



Republic of Malawi
IN THE HIGH COURT OF MALAWI
COMMERCIAL DIVISION
BLANTYRE REGISTRY
ELECTION PETITION NUMBER 93 OF 2025
(Before Msungama, J.)

IN THE MATTER OF THE PRESIDENTIAL, PARLIAMENTARY, AND LOCAL
GOVERNMENT ELECTIONS ACT OF 2023

AND

IN THE MATTER OF THE 16TH SEPTEMBER, 2025 PARLIAMENTARY
ELECTIONS FOR CHIRADZULU MASANJALA CONSTITUENCY IN
CHIRADZULU DISTRICT

Between:

GLORY SIMBOTA.....1ST PETITIONER
PETERKINS DEMPHSTER2ND PETITIONER
MATIAS MAGANGA CHIMENYA3RD PETITIONER
JUNIOR LLOYD MWENYESI4TH PETITIONER
ROCKY PRAISE CHIPENEMBE AND 4 OTHERS5TH PETITIONER
AND
TONY FLETCHER1ST RESPONDENT
MALAWI ELECTORAL COMMISSION2ND RESPONDENT

CORAM:

M.T. Msungama, Judge
Kumitengo, of Counsel, for the Petitioners
Chipembere, Of Counsel, for the 1st Respondent
Chapo, of Counsel, for the 2nd Respondent
Makonyo, Court Clerk

JUDGMENT

The Petition

1. This is an election petition arising from the Tripartite Elections which the Country had on the 16th September, 2025. The petition has been brought by Glory Simbota, Peterkins Demphster, Matias Maganga Chimenya, Junior Lloyd Mwenyesi, Rocky Praise Chipenembe and four other unnamed petitioners. No reasons have been given why the other four petitioners have not been named. The Respondents are Tony Fletcher (the 1st

Respondent) and the Malawi Electoral Commission (the 2nd Respondent). The 1st Respondent is the one who was declared as the winner of the Parliamentary elections in Masanjala Constituency in Chiradzulu District.

2. The Petition has been brought under S.100 of the Presidential, Parliamentary and Local Government Elections Act (“the Act”) and Order 19 rule 13 of the CPR 2017. I should mention at the outset that S.100 deals with appeals to the High Court against decisions made by the 2nd Respondent either confirming or rejecting the existence of irregularities in the conduct of elections.
3. In this Petition, the Petitioners are seeking orders of this court nullifying the declaration of the 1st Respondent as the winner of the Parliamentary Elections for Chiradzulu Masanjala Constituency made by the 2nd Respondent. The Petitioners are also seeking an order of the Court directing the 2nd Respondent to conduct fresh Parliamentary elections in the Constituency.
4. The petition states that the Petitioners were parliamentary candidates in the Elections in the Constituency. It is stated that some of the petitioners contested as independent candidates while others contested on the back of political parties. The petition alleges that the elections were mired in irregularities which occurred before, during and after the polling. According to the petition, these irregularities, which compromised the integrity and fairness of the elections, were reported to the 2nd Respondent by lodging complaints. The Petition continues to specify the irregularities reported to the 2nd Respondent as follows:
 - a) On the polling day, the 2nd Respondent’s members of staff or agents were directing voters to vote for the 1st Respondent.
 - b) The 1st Respondent, personally and through his campaign team, continued to campaign after the close of the campaign period. He was also seen giving handouts to voters.
 - c) On the voting day, the 1st Respondent and his campaign team went around several places within the constituency asking people to vote wisely and to vote for him.
 - d) The 1st Respondent and his campaign team distributed cash to voters on the eve of the elections, whilst asking voters to vote for him, thereby undermining the integrity and fairness of the elections.
 - e) Presiding officers were directing voters to vote for the 1st Respondent.
 - f) Ballots cast in favour of the Petitioners were considered null and void, defeating the whole essence of free and fair election.
 - g) The number of votes obtained by the 1st Respondent at the constituency tally centre was contrary to the number of votes announced by the 2nd Respondent.

- h) On the polling day, the 1st Respondent's truck and bus were spotted at St. Michael's Primary School polling station, ferrying people from Kachere and other places to the polling station, thereby undermining the integrity and fairness of the elections.
 - i) Police officers and soldiers intimidated the Petitioners' monitors when they complained about the conduct of the presiding officers who were directing voters to vote for the 1st Respondent.
5. The Petition also asserts that although the Petitioners submitted a formal complaint to the 2nd Respondent on the matters as outlined above, the 2nd Respondent nevertheless proceeded to declare the 1st Respondent as the elected member of parliament for the Constituency. A copy of the letter of complaint lodged with the 2nd Respondent was attached to the Petition as GS1. The letter, dated 20th September, 2025, is addressed to the Constituency Returning Officer, Chiradzulu Masanjala Constituency, Chiradzulu.
 6. The Petition is supported by a sworn statement purportedly sworn by the Petitioners, although it is in fact signed by the 1st Petitioner only. In this statement, it is stated that the matters deponed to are within the knowledge of the deponents and also based on information supplied to them by various individuals whom they appointed as monitors. The deponents also verify that all statements of fact contained in the Petition are true to the best of their knowledge and information.
 7. The 1st Respondent has filed his papers in opposition to the Petition, comprising a sworn statement and skeleton arguments. In the 1st Respondent's sworn statement, he denied all allegations against him by the Petitioners. He also averred that the elections were conducted freely and fairly. He further stated that he closed his campaign at the end of the campaign period mandated by the 2nd Respondent, which was on the 14th of September 2025. In his skeleton arguments, he contended that all allegations against him were mere fabrications and that the petition is unmeritorious, frivolous and vexatious and that it must be dismissed with costs. He further argued that the Petitioners' petition is incompetent for failure to satisfy the requirements under S.100 of the Act, in that although the provision provides for an appeal to the High Court from the decisions of the 2nd Respondent confirming or rejecting the existence of an irregularity, the Petition does not make reference to any decision by the 2nd Respondent confirming or rejecting the existence of an irregularity. It is further contended that the petition itself is not characterised as an appeal under S.100 of the Act.
 8. The 1st Respondent further argued, in the alternative, that even if this Court were to find the Petitioners' petition competent, the Petitioners would nonetheless not be entitled to the reliefs sought due to their failure to prove the alleged irregularities and to demonstrate how such irregularities affected the outcome of the election. In support of this position, the 1st Respondent relied on the decision in **Mutharika & Another v. Chilima & Another**¹, wherein the Malawi Supreme Court of Appeal emphasised that a petitioner bears the burden to prove the existence of irregularities and how the irregularities affected the outcome of the election.

¹ MSCA Constitutional Appeal 1 of 2020

9. The 1st Respondent further contended that the Petitioners' case is largely based on hearsay evidence and lacks sufficient particularity in that the Petitioners have failed to provide material details of the alleged irregularities, including the specific locations where the irregularities allegedly occurred, the identities of the persons involved, and the number of votes affected. In the absence of such particulars, the Petitioners' allegations remain unsubstantiated and incapable of sustaining the reliefs sought.
10. The 2nd Respondent filed its papers in opposition to the Petition. These comprise a reply to the Petition, a sworn statement verifying the reply, a response to the Petition through David Matumika Banda, Director of Legal Services and Secretary of the 2nd Respondent and skeleton arguments in response to the Petition. In its reply to the petition, the 2nd Respondent contended that the Petitioners' petition was defective for failure to disclose the other 4 Petitioners and for lack of detailed particulars of the allegations. Further, the Petitioners did not follow the complaints-handling procedure as required by law. It is contended that the complaints regime prescribed by law requires that a complaint alleging an irregularity should be lodged at the polling station or the Constituency Tally Centre, and handled by the presiding officers therein. If the complainant is not satisfied with the resolution, he or she may escalate the complaint to the Commission for determination. If not satisfied with the Commission's determination, the complainant can then appeal to the High Court.
11. On the allegation that the 1st Respondent's agents gave cash handouts to voters, it is contended that such complaints are by law required to be lodged with the Registrar of Political Parties, who has the legal mandate to deal with the same. On the allegation of the Petitioners' votes being declared null and void, it is argued that no details were provided by the Petitioners to substantiate the allegation. Further, the 2nd Respondent argued that it can only examine null and void votes if the number of such votes is enough to change the outcome of the election. In the present case, the votes that were cast as null and void were four hundred fifty-three (453), while the difference between the 1st Respondent and the 5th Petitioner, who came second, was twelve thousand one hundred forty-three (12,143) votes.
12. The 2nd Respondent further contended that the Petitioners' petition introduced, under paragraphs 3.2, 3.3,3.4 and 3.8, new irregularities that were not contained in the Petitioners' complaint letter, GS1. Counsel argued that according to the case of **John Malunga v Deus Texas Ndazona Banda Gumba and MEC**² any new matters raised in the petition that were not raised in the complaint cannot be entertained in an appeal hearing. Consequently, those cannot be entertained by this court.
13. It was also the 2nd Respondent's submission that the petition was defective for failure to comply with S.100(1) of the Act, which requires that a petition must be supported by a sworn statement. Counsel averred that the sworn statement accompanying the petition and its contents merely verify the petition. Counsel cited the case of **Dr Clement Mwale**

² Electoral Case No. 64 of 2025

v. **Chunga and MEC**³, to emphasise that a sworn statement in support introduces evidence to support the petition, and where there is no sworn statement in support, it amounts to non-compliance with statutory requirements. It was further submitted that Exhibit GS1 was tendered through the petition rather than through a sworn statement, contrary to Order 18 rule 14 of the CPR 2017, and therefore cannot be regarded as properly tendered before this Court. Additionally, Counsel argued that although the sworn statement purports to have been made by all Petitioners as deponents, it was signed only by the 1st Petitioner, Glory Simbota, purportedly in a representative capacity. This, Counsel contended, contravenes Order 18 rule 7(5)(e) of the CPR 2017, which requires each deponent to sign the sworn statement, indicating their full name, address, and capacity, and does not permit signing in a representative capacity

14. The Petitioners filed written submissions in response to what the 1st and 2nd Respondents submitted during the hearing of the petition. The gist of their submission is that all the objections raised by the Respondents were points of technicality. Counsel for the Petitioners urged this court to determine the matter on the merits of the case and not to dismiss the Petition on mere technicalities.
15. The issues for determination are whether the Petitioners' petition is procedurally flawed, whether it was competently brought under S.100 of the Act and whether the Petitioners have successfully discharged the burden of proving the irregularities alleged to warrant nullification of the elections.

Discussion and Determination

16. It is imperative that I quote the law under the relevant provisions/ sections of the Act;

“99. Commission to decide on complaints

Save as otherwise provided in this Act, any complaint submitted in writing alleging any irregularity at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and decided on by the Commission, and where the irregularity is confirmed, the Commission shall take necessary action to correct the irregularity and its effects.

100. Appeals to the High Court

- (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.
- (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 —

³ Election Petition No. 85 of 2025

(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) that the candidate who has won the election was at the time of his or her election not qualified for election, or that he or she was not properly nominated, or that a duly qualified candidate had his or her nomination improperly rejected.

(4) The court shall have the power to direct scrutiny and recount of votes if it is satisfied, during proceedings on an election petition, that such scrutiny and recount are desirable.

(5) At the conclusion of the hearing of the election petition, the court shall report its determination to the Commission and upon such report being given, such determination shall be final.

(6) No application shall be made to the High Court for an injunction or for an order restraining the holding of an election within fourteen days immediately preceding the date of the election.

(7) Notwithstanding subsection (6), the High Court shall have power, subsequent to the holding of an election, to declare void the election if, upon hearing the petition referred to in subsection (1), the High Court is satisfied that there are good and sufficient grounds for declaring the election void.

101. Election petitions

(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”

17. The law under SS. 100 and 101 is very clear. S.100 of the Act is triggered when a petitioner seeks to appeal a decision of the Malawi Electoral Commission confirming or rejecting irregularities. The case of **Bright Msaka SC and MacDonald Makanjira v. Tulinje Muluzi and MEC** emphasises that, under that provision, a petition must be an appeal challenging a decision by the 2nd Respondent confirming or rejecting irregularities. S.101 is triggered where there is no decision by the Malawi Electoral Commission, but nonetheless, irregularities were identified that led to the undue return and election to the office of the President, member of the National Assembly, or councillor.

18. In the present petition, the Petitioners cite S.100 as the basis for their petition. However, under paragraph 5 of the petition, the Petitioners allege that the 2nd Respondent declared the 1st Respondent the winner of the election, disregarding their complaints alleging the irregularities, meaning the petition is in regard to the election of the 1st Respondent and not a decision by the 2nd Respondent confirming or rejecting irregularities. Further to that, the petition does not indicate any decision made by the 2nd Respondent confirming or rejecting the irregularities alleged. This is more so when neither the petition nor the

accompanying sworn statement exhibits any decision by the 2nd Respondent nor reference to any decision the petition is challenging. Lastly, the Petitioners' main relief sought under the petition is nullification of the election of the 1st Respondent for undue return and election, which can only be sought under S.101 of the Act.

19. In the court's view, the Petitioners proceeded with this petition on the basis that the 2nd Respondent had not responded to their complaints and disregarded the same by continuing in its election of the 1st Respondent. Therefore, the petition, as it is, does not satisfy the requirements under S.100 of the Act, and was incompetently brought under that section as it does not in substance comprise an appeal against a decision by the 2nd Respondent confirming or rejecting the existence of an irregularity.
20. Further, the Respondents raised objections to the sworn statement accompanying the Petitioners' petition on two grounds, firstly, that the sworn statement accompanying the petition merely verifies and does not support the petition as required under S.100(1) of the Act. It is further argued that the Petitioners improperly tendered evidence through their petition rather than by way of sworn statements as required under Order 18 rule 14 of the CPR 2017. The case of **Dr. Clement Mwale v. Chunga and MEC**⁴ was cited to support this objection. I have had the opportunity of reading this authority. I am in total agreement with my sister, Justice F.A Mwale. S.100(1) is clear that a petition must be supported by a sworn statement and not verified by one. Further, as observed, in the case of **Chilima and Another v. Mutharika and Another**⁵, a petition is not a pleading as was previously known in the old rules. A petition lays out the grounds thereof and sets out the reliefs sought, but does not narrate the parties' case as a statement of case does, hence requiring the sworn statement in support.
21. Further, as observed elsewhere above, the sworn statement by the Petitioners purports to be deponed by all of the Petitioners but is only signed by the 1st Petitioner purportedly in a representative capacity. This is contrary to the requirements of Order 18 rule 7(5)(e) of the CPR 2017, which provides that a person making the sworn statement must sign the sworn statement, state one's full name, address and capacity to make the sworn statement. The deponent must sign, and in the case of more than one deponent, it would only be logical for all of them to sign the statement. The CPR 2017 does not provide for representative capacity in signing a sworn statement. I am inclined to agree with the Respondents that the sworn statement was improperly signed and is therefore non-compliant with the applicable rules. Such a defect is fatal and cannot be cured under Order 2 of the CPR 2017. Although Order 18 rule 19 CPR 2017 provides that a defective sworn statement may be used in court with the court's permission, no such permission was sought or granted.
22. The Respondents also took issue with the naming of the Petitioners, in that only five out of the nine were named. This is contrary to the dictates of Order 6 rule 3 of the CPR, which requires that each party to a proceeding must be named separately. It states as follows:

⁴ supra

⁵ Constitutional case No. 1 of 2019

“Each party to a proceeding shall be named separately”

So by revealing the names of only five of the petitioners whilst hiding the identities of the other four, the petition suffers yet another fatal blow. The reasons for naming all litigants are obvious. A person against whom legal proceedings are brought needs to know who has taken him to court. Fighting an invisible enemy would be extremely undesirable. Further, assuming the person sued ultimately wins, who will be responsible for the consequences of the futile litigation? Surely it would be difficult, if not impossible, to seek recompense against unnamed entities. Anonymous-claimant practice goes contrary to the basic principle that the one who commences a legal action avouches the cause before the court and the public. Fundamental fairness dictates that when a claimant sues a defendant by name and thereby identifies the defendant to the public, the claimant should likewise reveal his or her own identity. The defendant has a definite interest in knowing the claimant’s identity to fully utilise the discovery process and establish appropriate defences. In addition, proceeding anonymously creates a possible inability to determine *res judicata* effect of a judgment: **Roe v Ingraham**⁶. Filing a case under one’s name is not only a procedural formality, but is also an acknowledgement of the openness of our judicial process.

23. Even if the petition had managed to jump the procedural hurdles, I am of the firm view that the same would have still failed on other grounds. For instance, it is now accepted that the standard of proof in electoral petitions is the same as in civil cases, that is, on a balance of probabilities, as settled in *Chilima and Anor v Mutharika and Anor*⁷. In this case, the Court had the following to say:

“...petitions, just like any other civil matters, must be proved by the petitioner on a balance of probabilities and nothing else. If another standard was required, the legislature could have expressly said so”.

On appeal, the Supreme Court of Appeal⁸, further buttressed the law as follows:

“...our position is that the petitioner should discharge this initial burden of proof with a prima facie standard of proof, before the burden shifts to the Commission as a duty bearer. Once the burden so shifts, owing to the powers, functions, and duties the Constitution 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”.

24. In this matter, a lot of allegations of wrongdoing were raised against the Respondents. However, the Petitioners failed to bring concrete evidence to support such allegations. They opted to rely on hearsay evidence. No proof on the balance of probabilities was brought forth, for example, to prove the allegation that the 1st Respondent was distributing cash to voters to vote for him. No single individual was brought forward to testify that he was offered cash to vote for the 1st Respondent. The allegations that the 1st Respondent ferried voters from other places to vote for him suffer the same consequence as it is made without being substantiated by any concrete evidence.

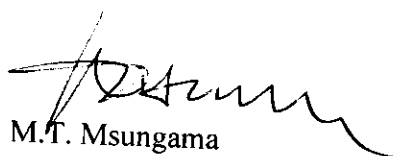
⁶ 364 F. Supp. 536, 541 n.7 (S.D.N.Y. 1973)

⁷ [2020] MERL 1

⁸ MSCA Constitutional Appeal 1 of 2020

25. Lastly, the Petitioners alleged that the Police and Malawi Defence Force Officers at the polling stations intimidated the Petitioners' monitors when they questioned the conduct of the presiding officers in influencing voters to vote for the 1st Respondent. The Petitioners did not parade any witnesses nor file sworn statements by any witness to testify that they were indeed intimidated; what the Petitioners proffered is hearsay evidence and cannot be entertained. I fail to find merit in the Petitioners allegations.
26. Further, the Act in ensuring free, open and fair elections under SS. 67 and 68 provides for the right of every candidate to choose representatives to be stationed at polling stations. These representatives are granted access to inspect ballots before voting and to monitor the actual voting and counting of votes. It is, therefore, surprising that the Petitioners herein would merely cast an allegation without providing this court with any evidence to show wrongdoing by the Respondents. The Petitioners would have presented their monitors to explain how and why the ballots cast in their favour were wrongly declared null and void. I find that the Petitioners have again failed to show any merit for this allegation.
27. In any case, even if the petitioners had managed to prove any irregularities, they would still have been obliged to prove that the said irregularities affected the outcome of the election. This, they have failed to do.
28. In conclusion, it is my finding that the petition fails and is dismissed on the procedural grounds as outlined above. Further, even if the Petition had managed to jump over the procedural impediments, which it failed to do, the Petitioners would still have failed in their action on the basis that they failed to discharge the evidential burden placed upon them to prove the allegations contained in their petition.
29. On the issue of costs, I would like to invoke my discretion by ordering that each party pays its own costs, principally because this is a matter of public interest.

Delivered at the High Court, Commercial Division, Blantyre Registry, this 13th day of July 2026.


M.T. Msungama
Judge