



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL DIVISION
ELECTION CAUSE NUMBER 61 OF 2025
(Before Honourable Justice Muhome)**

**IN THE MATTER OF THE PRESIDENTIAL, PARLIAMENTARY AND
LOCAL GOVERNMENT ELECTIONS ACT
AND
IN THE MATTER OF THE 16TH SEPTEMBER 2025 PARLIAMENTARY
ELECTIONS FOR BLANTYRE CITY SOUTH LUNZU
CONSTITUENCY IN BLANTYRE DISTRICT**

IN THE MATTER BETWEEN:

RASHID ABDUL GAFFAR **1ST PETITIONER**

ALEX CHIMWALA **2ND PETITIONER**

AND

VERONICA PEMPHO NDALAMA **1ST RESPONDENT**

MALAWI ELECTORAL COMMISSION (MEC) **2ND RESPONDENT**

CORAM: HON. JUSTICE ALLAN HANS MUHOME

Mr Michael Goba Chipeta, of Counsel for the Petitioners

Mr Fred Chipembere, of Counsel for the 1st Respondent

Ms Ellen Gwedeza, Court Clerk

RULING

1. The Petitioners filed a Notice of Petition dated 7th October 2025 and the Petition itself is dated 6th October 2025 challenging the decision of the Malawi Electoral Commission (MEC), the 2nd Respondent, declaring the 1st Respondent as winner of the Parliamentary elections held on 16th September 2025 in Blantyre City South Lunzu Constituency. They are seeking various remedies including nullification of the elections on the ground that the 1st Respondent corruptly influenced voters.
2. The Petition is supported by a joint sworn statement of the Petitioners dated 6th October 2025. There are also respective supplementary sworn statements of the Petitioners, both dated 8th October 2025.
3. Instead of opposing the Petition itself, the 1st Respondent raised Preliminary Objection, the subject of this Ruling. The Objection is that the Petition is incompetent under section 100 of the Presidential, Parliamentary and Local Government Elections Act, 2023 (the Act). There were two grounds for the Objection:
 - a) that the Petition was not an appeal against any determination by MEC of the Petitioners' complaints, it having been lodged before the Petitioners

had sight of MEC's responses to their complaints, and it not being based on MEC's responses to the Petitioners' complaints;

b) that there is in any event no determination by MEC either *confirming* or *rejecting* the existence of any alleged irregularity which is capable of forming the subject of an appeal under the said section 100.

4. The Objection is supported by the sworn statement of Counsel Fred Chipembere. Counsel argued that by section 100 of the Act, the Petition is supposed to be by way of appeal against a determination by MEC either *confirming* or *rejecting* the existence of an irregularity. That the Petition was incompetent as it was filed on 6th October 2025, before the Petitioners were aware of MEC's decision, which they allege to have known on 8th October 2025.
5. That the Petitioners tried to remedy the situation by filing supplementary sworn statements on 8th October 2025, stating that on 30th September 2025, MEC declared the 1st Respondent as the duly elected Member of Parliament (Exhibit **RG 2**). The 1st Petitioner, further stated that he came across MEC's decision dated 23rd September 2025 (Exhibit **RG 3**) attempting to resolve his complaint on 8th October 2025. In the case of the 2nd Petitioner, he discovered MEC's decision dated 27th September 2025 (Exhibit **AC 2**) attempting to address his complaint on the same 8th October 2025. Counsel argued that the decision of MEC did not *confirm* or *reject* the alleged irregularities but referred the Petitioners to the Registrar of Political Parties for relevant remedies. There was therefore no appealable decision.

6. In response, Counsel Michael Goba Chipeta argued that the Objection is based on facts and therefore this Court should dismiss it and hear the Petition itself. That Courts are slow to entertain Preliminary Objections that invite evidence or resolution of the contested factual matters: *Swain v Hillman* [2001] 1 All ER 91 (CA). That the Petition has particularity: (a) the complaints lodged with MEC; (b) MEC's decision/handling thereof; (c) the grounds impugning MEC's decision; and (d) the reliefs sought under section 100.
7. Both Counsel also cited the overriding objective of the Courts (High Court) (Civil Procedure) Rules 2017 (CPR) that enjoin this Court to deal with cases justly, expeditiously and proportionately under Order 1 r. 5 (4) - (5).
8. This Court has examined section 100 of the Act which 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 of a petition, supported by sworn statements, which shall clearly specify the declaration the High Court is being requested to make by order...
9. This Court is of the firm view that an appeal to the High Court is against a decision of the Commission, foremost. In addition, the decision may be *confirming* or *rejecting* the existence of an irregularity. That section 100 must be read in conjunction with other sections of the Act such as section 101 which provides further details on election petitions and not in isolation, as suggested by the 1st Respondent.
10. On the present facts, MEC made decisions in respect of the Petitioners' complaints. Whether those decisions *confirmed* or *rejected* the existence of an irregularity, those are matters for trial. The allegations that the 1st

Respondent corruptly influenced voters is a serious one requiring her reply. More importantly, ‘justice must not only be done, but must be seen to be done.’ To that end, the allegation must be tested through trial rather than dismissing it in a summary fashion.

11. In addition, the fact that the Petition did not initially disclose MEC’s decision and the same was incorporated through supplementary sworn statements is an irregularity that is curable under Order 2 of the CPR. This Court finds it plausible that the Petitioners had to file their Petition within 7 days, as required by section 101 of the Act. MEC declared the 1st Respondent a winner on 30th September 2025 and so the 7-day period was expiring on or about 7th October 2025. A delay would have clearly prejudiced the Petitioners rather than filing supplementary sworn statements after filing the Petition.
12. Further, Courts abhor Objections based on technicalities and considering the overriding objective of the CPR to deal with cases justly, expeditiously and proportionately, the Objection herein must fail. The Court must take care not to sacrifice justice under the alter of technicalities: ***Harnam Singh v. Jamal Pirbhai*** [1951] AC 608.
13. The Preliminary Objection is therefore overruled. The 1st Petitioner shall file and serve her reply in 14 days and the Petition shall be heard in open Court on 3rd November 2025 at 9:30 in the forenoon. Each party shall bear their own costs of this application. It is so ordered.

Made in Chambers this 22nd day of October, 2025.



Allan Hans Muhome

JUDGE