance with the established electoral procedures, and the results declared by the 1st respondent represent the true and genuine will of the electorate of Nsanje South West Constituency.

[119] At no point has the petitioner produced credible or verifiable evidence to prove that any of the alleged irregularities occurred or that they materially affected the overall results of the election.

[120] Even if it was to be assumed that the anomalies and irregularities occurred, the same would not have had any bearing on the final outcome of the election, which was conducted in a transparent, peaceful, and orderly manner.

[121] He further stated that Dinde Primary School, where these alleged events are said to have occurred, is in fact the petitioner's stronghold, where he obtained a large number of votes and overwhelmingly defeated him. This fact alone undermines the claim that any alleged irregularity there benefitted him.

[122] The petitioner has therefore failed to demonstrate that any of the alleged acts or omissions substantially affected the will of the voters or the results declared by the 1st respondent.

[123] It is apparent from the contents of the petition that the petitioner merely seeks to have a second bite of the cake after being unsuccessful in the election, by attempting to use this Honourable Court to overturn the clear will of the people of Nsanje South West Constituency.

[124] The 1st respondent, being the constitutionally and statutorily mandated body to conduct, manage, and administer elections in Malawi, duly discharged its functions lawfully, fairly, and in accordance with established electoral procedures.

[125] He verily believed that the results declared by the 1st respondent represent the true, free, and genuine will of the people of Nsanje South West Constituency, and that this Honourable Court should not allow the petitioner to relitigate his electoral defeat under the guise of alleged irregularities and unsubstantiated allegations.

[126] He prayed that this Honourable Court dismisses the petition in its entirety, with costs.

[127] The second sworn statement in opposition to the petition was made by Farook Karim. He depones that he is an adult male citizen of Lingume Village, Traditional Authority Malemia in Nsanje District.

[128] He stated that on 16th September, 2025 he voted at Nsanje Community Ground Polling Centre and thereafter accompanied his friends Dingiswayo Kachingwe and Rueben to their polling stations at Dinde Primary School.

[129] Because of the crowd at that polling station, he went to sit under a tree nearby while waiting for his friends to vote.

[130] While seated there, he saw MDF officers arrest another man, later identified as Mr. Sinthani Chisoni Benja, who was kneeling on the ground.

[131] Shortly thereafter, the same officers approached him, pointed a firearm at him, and ordered him into their motor vehicle while accusing him of promising to distribute money to voters.

[132] He denied the accusation, but they drove him to Nyamadzere Model School where they poured water on him, rolled him in mud, and tried to force him to confess to something that he had not done.

[133] He maintained his innocence and was later taken to the police station where he was detained from 16th to 18th September 2025 and subsequently released on bail pending investigations.

[134] At all material times, he was not an agent, representative, or member of the 2nd respondent's campaign team and had no instructions or connection whatsoever with the 2nd respondent.

[135] He made this statement to confirm that he was wrongfully apprehended and that the 2nd respondent had no connection with him or to any alleged bribery.

[136] He stated that he was wrongfully accused, that the 2nd respondent had no involvement or knowledge of the incident, and that the alleged promising of distribution and distribution of money did not occur.

[137] Upon release from custody, he was informed that the police were still investigating, as the matter had originated from the MDF officers' apprehension of him and Mr. Sinthani Chisoni Benja.

[138] The third sworn statement in opposition to the petition was made by Charles Bishop. He depones that he is adult male Malawian citizen and the campaign director for the 2nd respondent.

[139] On the night of 15th September, 2025, he was with the 2nd respondent and his wife at Red Valley Lodge, where he was lodging during the election period. They were together up until around or about 11:00 p.m., chatting and reviewing final polling arrangements.

[140] After 11:00 p.m., he left the lodge to go home and rest for the following day's polling exercise. The 2nd respondent and his wife remained at the lodge.

[141] On 16th September, 2025, being polling day, he began distributing food and refreshments to their representatives stationed at various polling centres across the constituency.

[142] He started from Nsanje Catholic Primary School polling centre and proceeded to Nsanje Community Ground, ensuring that all representatives were properly fed and equipped to carry out their duties.

[143] At around 8:00 a.m. to 9:00 a.m., he received a call from one of their representatives asking about a rumour circulating that the 2nd respondent was distributing cash to voters and that an army motor vehicle was heading towards Nsanje Community Ground.

[144] At that very time, he was physically present at Nsanje Community Ground himself. He assured his representatives that there was no such activity taking place and that they were only distributing food supplies to their accredited representatives.

[145] Thereafter, he proceeded towards Dinde Primary School but stopped briefly at Nsanje Trading Centre market to buy additional items for the representatives.

[146] As head of the campaign, he wishes to categorically state that no money was ever given to him or any of his team members for purposes of distributing handouts. All funds provided were for legitimate campaign and logistical expenses duly accounted for.

[147] He verily believed that the petitioner's allegations are false, malicious, and intended to tarnish the image of the 2nd respondent and to mislead this Honourable Court.

[148] The 2nd respondent's campaign was conducted peacefully, lawfully, and in full compliance with all electoral regulations.

**The Petitioner's sworn statement in reply to 2nd respondent**

[149] The sworn statement in reply to the 2nd respondent was made by Sinthani Chisoni Benja. He depones that he was one of the security men for candidate Walter Nyamirandu Manda in the Nsanje South West Constituency parliamentary elections held on 16th September, 2025.

[150] He stated that he read the sworn statement of Walter Nyamirandu Manda filed herein and would like to state as herein below.

[151] From 8:00 p.m. on 15th September, 2025 to 1:00 p.m. on 16th September, 2025 they went to Mwanda Village, T/A Malemia in Nsanje which is in Nsanje South West Constituency and they distributed money to potential voters.

[152] When they arrived there they met community police members and they bribed them with MK20,000 to let them enter the village.

[153] They were three of them, himself, Aslam Ackimu and Anusa and they were given MK900,000 to distribute and they distributed MK400,000 and remained with MK500,000.

[154] They would knock on the door of a household and with the assistance of the community policing members, they would request the adults in the house to come out and give them MK2,000 to each potential voter and ask them to vote for Walter Nyamirandu Manda.

[155] On 16th September, 2025 after voting had started, he still had MK109,000 left as a balance.

[156] He went to Dinde Primary School polling centre and there he started distributing money amounting to MK2,000 each to each potential voter and telling them to vote for Walter Nyamirandu Manda. His two friends went to other centres.

[157] As he was doing that, a certain woman requested that he buys her water and as he was talking to that woman, he was arrested by MDF officers and took him to Nsanje Police Station after they had beaten him up.

[158] His friend Ack Farook was also arrested and beaten up by the MDF officers.

[159] On 12th October, 2025 he was taken by Charles Mtchini and Gregory Sandram to Walter Nyamirandu Manda's lawyer and the lawyer wanted to take a statement from him but he declined to sign the statement.

[160] He was shown a sworn statement made on 13th October, 2025 allegedly made by him on behalf of the 2nd respondent. He completely disowned it and stated that he never signed it. The signature that is on the said statement did not belong to him. It was a complete forgery of his signature. A copy of the sworn statement was exhibited and marked as, "SCB 1".

[161] He decided to tell the truth about what happened and that is why he refused to sign the statement.

#### **Cross examination of Sinthani**

##### **Chisoni Benja**

[162] Sinthani Chisoni Benja was cross examined based on a recording of a telephone conversation that he had with someone named as Harrison.

[163] The recording of the telephone conversation was not part of any exhibits that was given in evidence by any one of the witnesses.

[164] The court took a decision to totally exclude this evidence because it was illegally obtained evidence. The recording of the telephone conversation was done by an unknown person, whether State official or a private individual without Sinthani Chisoni Benja's consent and in breach of his right to privacy as provided for under section 21 (c) of the Constitution.[\[1\]](#)

## Preliminaries

[165] Advocate Mr. Emmanuel Chapo for the 1st respondent, made an application that the petition should be dismissed with costs because it had been brought against an entity that was unknown to the law, “Electoral Commission” instead of “Malawi Electoral Commission”. He argued that in law, the petition was therefore a nullity.

[166] In support of this application, he cited *Muluzi and another -vs- Malawi Electoral Commission*,<sup>[2]</sup> in which the High Court noted that the defendant sued in the matter had been named, “Malawi Electoral Commission” which was not the name the Constitution gave it at birth, and by which the generality of electoral law referred to it with.

[167] Advocate Mr. Emmanuel Chapo also cited the case of *Democratic Progressive Party -vs- Attorney General*<sup>[3]</sup> where the High Court noted as follows:

We are in the realm of the law and nomenclature matters. Public offices and officers should therefore be referred to according to law.

[168] In that same case referred to above, referring to the case of *Tembo and Kainja -vs- The Speaker of the National Assembly* MSCA Civil Appeal No. 1 of 2003 (Unreported) the High Court noted that an injunction issued against the Speaker of the National Assembly, whom the court found to have been a wrong party, was vacated *inter alia* on the ground that a wrong party had been sued.

[169] The High Court stated as follows:

*Our understanding of that finding is that where a claimant has not sued the correct party the action is futile and no remedy can ensue from the same as no defendant exists from whom such remedy can be recovered.*<sup>[4]</sup>

[170] In response, Advocate Mr. Clement Masauko Mwala conceded that he was not aware of the amendments to section 75 of the Constitution which now established “Malawi Electoral Commission” as well as section 1 of the Malawi Electoral Commission Act which provides that the Act may be cited as the Malawi Electoral Commission Act.

[171] Advocate Mr. Clement Masauko Mwala argued that the petitioner should be allowed to amend the name of the 1st respondent which had been sued as, “Electoral Commission” to “Malawi Electoral Commission” by adding the word, “Malawi” so that the court can deal with the matter on its merits in line with the overriding objective of the Courts (High Court) (Civil Procedure) Rules, which was to deal with proceedings justly.

[172] He further argued that in any case the 1st respondent had not been prejudiced in any way by the incorrect name.

### **Preliminary matter**

### **Resolution of the 1st**

[173] The bench depends on the bar to cite to it the correct law. Where the bar is not so updated on the current status of the law, the bench has a duty to point that out. But certainly, it is the bar that must do more to assist the court in that regard.

[174] In the present petition, the petitioner's legal practitioner relied on an older version of the Constitution<sup>[5]</sup> and sued the 1st respondent as "Electoral Commission" instead of the "Malawi Electoral Commission". He also did not consult the Malawi Electoral Commission Act,<sup>[6]</sup> or if he did, he consulted the Electoral Commission Act.

[175] In these circumstances, should the remedy always be to dismiss the petition, especially in election matters, where an incorrect party has been sued as was argued by Advocate Mr. Emmanuel Chapo, the legal practitioner for the 1st respondent?

[176] This court is of a different opinion. It would be too harsh of a measure to take in circumstances where it can be shown that the Malawi Electoral Commission would not suffer any serious prejudice.

[177] In fact, the general principle of law is that election matters, being human rights in nature, should as far as possible, be decided on their merits and not technicalities, unless the technicalities are of such a nature that they cannot be waived or cured by the court.

[178] This court is not alone in this view. In *The State -and- Malawi Electoral Commission and Attorney General, ex-parte Ellock Maotcha Banda*<sup>[7]</sup> the applicant had sued “Malawi Electoral Commission” instead of “Electoral Commission” as the law stood then.

[179] Electoral Commission raised a similar preliminary issue as in the present petition that a non-entity had been sued and that therefore the petition had to be dismissed with costs.

[180] The High Court (Kapindu, J) sitting allowed the applicant to amend all relevant court processes to reflect the fact that the correct name of the 1st respondent was the “Electoral Commission”. The Court noted that there was no prejudice to the 1st respondent whatsoever with those amendments.

[181] Similarly, in this petition, the Court does not see any prejudice that the 1st respondent will suffer if it allows the petitioner to amend the name of the 1st respondent from “Electoral Commission” to “Malawi Electoral Commission” as is the position of the law now.

[182] In *Mchali -vs- Kajawa and another*<sup>[8]</sup> the petitioner sued “Malawi Electoral Commission” instead of “Electoral Commission”. The petitioner then brought a summons for leave to amend the name by deleting the word, “Malawi” from the name of the 2nd respondent.

[183] The High Court (Kamanga, J), as she then was, granting an order of leave to amend the name of the 2nd respondent held that the three factors to consider are that first, the mistake must have been a genuine mistake; second, the mistake should not be misleading or cause any reasonable doubt as to the identity of the party to be sued; and lastly, it would be just to make the amendment.

[184] The High Court further held that in practice leave to amend is usually granted as “it is cardinal to justice that issues must be settled between the correct parties to save multiplicity of actions and costs”.

[185] The High Court also held that the objective of the court in allowing amendments to proceedings “is to decide the rights of the parties and not to punish them for the mistakes they make in the conduct of their cases”. The court was not persuaded by the arguments and submissions of the 1st respondent which were inclined towards swaying the court to pursue a punitive route against the petitioner in the conduct of his matter.

[186] Furthermore, the High Court held that its assessment of the arguments raised by the 1st respondent was that he had failed to appreciate the distinction between an application to amend a name of a party and an identity of a party. While the law and rules of practice allow the amendment of the name of a party at any stage of the proceedings, the procedure was very clear that one could not amend the identity of a party.

[187] The High Court went on to hold that the mistake made by the petitioner was not misleading, given that election issues were raised in the petition, and they could not cause any reasonable doubt as to the identity of the party that the petitioner intended to sue, who happened to be responsible for the management and control of presidential and parliamentary elections.

[188] It was the final holding of the High Court that the court had discretionary powers to grant or refuse an application for leave to amend which should be exercised judiciously.

[189] In this petition, the 1st respondent argued that the prejudice that it will suffer is that if the amendment will be allowed, it would amount to allowing the petitioner to file his petition outside the limitation period of seven (7) days as prescribed under the Presidential, Parliamentary and Local Government Elections Act, 2023.[\[9\]](#)

[190] The 1st respondent's argument is unsustainable for two reasons. First, this court's understanding of the law is that if it allows the amendment of the name by simply adding the word, "Malawi" at the beginning of the words, "Electoral Commission", the same will take effect from the date when the petition was filed with the court, which is 3rd October, 2025.

[191] Second, no specific limitation period has been prescribed for section 100 petitions under the Presidential, Parliamentary and Local Government Elections Act, 2023.[\[10\]](#) There is therefore no question about the 1st respondent not being able to

benefit from any limitation period.

[192] The seven (7) days limitation period applies to section 101 petitions under the Presidential, Parliamentary and Local Government Elections Act, 2023. Petitions under section 100 are just required to be brought or filed within a reasonable time due to potential impact that they may have on elections results.<sup>[11]</sup> Otherwise, they have no specific limitation period as it were.

[193] Time for filing appeals under section 100 of the Presidential, Parliamentary and Local Government Elections Act, 2023 starts running when the Malawi Electoral Commission confirms or rejects the existence of an irregularity, and not when election results are declared.<sup>[12]</sup>

[194] Section 100 petitions and section 101 petitions are different from each other. They should never be transposed or conflated. That would also explain why they are under different parts of the Presidential, Parliamentary and Local Government Elections Act, 2023. In the same vein, remedies under section 100 petitions cannot apply to petitions under section 101 and vice versa.

[195] To push the pendulum further in that direction, section 100 petitions end at the High Court level. A party cannot appeal against a decision of the High Court that was brought under section 100 to the Supreme Court of Appeal.<sup>[13]</sup> On the other hand, section 101 petitions are appealable to the Supreme Court of Appeal.<sup>[14]</sup>

[196] In the final analysis, this court allows the amendment sought by the petitioner for a number of reasons.

[197] First, the 1st respondent took further steps in the proceedings from the time it became aware that the petitioner had sued a non-entity. It filed the following documents: (a) reply to the petition, (b) sworn statement in support of reply to petition, (c) sworn statement verifying the reply and in response to petition, and (d) skeleton arguments in support of reply. It cannot be heard now to say that the 1st respondent is a non-entity. There was no reasonable doubt as to who the real party was in this petition.

[198] Second, as the discussion above has shown, the argument about deriving a benefit from limitation period under section 100 petitions by the 1st respondent was misconceived. That benefit does not exist. It was imaginary. The court is satisfied that the 1st respondent will suffer no prejudice. There was no confusion on its part as to which entity was being referred to by the petitioner.

[199] Third, the cases of Muluzi and another -vs- Malawi Electoral Commission, Democratic Progressive Party -vs- Attorney General and Tembo and Kainja -vs- The Speaker of the National Assembly are distinguishable from the present one as they did not enjoy the privilege of amendment of court processes.

[200] The distinction lies in the intervention of the court by way of amendment of the processes as did the court in The State -and- Malawi Electoral Commission and

Attorney General, ex parte Ellock Maotcha Banda and Mchali -vs- Kajawa and another.

It is important that parties and courts should avoid being overly technical in these types of cases, especially on procedural issues that do not go to the root of the case.

[201] Fourth, this court has always regarded as the correct principle to guide a court in considering whether to grant an application for amendment of pleadings the statement in Cropper -vs- Smith<sup>[15]</sup> by Bowen L.J. when he said:

*I think it is well established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes which they make in the conduct of their cases by deciding otherwise than in accordance with their rights...I know of no kind of error or mistake which if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy and I do not regard such amendment as a matter of favour or grace...*

[202] This Court is aware that a petition is not a pleading or statement of case as was held by the High Court in Chilima and another -vs- Mutharika and another<sup>[16]</sup> and confirmed by the Supreme Court of Appeal in Mutharika and another -vs- Chilima and another.

[203] The above notwithstanding, this Court is unable to see why the principle as laid down by Bowen L.J. in Cropper -vs- Smith would not apply to petitions, especially in view of the overriding objective of the Courts (High Court) (Civil Procedure) Rules. As a matter of fact, that has been the approach of the High Court in these matters.<sup>[18]</sup> This disposes of the preliminary issue raised by the 1st respondent.

## **2nd Preliminary matter**

### **and its resolution**

[204] There was another issue that was raised by the court. It was that in its view, it was not possible for the petitioner to bring his petition under both sections 100 and 101 of the Presidential, Parliamentary and Local Government Elections Act, 2023 as he initially did. He had to choose one provision and not both.[\[19\]](#)

[205] The petitioner in his wisdom settled for section 100. Consequently, section 101 was accordingly removed from the title of the petition and amended accordingly. This was done in the spirit of the general principle that as far as possible, election petitions should be determined on their merits rather than on technicalities, as we have already seen.

### **The Law**

[206] Section 76 (1) of the Constitution is to the effect that the Malawi Electoral Commission shall exercise such functions in relation to elections as are conferred upon it by the Constitution or by an Act of Parliament.

[207] In terms of section 76 (2) (c) of the Constitution, one of the duties and functions of the Malawi Electoral Commission is to determine electoral petitions and complaints related to the conduct of any elections.

[208] The other duty and function of the Malawi Electoral Commission is to ensure compliance with the provisions of the Constitution and any Act of Parliament. This is in accordance with section 76 (2) (d) of the Constitution.

[209] According to section 76 (3) of the Constitution, any person who has petitioned or complained to the Malawi Electoral Commission shall have a right to appeal to the High Court against determinations made under subsections (2) (c) and (2) (d).

[210] Section 100 of the Presidential, Parliamentary and Local Government Act, 2023 provides as follows:

(1) An appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity and such appeal shall

be made by way a petition, supported by sworn statements, which shall clearly specify the declaration the High Court is being requested to make by order.

(2) On hearing a petition under subsection (1), the High Court -

(a) shall, subject to subsection (3), make such order or orders as it thinks fit; or

(b) in its absolute discretion, may or may not condemn any party to pay costs in accordance with its own assessment of the merits of the complaint.

(3) An order of the High Court made under subsection (2) shall not declare an election or the election of any candidate void, except on the following

grounds which are proved to the satisfaction of the Court-

(a) that the voters were corruptly influenced in their voting contrary to any provision of this Act, or had their ballot papers improperly rejected or voted more than once;

(b) that persons not entitled were improperly granted ballot papers;

(c) that persons entitled to them were improperly refused ballot papers;

Provided that, if the Court is satisfied that any failure to comply with this Act did not affect the result of the election, it shall not declare the election void; or

(d)...

[211] Where a petitioner alleges that the voters were corruptly influenced in their voting contrary to any provision of the Act, the position of the law is such that it must be shown through evidence that the outcome of the elections could have been affected by any of the said allegations for the court to declare the election void. [\[20\]](#)

[212] Put differently, if the court is satisfied that any failure to comply with the Act did not affect the result of the election, it shall not declare the election void. This is clear from the proviso to section 100 (3) (a), (b) and (c) of the Presidential, Parliamentary and Local Government Elections Act, 2023.

[213] It is the petitioner who must prove that the voters were corruptly influenced in their voting contrary to any provision of the Presidential, Parliamentary and Local Government Elections Act, 2023. [\[21\]](#)

[214] Section 2 of the Presidential, Parliamentary and Local Government Elections Act, 2023 defines an “irregularity”. In relation to the conduct of an election, it means non-compliance with the requirements of this Act, the Constitution and any other applicable law.

[215] Malawi Electoral Commission is under constitutional and statutory duty to conduct all elections in strict compliance with the law. This is one of its core duties and functions.<sup>[22]</sup>

[216] The burden of proof is on the one alleging irregularities, to establish how the irregularities affected the integrity of the election’s outcome. It is the petitioner who bears the initial burden to support his petition with evidence.<sup>[23]</sup>

[217] The standard of proof in election petitions is *prima facie* standard. The petitioner is required to discharge the initial burden of proof on a *prima facie* standard of proof, before the burden shifts to the Commission as a duty bearer.<sup>[24]</sup>

[218] Once the burden so shifts, owing to the powers, functions and duties of the Commission and the electoral statutes have conferred on the Commission, the Commission must discharge the burden of proof in rebuttal of the petitioner’s allegations on a balance of probabilities.<sup>[25]</sup>

[219] An election is not to be lightly nullified both as a matter of principle and as well as in recognition of practical realities. It is not the duty of the courts to decide elections. It is the electorate that should do so. The duty of courts is to strive, in the public interest, to sustain that which the people have expressed as their will.[\[26\]](#)

### **Application of the Law to the Facts**

[220] The first issue that the court has to grapple with is whether or not the election of the 2nd respondent is void for corruptly influencing voters in their voting?

[221] The petitioner argued that giving of handouts by the 2nd respondent fits within the meaning of corruptly influencing voters in their voting. In his sworn statement in support of the petition, he states that on 15th and 16th September, 2025 the 2nd respondent and his agent distributed money to potential voters and two of his agents were arrested for it as a result.

[222] The petitioner states that he reasonably believes that this was an irregularity and that it influenced the results of the election and that the election of the 2nd respondent must be declared void and a fresh parliamentary election should be ordered.

[223] It was also argued that the sworn statement of Sinthani Chisoni Benja is clear that on 15th and 16th September, 2025 they were given the sum of MK900,000.00 to distribute to potential voters and would then ask them to vote for Walter Nyamirandu

Manda.

[224] They would knock on the door of a household and request an adult to come out and they would give MK2,000 to each potential voter. This they did at Mwanda Village, Traditional Authority Malemia in Nsanje district.

[225] On 16th September, 2025 the Sinthani Chisoni Benja went to Dinde Primary School and his two friends went to other centres. These were Nsanje Catholic Primary School and Nyamadzere Primary School.

[226] Sinthani Chisoni Benja and Ack Farook were arrested by Malawi Defence Force officers and taken to Nsanje Police Station. They are currently on bail.

[227] The sworn statement of Marita Store confirms that Sinthani Chisoni Benja approached the voting line at around 12:00p.m. and was telling voters to vote for Walter Nyamirandu Manda and that in turn gave them MK2,000 each.

[228] The said Marita Store and other candidate representatives informed the presiding officer and the Malawi Defence Force officers arrested and took Sinthani Chisoni Benja to the police.

[229] Marita Store states that Fyness refused to go to the Nsanje Police Station to have a statement recorded because as a candidate representative for Walter

Nyamirandu Manda, it was not going to be proper for her to give evidence against a man working for the same candidate.

[230] The sworn statement of Ndaziona Samu states that Walter Nyamirandu Manda went to Mkotamo Catholic Church and Pastor Tomee Church and started distributing money personally to the people that had gathered. He avers that he saw Walter Nyamirandu do that.

[231] Apparently, the 2nd respondent was first distributing MK2000 to every person and when the money run out, he started giving out MK1,000 to each person and telling them to vote for him the next day.

[232] According to Ndaziona Samu, the people were many and according to his estimation, they were over 1000.

[233] The sworn statements of Flora Peterson, Bingala Tchale and Samuel Kaswada repeat what the other deponents have already stated.

[234] The petitioner finally argued that in this case, the 1st respondent should have come in to deal with the civil side of the complaint by disqualifying the candidate concerned, the 2nd respondent.

[235] In response, the 2nd respondent, deponed that on the night of the 15th September, 2025 he was at Red Valley Lodge with his wife and did not leave the premises at any point.

[236] The 2nd respondent categorically denied the allegations that he went to Mkotamo Village or that he distributed money to any voters. He states that he was informed about the arrests of the two individuals but has no connection with them. The two individuals were not his agents, representatives or campaign team members.

[237] Walter Nyamirandu Manda further deponed that the allegations made by the petitioner are false, unsubstantiated, and motivated by dissatisfaction with the lawful outcome of the election. He describes them as an attempt to frustrate the democratic will of the people who freely choose their representatives.

[238] Having considered the two versions as given by the petitioner and his witnesses and the 2nd respondent and his witnesses, the court is more inclined to believe the petitioner's version of events that the 2nd respondent and his agents gave handouts on 15th September, 2025.

[239] The court does not believe that the petitioner and his witnesses just sat down and cooked up this story. It may have been an afterthought but the court does not believe that it was a mere fabrication. The 2nd respondent was seen by Ndaziona Samu at Mkotamo Village in his motor vehicle personally distributing money to potential voters at Mkotamo Catholic Church and Pastor Tomee Church.

[240] In addition, Sinthani Chisoni Benja admits in his sworn statement that they were given the sum of MK900,000 by the 2nd respondent to distribute to potential voters and that after the election he still had MK109,000 left. The distribution of money was to continue even on 16th September, 2025 at specific polling stations.

[241] That would also explain why Sinthani Chisoni Benja and Ack Farook were arrested by Malawi Defence Force officers. They were up to no good. They are currently on bail. That would also explain why a lady called Fyness refused to go to Nsanje Police Station to give a statement because it was not going to be proper for her to give a statement against a man working for the same candidate, the 2nd respondent. Flora Peterson also made a similar observation in her sworn statement.

[242] There was a suggestion from the 2nd respondent that the petitioner obtained a large number of votes and overwhelmingly defeated him at Dinde Primary School and that this shows that the allegation by the petitioner is not true. The 2nd respondent brought no evidence to prove that he was overwhelmingly defeated by the petitioner at Dinde Primary School. Therefore, the court is unable to believe the 2nd respondent's allegation that he was overwhelmingly defeated by the petitioner at Dinde Primary School.

[243] The Court notes that the 2nd respondent and his witnesses deny that they were involved in any of the allegations made by the petitioner. Obviously, they would never admit any wrongdoing.

[244] However, the court still finds that the 2nd respondent and his agents, Sinthani Chisoni Benja and Ack Farook, distributed handouts (money) to potential voters on 15th September, 2025 contrary to section 41 (5) of the Political Parties Act.<sup>[27]</sup> This was indeed an irregularity as defined by section 2 of the Presidential, Parliamentary and Local Government Elections Act, 2023.

[245] The question is: having given handouts to potential voters, and having advised them to vote for the 2nd respondent, did they in fact vote for him and did that affect the results of the election outcome?

[246] The evidence before the court shows that the 2nd respondent gave handouts to potential voters (adults) who had gathered at Mkotamo Catholic Church and Pastor Tomee Church. Similarly, the 2nd respondent's agents would go to a household and ask an adult to come out and give them a MK2000 note and ask them to vote for the 2nd respondent.

[247] The two agents of the 2nd respondent also gave the same amount of money to a few voters on 16th September, 2025 and they were arrested for it.

[248] There are two quick things to be said about the giving of handouts in this petition.

[249] First, the court is not satisfied that actual registered voters were targeted by the 2nd respondent and his agents, especially, on 15th September, 2025. From the sworn statements in support of the petition, as long as one was an adult either at Mkotamo Catholic Church or Pastor Tomee Church or in a household, they were being given a MK2000 note.

[250] The case would have been different if the 2nd respondent and his agents were asking the potential voters to be shown a registration voting certificate first before giving them handouts. That they never did.

[251] Without this verification process, the 2nd respondent and his agents gave handouts to other people who were not even registered voters. It is a notorious fact that it is only one out of three persons in Malawi that were registered as voters for the September 16, 2025 elections.

[252] This raises the question whether in that case, where not only registered voters were being given handouts, but just any potential voter, even unregistered persons, amounts in law to be a handout properly so called? It goes without saying that unregistered persons cannot influence the outcome of an election.

[253] The right to vote is qualified. It is only available to those who have registered in the appropriate constituency after satisfying the residential and other requirements. That was the holding of the Supreme Court of Appeal in Chakuamba and others -vs- Attorney General and others<sup>[28]</sup> (3).

[254] Second, even if it was to be accepted that the persons who received handouts on 15th September, 2025 were slightly over 1000 as deponed by Ndaziona Samu, out of this figure, around 350 to 400 would be the actual registered voters, if the fact that only one out of every three persons in Malawi were registered as voters would be anything to go by.

[255] The other question is: out of these 350 to 400 registered voters, did all of them vote the next day? If they did vote, did they vote for the 2nd respondent as they were asked to do or they voted according to their choice and conscience? These questions remain unanswered and the petitioner did not address them.

[256] Be that as it may, one thing for sure is that registered voters in Malawi are very intelligent people, if not cunning. It does not matter where they are from - be it urban or rural. They know exactly what they want and who to vote for. They are not as gullible as some people may think of them. They can receive handouts from candidates and still vote for a candidate of their choice.

[257] Third, it is in evidence that on 16th September, 2025 Sinthani Chisoni Benja approached the voting line at about 12:00p.m. This means that from the time that the poll opened at 06:00a.m. up to 12:00p.m. no voter can claim to have been corruptly influenced by any handout.

[258] It is also in evidence that as soon as it was noted that Sinthani Chisoni Benja was telling voters on stream 1 to vote for the 2nd respondent and that he was giving them MK2000 notes, the matter was reported to the presiding officer. Thereafter, Malawi Defence Force officers intervened and arrested him and took him to Nsanje Police Station.

[259] As it is, it is not known how many voters were allegedly corruptly influenced in their voting on 16th September, 2025 by the 2nd respondent's agent or agents.

[260] Worse still, the petitioner did not proffer any evidence of the difference of votes that he got between him and the 2nd respondent so that the court has an appreciation whether the irregularity herein affected the outcome of the election.

[261] It also did not come out in the petitioner's evidence as to how many polling stations this constituency had and whether the irregularity herein had the potential to affect results for the entire constituency.

[262] The petitioner did not also proffer any evidence of not even a single voter who received a handout from the 2nd respondent or his agents who voted for the 2nd respondent as a result of being asked to do so by them.

[263] In view of the foregoing, it is difficult to say with certainty whether any voters were indeed corruptly influenced in their voting to vote for the 2nd respondent and

whether that, affected the results of the election as required by law.

[264] Consequently, the court holds that the petitioner has dismally failed to prove the allegation in his petition. While the court has found that there was indeed an irregularity, the court is not satisfied that the irregularity affected the result of the election.

[265] For that reason, the court agrees with the submission by the 2nd respondent that the petitioner has failed to prove the proviso to section 100 (3) (a), (b) and (c) of the Presidential, Parliamentary and Local Government Elections Act, 2023. Consequently, the Court declines to declare the election of the 2nd respondent void as prayed for by the petitioner.

[266] The second issue for the court to grapple with is whether or not the failure of the 1st respondent to consider and determine the petitioner's complaint is unlawful?

[267] It is in evidence that the petitioner lodged a complaint with the 1st respondent on 18th September, 2025. The petitioner alleges that the 1st respondent failed to consider and determine the complaint as required by law and that, that failure is therefore unlawful.

[268] The 1st respondent argued that section 100 of the Presidential, Parliamentary and Local Government Act, 2023 means that the court is dealing with a complaint that

was before it. The petitioner cannot raise new issues under this section. This means that the only complaint is the one contained in exhibit, "FR 1" which was essentially about handouts.

[269] Advocate Mr. Emmanuel Chapo prayed that the other complaint relating to campaigning outside the campaign period be expunged from the record. He also argued that you cannot have a situation where new complaints are being raised through sworn statements. Only evidence relating to handouts should be allowed to stand and the rest should be disregarded by the court.

[270] Advocate Mr. Emmanuel Chapo joined issue with the petitioner that giving of handouts may fit in the ground for corruptly influencing voters in their voting but that the test in the provision may not be satisfied. He contended that this is where the issue of misconduct being offences come in.

[271] On this point, Advocate Mr. Emmanuel Chapo stated that there is no such distinction in law as the civil side of the misconduct and criminal side of the misconduct as was argued by Advocate Mr. Clement Masauko Mwala. It just does not exist. A misconduct is either criminal or not.

[272] In this case, giving of handouts is an offence under section 41 (5) of the Political Parties Act and at the time when the complaint was lodged with the 1st respondent, law enforcement agents were already seized with the matter. Thus, there was no further role for the 1st respondent to play in the investigation or resolution of the

same.

[273] Further, the power to receive, investigate and resolve complaints relating to handouts vests in the office of the Registrar of Political Parties and not the 1st respondent. The complaint by the petitioner may be valid but it cannot operate to void an election. There is a path which the law has created. The petitioner should be redirected to the Registrar of Political Parties.

[274] Similarly, campaigning outside the prescribed campaign period constitutes an offence under section 115 (b) (iii) of the Presidential, Parliamentary and Local Government Elections Act and under the Code of Conduct for Election Campaign, 2025. The law envisages that criminal offences must be dealt with by following due process of the law involving law enforcement agencies.

[275] The Court is satisfied that the 1st respondent did not fail to consider and determine the petitioner's complaint as was alleged. The complaint was criminal in nature and the 1st respondent does not prosecute crimes. Criminal processes had already ensued.

[276] The law is very clear that the Malawi Electoral Commission has a duty and function to deal with and determine complaints. However, this duty does not extend to conduct criminal investigations or prosecutions. [\[29\]](#)

[277] A misconduct is either an offence or not an offence. If it is an offence, it falls outside the ambit of the Malawi Electoral Commission. The best the Malawi Electoral Commission can do is to refer it to an appropriate enforcement agency as is provided for under rule 11 (4) (c) of the Code of Conduct for Election Campaign, 2025. In any event, it is a time honoured legal principle that the same matter cannot be handled by two bodies or for a simultaneously.

[278] The first part of the complaint relating to handouts is already with the Malawi Police Service. The two individuals were already arrested and they are currently on bail. There was nothing else for Malawi Electoral Commission to do in that regard.

[279] The second part of the complaint relating to campaigning outside the prescribed official campaign period falls within the province of the Registrar of Political Parties. The 1st respondent could not assume jurisdiction over a criminal offence as we have already seen.

[280] Consequently, this court finds and agrees with the 1st respondent that the alleged incidents of contravention of the law could not be used by the 1st respondent to affect the results of the parliamentary elections in Nsanje South West Constituency. The second issue for determination is also dismissed.

[281] Before the Court rests, it would like to observe in passing that, section 100 of the Presidential, Parliamentary and Local Government Elections Act cannot be relied upon by a petitioner in the absence of a decision by the Malawi Electoral Commission

confirming or rejecting the existence of an irregularity.<sup>[30]</sup>

[282] The Court avoided using this observation in the determination of this petition because it never put it to the parties nor did it hear them on the same.

[283] Costs are awarded in the discretion of the court.<sup>[31]</sup> The general rule is that the unsuccessful party pays costs of the successful party. There is no reason for the court to depart from this general rule. Costs of this petition are awarded to the respondents.

[284] They shall be assessed by the Registrar of the court in default of any agreement by the parties themselves. It is so ordered.

[285] Made in open court this 7th day of November, 2025 at Blantyre, Malawi.

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**[1]**

See generally, Cassim Chilumpha, SC Containing the Widening Gyre: Protection of Personal Privacy under the Constitution of Malawi, Zowo Designs (2014).

**[2]**

[1994-2012] MELR 253 (HC).

**[3]**

[2013-2021] MELR 502 (HC).

**[4]**

n3 above.

**[5]**

The Constitution of the Republic of Malawi.

**[6]**

Cap. 2:03 of the Laws of Malawi.

**[7]**

Election Case No. 13 of 2019 (High Court of Malawi) (Zomba District Registry) (Unreported) a ruling dated 5th June, 2019.

**[8]**

[2013-2021] MELR 190 (HC).

**[9]**

Act No. 10 of 2023.

**[10]**

This was also the case under the repealed section 114 of the Parliamentary and Presidential Elections Act. See Banda and others -vs- Electoral Commission and others, [2013-2021] MELR 250 (HC).

**[11]**

Banda and others -vs- Electoral Commission and others, [2013-2021] MELR 250 (HC).

**[12]**

As above.

**[13]**

See section 100 (5) of the Presidential, Parliamentary and Local Government Elections Act, 2023. See also Namasasu -vs- Msungama and another [2013-2021] MELR 231 (SCA).

**[14]**

There is nothing in section 101 of the Presidential, Parliamentary and Local Government Elections Act, 2023 that provides that the determination of the High Court shall be final.

**[15]**

(1884) 26 Ch. D 700, 710. 16

**[16]**

Chilima and another -vs- Mutharika and another [2020] MELR 1 (HC).

**[17]**

Mutharika and another -vs- Chilima and another [2020] MELR 406 (SCA).

**[18]**

n9 above. See also Chilima and another -vs- Mutharika and another, Constitutional Reference No. 1 of 2019 (High Court of Malawi) (Lilongwe District Registry) (Unreported) Ruling of 27th June, 2019.

**[19]**

The rationale has already been discussed during the resolution of the first preliminary matter.

**[20]**

Navicha -vs- Electoral Commission and Anor [1994-2012] MELR 391 (HC).

**[21]**

As above.

**[22]**

See Paragraph 210 above.

**[23]**

Mutharika and Anor -vs- Chilima and Anor [2020] MELR 406 (SCA).

**[24]**

As above.

**[25]**

As above. See also Sekati -vs- Electoral Commission and another [2013-2021] MELR 438 (HC).

**[26]**

n23 above.

**[27]**

Act No. 1 of 2018.

**[28]**

[1994-2012] MELR 105 (SCA).

**[29]**

See Mwale -vs- Ibrahim and another [2013-2021] MELR 316 (HC).

**[30]**

See Khembo -vs- Electoral Commission and another [1994-2012] MELR 78 (HC).

**[31]**

Section 100 (2) (b) of the Presidential, Parliamentary and Local Government Elections Act, 2023.