

# The State v Malawi Electoral Commission, on the application of The Democratic Progressive Party and Others

## Summary

<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	Justice Matapa Kacheche
<b>Cause Number:</b>	Judicial Review Case No. 19 of 2025
<b>Date of Judgment:</b>	September 03, 2025
<b>Bar:</b>	E. Kaphale SC, F. Tambulasi, B. Chimkango, Counsel for the Applicant Hon. Attorney General, T. Nyirenda SC, E. Chapo, L. Lunguzi, Counsel for the Respondent

The Applicants sought judicial review in the High Court, Civil Division, against the Respondent's decisions regarding the electoral process. The Applicants challenged the Respondent's refusal to allow an audit of the electoral process and the electronic management system, as well as the decision to use electronic voter identification and result transmission for the upcoming September 2025 elections. Upon the Court granting permission for judicial review, the Respondent

filed an application to have that permission discharged. Concurrently, the Applicants filed a cross-application to end proceedings early due to the Respondent's failure to file a defence within the court-ordered time.

The principal issues before the Court were to determine the merits of both applications, which hinged on whether the parties had complied with procedural rules. The Court had to resolve the Applicants' claim that the Respondent's late filing of a defence merited an early end to proceedings. It also had to consider the Respondent's argument that the judicial review permission should be discharged due to alleged procedural irregularities, including defective sworn statements and the availability of alternative remedies. The Court dismissed both applications.

The Court reasoned that the Respondent was entitled to challenge the validity of the served documents, and was therefore not obliged to file a defence until the irregularity was resolved, thereby justifying the delay and dismissing the Applicants' application. The Court also held that while the Applicants' primary sworn statement was irregular as it was commissioned via a WhatsApp video call and did not contain a valid electronic signature, this irregularity did not invalidate the permission to apply for judicial review. Another sworn statement filed by a different deponent was found to be sufficient to establish a reviewable decision. The Court refused to dispose of the matter on minor technicalities. The Court ordered each party to bear its own costs and set a new date for the judicial review hearing.