



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

ELECTORAL PETITION NUMBER 68 OF 2025

BETWEEN

LYNDA KHEMBO

PETITIONER

AND

MALAWI ELECTORAL COMMISSION

1ST RESPONDENT

GEOFFREY ONSEWA

2ND RESPONDENT

CORAM: HON. JUSTICE TEXIOUS S MASOAMPHAMBE

Nyondo, of Counsel for the Petitioner

Kaonga, of Counsel for the 1st Respondent

Tepeka, of Counsel for the 2nd Respondent

Wahabi, Principal JRO

RULING

INTRODUCTION

[1] The petitioner, Miss Lynda Khembo, applied under Order 10 rule 27 of the Courts (High Court) (Civil Procedure) Rules (CPR), for an injunction restraining the 2nd respondent, Mr Geoffrey Onsewa, from taking the oath of office and assuming the seat of Member of Parliament for Chikwawa North Constituency. The application is supported by a sworn statement. The 1st

respondent, the Malawi Electoral Commission (MEC) and the 2nd respondent, Mr. Geoffrey Onsewa filed a sworn statement and skeleton arguments in opposition.

[2] This application arises within an existing election petition brought under section 101 of the Parliamentary, Presidential and Local Government Elections Act (PPLGEA). Earlier, the Petitioner had made an application, without notice, to add, as a party, the Honourable the Chief Justice on the ground that he was the one who was going to administer oath to the Members of the Parliament, and one Mr. Geoffrey Onsewa, as the winner. In its ruling, this Court allowed the joinder of the said Mr. Geoffrey Onsewa as 2nd respondent but declined the joinder of the Honourable the Chief Justice.

ISSUES

[3] In this application the Court must determine:

- i. Whether MEC should be removed as a party to this application; and
- ii. Whether, in law and equity, an injunction restraining the declared winner from being sworn in should be granted.

Submissions of the Parties

Petitioner's Submissions

[4] Counsel for the petitioner submits that serious irregularities occurred in the conduct of the parliamentary election for Chikwawa North Constituency, and that the validity of the 2nd respondent's election is under challenge. The petitioner relies on the Court's equitable powers to grant interlocutory injunctions arguing that there is a serious question to be tried. The petitioner alleges multiple irregularities at polling and tally centres in Chikwawa North. She alleges unsigned or uniformly signed Form 18B (tally sheets) at Mfera polling station; the presiding officer allegedly admitted signing on behalf of party monitors under pressure; copies of Form 18B and related documents are exhibited. She further alleges that refusal by presiding officers at certain stations (Dulansanje, Chimoto) to provide results to party monitors, and partial disclosure of streams at Chimoto and that results were aggregated without monitors' access.

[5] It is a further contention of the petitioner's counsel that complaints lodged to MEC (Form 16A and follow-up correspondence) which, the petitioner says, were not determined before MEC proceeded to declare the 2nd respondent the winner on 30 September 2025. Exhibits of the complaints, correspondence and MEC declaration are attached.

[6] As to the inadequacy of damages, the petitioner argues that damages cannot adequately remedy the harm that is the loss of the right to be lawfully elected; the public interest in free and fair elections, and the quantum of such damage is not easily quantifiable. The petitioner’s counsel cites *Chilima & Another v Mutharika & Another* [2020] MWHC 2 and *Mutharika & Another v Chilima & Another* [2020] MWSC 1 the High Court and the Supreme Court of Appeal decisions, and *S [On the application of MERA v The Ombudsman* [2021] MWHC Civ 214, in support of the argument that damages are inadequate where constitutional rights to elective office are in issue.

[7] The petitioner further contends that unless restrained, the 2nd respondent will be sworn in and take up functions that may render this petition nugatory i.e. practical irreversibility and prejudice. She asks the Court to preserve the pre-oath status quo pending trial.

[8] Turning to the balance of convenience, the petitioner argues and submits that the petitioner says public policy does not favour allowing an “illegally appointed or unduly returned” person to assume lawful authority; the balance of justice, therefore, tilts in favor of granting the injunction. The petitioner cites a recent Supreme Court of Appeal decision in *President of the Republic of Malawi v State [On the application of Chikhulupiliro Zidana* MSCA Misc. Civil App No. 30 of 2024 in support of this public-interest argument.

[9] The petitioner therefore prays for an interlocutory injunction restraining the 2nd respondent from taking the oath and seat pending final determination of the petition.

Submissions of the 1st Respondent

[10] The 1st respondent opposes the application for an injunction restraining the swearing-in of the 2nd respondent. MEC submits that its constitutional and statutory role is confined to the management of elections and declaration of results. Once a winner has been declared and gazetted, MEC has no function in the administration of oaths or parliamentary processes. Since the injunctive relief sought is directed at restraining the swearing-in of the declared winner, and not at MEC itself, the Commission argues that it is not a necessary party to this interlocutory application and ought to be excused or removed from further participation.

[11] The 1st respondent further contends that the application for interlocutory injunction fails to meet the requirements under Order 19, Part III and Order 10 of the CPR. Relying on the principles in *American Cyanamid Co v Ethicon Ltd* (1975) AC 398 as approved in *Candlex Limited v Phiri* Civil Cause No.713 of 2000 and local authorities, it argues that the petitioner has not demonstrated a serious question to be tried, nor shown that damages would be an inadequate remedy.

[12] On the alleged irregularities, MEC told the court that:

- a All polling station results were properly recorded and signed by authorized officers.
- b Allegations of forged signatures are unsupported, unreported to police, and speculative.
- c Section 68 of the Act does not create a right to access signed results in the manner claimed by the Petitioner.
- d Any failure to respond to complaints does not in itself constitute undue return under section 101.

[13] It is the submission of MEC that under authorities such *Gondwe and another v Gotani-Nyahara* [2005] MLR 121 (SCA), *Laston Thawale v Electoral Commission and Philipo Chinkhonde* Misc Civil Case No 41 of 2009, the petitioner bears the burden to prove not only irregularities but that such irregularities affected the election result.

[14] MEC further contends that the balance of convenience militates strongly against the injunction. Preventing the declared Member of Parliament from taking office would leave the constituency without representation, which is contrary to public interest and the constitutional design of representative democracy. The presumption of regularity and legality attaches to MEC's declaration until a competent Court rules otherwise.

[15] MEC accordingly prays that the application for injunction be dismissed with costs. In the alternative, it requests to be removed as a party to this particular application on the ground that the relief sought is not directed against it.

Submissions of the 2nd Respondent

[16] The 2nd respondent similarly opposes the application. He argues that he was duly declared winner of the parliamentary election for Chikwawa North Constituency by MEC. He further states that the election was free and fair, and that, according to him, no complaints were raised by the petitioner or any other candidate during, or immediately after, polling and vote tabulation. He went on to argue that the allegations, now raised, were never brought to his attention during the electoral process and appear for the first time in the petition. He describes them as "deliberate distortions" made to mislead the Court.

[17] The 2nd respondent proceeded to argue that the petitioner's application is filled with hearsay from "unknown individuals" and lacks admissible or credible evidence. He further told the Court that the injunction is misdirected because MEC does not administer oaths of office. This is the function of Parliament or the Clerk of Parliament under section 52 of the Constitution.

[18] The 2nd respondent, relying on the established three-part test for interlocutory injunctions from *American Cyanamid Co. v Ethicon Ltd* [1975] AC 396, submits that there is no serious question to be tried. The petitioner has not established a serious issue requiring trial. The sworn statement relies on inadmissible hearsay and does not prove any electoral irregularity.

[19] On adequacy of alternative remedy, the 2nd respondent submits that the Court has power under section 101 to nullify the election after full trial. This is an adequate remedy, therefore, there is no need for interim restraint. He relied on *Evans Marshal & Co. v Bertola SA* [1973] 1 WLR 349 for this argument.

[20] He concluded by telling the Court that it is clear that the balance of convenience, from the facts, favours refusal of injunction. He invited the Court to consider where the greater risk of injustice lies. Preventing the 2nd respondent from taking office, so he argued, would cause irreparable harm to his constitutional right to represent the constituency. The electorate would be left effectively unrepresented. The petitioner, by contrast, will suffer no irreparable harm since a full remedy exists at the end of trial. The 2nd respondent, therefore, prays the application for injunction should be dismissed with costs.

The Applicable Law

[21] Section 101 of the PPEA is in the following words:

“101.—(1) A complaint alleging an undue return or an undue election of a person to the office of President, member of the National Assembly, or councillor, by reason of an irregularity or any other cause whatsoever shall be presented by way of petition to the High Court within seven days, including Saturday, Sunday and a public holiday, of the declaration of the result of the election in the name of the person—

(a) claiming to have had a right to be elected at that election;

or

(b) alleging to have been a candidate at such election.

(2) In proceedings with respect to a petition under subsection (1), the Commission shall be joined as a respondent.

(3) If, on the hearing of a petition presented under subsection (1), the High Court or any court of competent jurisdiction, makes an order declaring that—

(a) the President, the member of the National Assembly or the councillor, as the case may be, was duly elected, such election shall be and remain valid as if no petition had been presented against his or her election; or

(b) the President, the member of the National Assembly or the councillor, as the case may be, was not duly elected, the Registrar of the High Court shall forthwith give notice of that fact to the Commission and the Commission shall publish a notice in the Gazette stating the effect of the order of the Court.

(4) Pursuant to an order of the Court under subsection (3)(b) declaring that the President, the member of the National Assembly, or the councillor, as the case may be, was not duly elected, a fresh election to the office of President, or for the seat of the member of the National Assembly, or the councillor, as the case may be, shall be held in accordance with this Act.

(5) The Commission shall not register new voters for the fresh election.

(6) The Commission shall not accept nomination of new candidates in a fresh election but shall allow nomination of a new candidate for a political party only if the political party candidate in the nullified elections—

(a) becomes disqualified;

(b) dies; or

(c) is otherwise incapacitated,

before the fresh elections are conducted.

(7) A declaration by the Court under subsection (3)(b) shall not invalidate anything done by the President before that declaration.

(8) A petition and any appeal arising therefrom shall be heard in accordance with Part II of Order 19 of the Courts (High Court) (Civil Procedure) Rules.

(9) Notwithstanding subsection (8), the Chief Justice may make rules for the practice and procedure for election petitions and appeals under this Act.”

[Emphasis added]

[22] Section 52 of the Constitution provides that Members of Parliament shall, before taking their seats, take and subscribe to the oath of allegiance before the Chief Justice in the National Assembly:

52. *Oath of allegiance*

Every member of Parliament, before taking his or her seat, and every officer of Parliament, before assuming duties of his or her office, shall take and subscribe before the Chief Justice in the National Assembly—

- (a) the oath of allegiance in the form prescribed by law; and*
- (b) such other oaths for the due performance of their respective offices as may be prescribed by law.*

[23] This application is brought pursuant to Order 10 rule 27 of the CPR. That provision sets out the conditions under which this Court may grant an interlocutory injunction. It provides as follows:

27. The Court may, on application, grant an injunction by an interlocutory order when it appears to the Court –

- (a) there is a serious question to be tried;*
- (b) damages may not be an adequate remedy; and*
- (c) it shall be just to do so,*
and the order may be made unconditionally or on such terms or conditions as the Court considers just.

[24] Meanwhile, Order 10 rule 2(1) of the CPR, governs the form and parties to an interlocutory application made within an existing proceeding. It is in the following words:

2. – (1) An application in a proceeding shall –

- (a) be signed by the applicant or the applicant’s legal practitioner;*
- (b) cite the same parties as in the proceeding and anyone whose interests are affected by the order sought; and*
- (c) be signed and sealed by the Registrar. [Emphasis added]*

The Law and Analysis

Whether MEC remains a party

[25] This application is made within an already existing proceeding under section 101 of the PPLGEA. Section 101(2) of the PPLGEA expressly provides that the Commission “shall be joined as respondent” in such a petition. An interlocutory application does not create a separate proceeding. The MEC, therefore, remains a party by operation of law. The argument that it should be removed at this stage is untenable.

[26] I understand MEC’s argument that the injunctive relief cannot be against them, which is true but that in itself does not warrant that they should be removed as a party in this proceeding. Arguably all MEC could have done after being served with the documentation of the interlocutory

injunction is put a notice that they will not be contesting the application as it is not against their interests. But, as a mandatory respondent under section 101(2) of the PPLGEA, MEC cannot and should not pray to the Court that they be removed as a party. It then begs the question what will happen to the petition under section 101 of the PPLGEA.

[27] The effect of this Order 10 rule 2(1)(b) of the CPR is that, where an application is brought within ongoing proceedings, the applicant is obliged to cite all parties who are already before the Court in that proceeding, regardless of whether each party is directly affected by the interim relief sought. Accordingly, MEC, having been mandatorily joined as a respondent under section 101(2) of the PPLGEA, must remain a party to any interlocutory application made in the same cause, including this application for an injunction. Order 10 rule 2(1) of the CPR, therefore, does not permit the exclusion or removal of MEC, at this stage, merely on the basis that the substantive relief is directed primarily at another respondent.

[28] Order 10 rule 2(1) of the CPR requires that an interlocutory application within a proceeding must cite the same parties as in the main proceeding, together with any person whose legal interests are affected by the order sought. It is on this basis that this Court earlier allowed the joinder of Mr. Geoffrey Onsewa as 2nd respondent. Now, to remove MEC, despite it being a mandatory respondent, under section 101(2) of the PPLGEA, would directly contradict this procedural requirement and create inconsistency between the interlocutory application and the main petition. Such a situation would generate uncertainty and procedural confusion, particularly given that the application is brought under the same cause title and case number.

[29] In short, the Court finds no legal basis upon which MEC may be removed as a party to this application. The prayer, to that effect, is therefore, declined. Whether or not the injunctive relief is directed at MEC, is irrelevant to its standing. As a respondent, it remains a statutory party to the proceedings until final disposal of the petition.

[30] This conclusion naturally leads to the next question: whether the legal framework under section 101 of the PPLGEA envisages or accommodates the kind of interlocutory injunction sought in this matter.

Whether an injunction is competent under section 101

[31] The principal legal question is whether, in the context of a petition under section 101 of the PPLGEA, this Court may properly grant an interlocutory injunction restraining the person declared

elected from taking the oath of office and assuming the seat in the National Assembly before the petition is determined. The answer requires an examination of the statutory scheme in the PPLGEA, related provisions governing vacancies and continuity of representation, the scope of the Court’s interlocutory powers under Order 10 of the CPR, and equitable considerations including the interests of the electorate. The Court must also have regard to the authorities cited in the parties’ submissions.

The statutory scheme created by section 101 — a complete remedial code

[32] Section 101 of the PPLGEA establishes a discrete remedy for alleged “undue return” or “undue election”. Its language and structure disclose a deliberate legislative design. The Act authorizes a person claiming to have had the right to be elected, or alleging to have been a candidate, to present a petition to the High Court within seven days of the declaration of results. Subsection (2) requires that MEC be joined as respondent. Subsections (3) and (4), then, provide the only two operative outcomes the Court may make after hearing the petition: either (a) the Court declares the person duly elected and the election stands, or (b) the Court declares the person not duly elected and, in that event, the Registrar notifies MEC and a fresh election is to be held under the Act.

[33] In my considered view, statutory architecture is comprehensive. The remedy authorized by Parliament is a remedy that adjudicates and ultimately either confirms or annuls the election. It follows that any extraordinary interim relief that would effectively cancel out the declared election result before the Court has reached a determination, should be carefully scrutinized against the legislative scheme.

The presumption of validity and legislative protection of continuity

[34] Counsel for the 1st respondent submits that there is the presumption of validity and legislative protection of continuity. This Court agrees with the 1st respondent and holds that indeed, two features of the PPLGEA demonstrate that the law presumes continuity of representation pending judicial determination. First, section 101(3)(a) contemplates that an election will be treated as valid “*as if no petition had been presented*” if the Court finds the candidate duly elected. This provision presupposes that the declared candidate continues to occupy the office and exercise its functions unless and until the court declares otherwise. Second, subsection 101(7) (albeit related to the office of the President) expressly validates acts done by the president prior to judicial nullification. In my view, the section was drafted to avoid cascading invalidity of official acts performed before a nullifying judgment. Both provisions are inconsistent with a rule that the mere filing of a petition should suspend the effect of a declaration of results and deprive electors of representation.

[35] It must be said the application for interlocutory injunction though interim, its effect is to create a vacancy of the seat in the National Assembly. Section 63 of the Constitution and the PPLGEA contain other provisions which reveal Parliament’s careful delineation of when a seat is vacant and what follows a vacancy. Two examples are instructive: Section 121 of the PPLGEA states as follows:

“If, after the holding of a general election no person has been elected in one or more constituencies or wards, a session of the National Assembly or council, as the case may be, may commence notwithstanding any such vacancy.”

[36] In my view, the law deliberately avoids creating a vacancy merely because a petition is filed. If Parliament intended that a constituency should remain unrepresented during the pendency of a petition, it would have expressly stated so. Instead, other provisions of the PPLGEA, like section 121, show, by contrast, that a vacancy only arises in clearly defined circumstances and not merely because an election is being challenged.

[37] Again, section 23 of the PPLGEA is material in the circumstance. The same is worded as follows:

23.__(1) Where a seat of a member of the National Assembly or a councillor becomes vacant otherwise than by dissolution of the National Assembly or a council, a by-election shall be held. Clearly shows there must be no vacancy.

(2) A seat of a member of the National Assembly or a councillor shall not be declared vacant in accordance with any written law until the time for appeal against the decision occasioning the vacancy has expired or, if there is an appeal, until the determination of the appeal. [Emphasis added]

[38] Section 23(1) and (2) of the PPLGEA provides that where a seat becomes vacant otherwise than by dissolution, a by-election shall be held, and *that a seat shall not be declared vacant under any written law until the time for appeal against the decision occasioning the vacancy has expired or, where there is an appeal, until the appeal is determined.* This language establishes two important principles: first, that the law identifies discrete grounds and procedures that create a vacancy; and second, that the law pauses finality pending appeals. Importantly, in my view, the statute does not provide that filing a petition under section 101 triggers a vacancy or suspends swearing-in.

[39] It may be contended that an injunction does not declare the seat vacant and therefore the question of vacancy does not arise. That approach elevates form over substance. The effect of restraining the swearing-in of a declared Member of Parliament is that the constituency is left without representation in the National Assembly. In constitutional terms, representation is not a theoretical status but a functional one- the ability of the elected Member to sit, debate, vote and participate in parliamentary processes. A restraint on oath-taking suspends all these functions and therefore operates, in substance, as a temporary vacancy. The proper status quo preserved by law is not the position before the oath, but the position after declaration by the Commission, unless and until the Court nullifies the election.

[40] Both the Constitution and the PPLGEA recognize only two states of a parliamentary seat: either occupied or vacant. They do not envisage a third state of '*declared but functionally suspended*'. Where Parliament intended a delay between election and assumption of office such as in presidential election disputes under section 81(3) of the Constitution, it expressly provided so. Section 101 contains no such provision. The omission is deliberate. Courts must therefore be cautious not to create, through injunction, a situation which the statute does not authorize.

[41] These express provisions show that, where Parliament intends a particular effect to follow from specified events such as vacancy, by-election or appeal, it expressly says so. That has not provided for suspension of swearing-in upon the institution of petition under section 101 of the PPLGEA, is a significant indicator of legislative intent. Therefore, the canons of statutory interpretation apply. The maxim '*expressio unius est exclusio alterius*' as applied in *Nseula v Attorney-General and another* [1999] MLR 313 (MSC) has force here. Where the legislature has expressly provided for certain consequences (vacancy, by-election, preservation of acts done prior to nullification), but has omitted to provide for suspension of swearing-in on mere filing of a petition, that omission is telling. A purposive construction of the PPLGEA supports continuity of representation. The statutes ought to be read to preserve democratic representation in the absence a judicial finding to the contrary. This approach respects Parliament's allocation of remedies and the balance struck between finality, public order and the right to challenge.

The role of Order 10 of the CPR and the scope of interlocutory jurisdiction

[42] Order 10 of the CPR vests the High Court with wide powers to make interlocutory orders within a proceeding. It is true that an interlocutory injunction can in proper cases preserve rights and prevent irreparable injury pending trial. But the Court's equitable discretion must be exercised in harmony with the statutory scheme. The fact that the Court has interlocutory powers under Order 10 of the CPR, does not mean those powers may be used to contravene or supplant the clear legislative design in the PPLGEA. In short, while the Court can grant ancillary relief necessary to

protect the efficacy of its process, it should not use Order 10 of the CPR to effect a result that the statute itself did not provide, namely, to suspend the declared winner's right to take the oath and to represent the constituency pending determination.

[43] This is not a mere technicality. The Court's interlocutory jurisdiction must be exercised with due regard to the constitutional and statutory interests at stake including representation, parliamentary business, and the public interest in continuity of governance.

Equitable considerations — constituency representation and balance of convenience

[44] More importantly, interim injunctions are equitable remedies and require balancing of competing harms. The petitioner must show: (i) a serious question to be tried; (ii) that damages are not an adequate remedy; and (iii) that the balance of convenience favours the grant of relief together with public interest considerations, see *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 and the authorities applying it in Malawi.

[45] Thus, even accepting that the petitioner has raised triable issues on the merits of the petition, a matter the Court cannot finally decide now, a further, discrete assessment must follow for the remedy sought here. Two equitable considerations are decisive: First, the rights of the electorate to continuous representation. Elections are not merely private contests between candidates; they determine who represents and exercises authority on behalf of the people. See *Mutharika and Anor v Chilima and Anor* [2020] MELR. Depriving an entire constituency of representation is not a matter to be lightly ordered by injunction. The Court must weigh the harm to the electorate if representation is suspended, against the harm to the petitioner if swearing-in is permitted. In constitutional and electoral contexts, our courts have often emphasized that the balance may tip in favour of maintaining representation pending final adjudication, absent clear need to the contrary. In this regard, the Court is further fortified by the reasoning adopted in *R v Malawi Electoral Commission & Another; Ex parte Ellock Banda* (Election Cause No. 13 of 2019) [2019] MWHC 103 (5 June 2019). In that case, Honourable Justice Prof. Kapindu, emphatically held that even if interlocutory relief is available under Order 19 and Order 10 of the CPR, it ought not to be granted lightly in electoral matters. The Court stated:

“I must however proceed to mention that in any event, I would not have granted the Order of interlocutory injunction herein in terms of Order 19 Part III of the CPR, 2017 as read with Order 10 Rule 27 of the CPR, 2017. The Court does not consider it just to do so. There is a presumption of legality that applies when public institutions make decisions within their mandate. Having declared Mr. Samuel

Malume Bokosi winner of the Parliamentary seat for Machinga Central Constituency, the balance of justice and convenience lies in letting the relevant state institutions treat him as duly elected unless and until a competent Court declares otherwise. This is also appropriate for the general smooth functioning of Parliament as an important organ of the State. It must be in exceptional cases in my view, supported by very cogent reasons and concerns, that a Court should be amenable to making an order restraining a person who has been declared as a duly elected Member of the National Assembly from proceeding to take oath of office. I did not see any exceptional circumstances in the present matter warranting such course of action. Should the Court find that the 1st Respondent indeed had significant failures in the manner it exercised its functions herein, and that thereby Mr. Samuel Malume Bokosi was not duly elected as a Member of Parliament for Machinga Central Constituency, there is nothing to stop this Court from making such declarations according to law. The Applicant would have an affective remedy.”

[46] This passage reflects the same principle the Court applies here that the smooth functioning of Parliament and the right of constituents to representation cannot be disrupted on the basis of unproven allegations unless exceptional circumstances are demonstrated. The availability of a full remedy under section 101 of the PPLGEA, including nullification and fresh elections, ensures that the petitioner is not left without recourse should their petition ultimately succeed.

[47] Second, this application poses practical and institutional consequences. An injunction restraining swearing-in would create practical difficulties: parliamentary business may be disrupted; the constituency would have no voice in the meantime; and the court may be drawn into supervising constitutional processes that the legislature placed elsewhere. The Court must be mindful of the institutional competence and separation of functions.

[48] This reasoning is consistent with the decision in *Jackson Allie Daud Mataka v Malawi Electoral Commission & Francesca Masamba*, Misc. Electoral Cause No. 52 of 2025, where the High Court refused an injunction restraining the swearing-in of a declared Member of Parliament. In that case, the Court accepted that serious issues were raised and that assumption of office cannot easily be compensated by damages. However, it held that the balance of justice and public interest lay against granting the injunction. The Court observed:

“The last question then is whether it would be just to grant the injunction. The balance of justice seems to tilt in favour of not granting the injunction. If the injunction is granted, the people of Mangochi East Constituency will be without

representation in parliament until such a time when the substantive action is resolved. It appears to me a better option that the constituents have representation in the meantime too than none at all since the body that declared the second respondent as the successful candidate is endowed with the mandate to conduct elections and should be presumed to have acted lawfully unless shown otherwise. If in the end, the applicant succeeds in the main matter, the court can always order a nullification of the results.”

Adequacy of alternative effective remedies

[49] The petitioner argues that damages are inadequate, and that is often true in electoral cases where the right to hold office and the dignity of election cannot be fully compensated by money. But here the PPLGEA itself provides a specific alternative remedy: if, after hearing, the Court finds that the election was undue, the statutory consequence is nullification and a fresh election. That remedy is directed at restoring lawful representation and averting long-term injustice. Where the statutory scheme provides for an adequate, specific remedy to remedy a successful challenge, equitable intervention in the form of an injunction becomes less compelling absent exceptional circumstances.

Where the petitioner’s case might succeed on merits but still fail on remedy

[50] It is important to recognize that even where a petitioner has a plausible or triable case on the merits, the discretionary grant of interlocutory relief blocking swearing-in is not automatic. The remedy must be proportionate and consonant with statute. The points made in the MEC’s arguments that not every irregularity leads to nullification and that the petitioner bears the burden of proving the irregularity affected the result, see *Gondwe and another v Gotani-Nyahara* [2005] MLR 121 (SCA), all go to the weight to be given to the merits. But even assuming the argument that the merits are substantial, that alone does not justify the extraordinary consequence of suspending representation before trial.

[51] In the balance of convenience assessment, the public interest in continuous representation and the statutory design of section 10 of the PPLGEA, weigh strongly against an injunction that would create an unjustified vacancy.

Determination

[52] For the reasons above the Court concludes that, as a matter of statutory construction, purpose, and equity, an interlocutory injunction restraining a duly declared winner from taking the oath of office and occupying the seat is generally not a competent remedy within the framework of section

101 of the PPLGEA. The statutory scheme contemplates adjudication and a determination that either confirms or nullifies the election, with consequential remedies including fresh elections provided for; it does not contemplate that the mere filing of a petition will produce an automatic suspension of the declared result.

[53] That conclusion is reinforced by the public interest in continuity of representation, the specific statutory provisions governing vacancies and by-elections, and the Court's duty to exercise equitable powers in a manner consistent with Parliament's chosen scheme. Accordingly, unless truly exceptional and compelling evidence is shown demonstrating that irreparable and exceptional prejudice would result and that no other adequate statutory remedy could protect the interests of the petitioner and the public, the Court should not grant an interlocutory injunction restraining swearing-in in the context of a petition under section 101 of the PPLGEA

[54] The proper status quo preserved by law is not the position before the oath, but the position after declaration by MEC, unless and until the Court nullifies the election. Accordingly, an injunction preventing the declared winner from being sworn in is not competent within the framework of section 101, is unsupported by the PPLGEA, and would usurp the statutory design that balances electoral challenge with uninterrupted representation.

[55] The application for an interlocutory injunction restraining the 2nd respondent from being sworn in is hereby dismissed with costs.

Made in Chambers, this Friday, the 24th day of October, 2025 at Blantyre.



Texious S Masoamphambe
JUDGE