



**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
Electoral Matter NO. 5 OF 2025**

*(Before Honourable Justice PEMBA)*

IN THE MATTER OF SECTION 42 OF THE PRESIDENTIAL, PARLIAMENTARY AND LOCAL GOVERNMENT ELECTIONS ACT;

AND

IN THE MATTER OF AN APPLICATION FOR A DECLARATION THAT THE DECISION OF THE MALAWI ELECTORAL COMMISSION EXCLUDING THE CLAIMANT FROM THE OFFICIAL LIST OF PARLIAMENTARY CANDIDATES FOR THE 16 SEPTEMBER 2025 ELECTION IS UNLAWFUL AND UNFAIR, AND AN APPLICATION FOR CONSEQUENTIAL ORDERS;

AND

IN THE MATTER OF AN ELECTION APPLICATION BY CHARLES J. SANDRAM

*IN THE MATTER BETWEEN:*

CHARLES J. SANDRAM .....CLAIMANT

-AND-

MALAWI ELECTORAL COMMISSION .....DEFENDANT

**CORAM:**      **HON. JUSTICE HOWARD PEMBA**  
Mr Khwima Mchizi, Counsel for the Claimant  
Mr Lawrence Kapinda, Counsel for the Defendant  
Mrs. Mwase, Court Clerk and official Court interpreter

**RULING**

**Introduction**

1. This is my ruling on an application made by Mr Charles Sandram, the Claimant herein, for review of the decision of the Defendant, the Malawi Electoral Commission (MEC) excluding the Claimant from the official list of

parliamentary candidates for Dedza Mtakatika Constituency. The application is made under **Order 19 rule 13** of the Courts (High Court) (Civil Procedure) Rules) as read with **Section 42** of the Presidential, Parliamentary and Local Government Elections Act No. 10 of 2023.

2. The brief background information of the matter is as outlined below. The Claimant is a prospective parliamentary candidate for Dedza Mtakatika Constituency in the forthcoming Malawi General Elections of 16<sup>th</sup> September 2025. On 17<sup>th</sup> June 2025, the Defendant published a General Notice regarding the conduct of the said 2025 General Elections. By this notice, the Defendant informed the public that collection of nomination papers for candidates intending to contest as Members of Parliament had commenced on 10<sup>th</sup> June 2025 and would run up until the 30<sup>th</sup> of July 2025 which was the last day for submissions of nominations.
3. Further to that, the Defendant advised the public through a notice titled “Determination of Nomination Fees for 2025 General Election” that, among others, the youth candidates (persons less than 35 years) in the Parliamentary Election category would pay a nomination fee of MK1,250,000.00.
4. Pursuant to this information, on 18<sup>th</sup> of June 2025, the Claimant paid his nomination fee of MK 1,250,000.00 for Dedza Mtakatika Constituency having believed that he qualified as a prospective youth candidate under 35 years since he was born on the 19<sup>th</sup> July, 1990.
5. On the 14<sup>th</sup> August 2025, the Defendant through its official Facebook Page published an official list of parliamentary candidates whom it has duly approved to contest in the forthcoming elections of 16<sup>th</sup> September 2025. Surprisingly, the Claimant’s name is missing on the list.
6. On the 15<sup>th</sup> August, 2025, he received a notice and statement of rejection of his nomination as a candidate for the forthcoming parliamentary elections citing that he had paid less than the required nomination amount which was MK 1,250,000.00 only instead of MK2,500,000.00 which was meant for male

candidates. Immediately after receiving the rejection notice, he engaged Messrs. Clarkes Attorneys to lodge a complaint with the Defendant in which he demanded that it should review its decision of not including his name on the list of candidates who were eligible to contents for the coming Parliamentary Election in Dedza Mtakataka Constituency.

7. On the 15<sup>th</sup> of August 2025, Messrs Clarkes Attorneys wrote the Defendant requesting a review of its decision. When the Claimant saw that there was no any response from the Defendant, yet time was drawing closer to the polling day, he instructed Messrs Clarkes Attorneys to commence the present proceedings by way of an application for review challenging the Defendant's decision to reject his nomination papers based on the ground that he did not qualify as a youth candidate and hence that his nomination fees were inadequate to contest as a candidate in the forthcoming parliamentary elections.

#### **Submission by the Claimant**

8. In support of the application, there is a sworn statement deponed by the Claimant himself and skeleton arguments. Attached to the sworn statement are some documentary evidence forming part of his submission. These include a copy of his national identification card (exhibited as **CJS1**) showing his date of birth, a copy of the notice of the 2025 General Elections issued by the Defendant (exhibited as **CJS2**), an official list of approved candidates for Dedza Mtakataka Constituency (exhibited as **CJS3**), a notice of his rejection (exhibited as **CJS4**) and a copy of a letter containing his complaint from his lawyers to the Defendant(exhibited as **CJS5**).
9. The Claimant contends that through the notice published by the Defendant on 17<sup>th</sup> June 2025, the Defendant further advised the public that after the formal presentation of the nomination papers, but before the close of the period allowed for nomination, the Defendant would advise the candidates or their election representatives of any defect in the candidates' nomination papers or supporting documents, and the candidates or their election

representatives would be given a chance to rectify the defect before the closure of the nomination period.

10. He said that before submission of nomination papers, the procedure was that one would pay nomination fees and upon being satisfied that the requisite fees had been paid, the Defendant would proceed to issue out a nomination form. After submission of his nomination forms, the Claimant stated that he called the Constituency Returning Officer, the District Elections officer for Dedza and the Defendant's Director of Media and Public Relations to wit Mr Sangwani Mwafulirwa who all confirmed that he qualified as a youth candidate since the Defendant had changed its calendar after he had already paid the nomination fees.

11. He further said that by the 30<sup>th</sup> of July 2025, which was the last day of receipt of nominations, he had not received any communication regarding any defect in his nomination for a parliamentary seat for the above-named Dedza Mtakataka Constituency. Thus, it was his expectation that in accordance with the electoral law, his name would be published in the Gazette, or in a newspaper or broadcast by radio by the 8<sup>th</sup> of August 2025. He was thus mesmerized to learn that his name did not appear on the list of candidates who are eligible to contest for the coming Parliamentary Election in Dedza Mtakataka Constituency.

12. Hence, it is submitted by the Claimant that the Defendant's decision to reject his nomination for parliamentary elections in Dedza Mtakataka constituency is unlawful and he therefore seeks the following reliefs:

- a. A declaration that the Defendant's decision to exclude him from the final list of parliamentary candidates for Dedza Mtakataka Constituency is unlawful in terms of the Presidential, Parliamentary and Local Government Elections Act on the basis of failure of the Defendant's Returning Officer for Dedza Mtakataka Constituency to immediately notify the Claimant or his election representative of the rejection of his nomination papers based on the fact that he does not

qualify as a youth candidate for the forthcoming parliamentary elections and that he paid less than the required nomination fee.

- b. An order of injunction mandating the Defendant through its Returning Officer for Dedza Mtakataka Constituency to accept the Claimant's nomination as a parliamentary candidate of the above Constituency or in the alternative allow the Claimant pay the balance of nomination fees in the category of candidates who are not classified as young
- c. An order for costs
- d. And any other order the court may deem fit and just in the circumstances

### **The Defendant's submission**

13. The Defendant opposes the application and there are two sworn statements in opposition; one filed by Mr David Matumika Banda, and another filed by Mr Sangwani Mwafulirwa, who are Director of Legal services and Director of Media and Public Relations for the Defendant respectively. Counsel for the Defendant also filed skeletal arguments in opposition to the Claimant's application.
14. The gist of the Defendant's submission is that the Defendant acted within the law in rejecting the Claimant's nomination and its decision is therefore lawful. Counsel argues that at all material times, the Defendant released the program of its activities and any changes ahead of time to enable the candidates to plan accordingly. That way, even after the change of dates for submission of nomination papers, the candidates had the opportunity to determine whether or not they qualified for the discounted nomination fees at the time of presentation of nomination fees.
15. It is further argued by the Defendant that the Claimant herein presented his nomination papers on 27<sup>th</sup> July 2025 at which time he was 35 years old having been born on 19<sup>th</sup> July 1990. He was therefore not less than 35 years old to qualify for youth nomination fees. Thus, upon close of the nomination period, a review of the Claimant's nomination papers revealed that he was not duly nominated owing to his failure to pay the prescribed nomination fees.

16. If anything, the Defendant further submits that under **Section 40** of the Presidential, Parliamentary and Local Government election Act, the duty to pay the prescribed nomination fees is at all material times that of the candidate or his election representative. The duty does not shift under any circumstances. The Defendant's duty is to determine and publish the prescribed nomination fees which it did. Thus, it was incumbent upon any prospective candidate to verify how old he would be at the time of presentation of nomination papers and not at the time of depositing the nomination fee.
17. Furthermore, the Defendant has argued that these proceedings are procedurally incompetent. They argue that the decision which is subject of this review is that of the Returning Officer and under Section 99 of the Presidential, Parliamentary and Local Government Elections Act 2023, the Claimant was supposed to lodge his complaint first to the Commission (the Defendant) before coming to this Court.
18. Based on these grounds, in these circumstances, the Defendant believes that they acted within the law in rejecting the Claimant's nomination and that the application for review should be dismissed with costs.

#### **Issues for determination**

19. The central issue before me is to determine on whether or not the Defendant's decision to exclude the Claimant from the final list of parliamentary candidates for Dedza Mtakatika Constituency is unlawful under the **Presidential, Parliamentary and Local Government Elections Act, No. 10 of 2023** and ought to be set aside.
20. In making this determination, I am inclined to consider the following three specific issues:
- i. Whether or not the matter herein is incompetent taking into account the available internal remedies under the Act.

- ii. Based on the outcome of (i) above, whether or not the Claimant was eligible to pay the reduced nomination fee as a youth candidate at the time of submitting his nomination papers.
- iii. Whether or not the Defendant, through its Returning Officer, duly exercised its statutory duties, particularly with respect to communication of any alleged defects in the Claimant's nomination.

### Law and analysis

21. This matter borders on the Claimant's constitutional right. In order to uphold the supremacy and sanctity of our Constitution and what it stands for, and in order to accord the people of this country realistic participation in the governance of their nation, the Constitution has specifically accorded our people the right to participate in the political agenda under **Section 40** of the Republican Constitution, which states as follows:

**40(1)** *Subject to this Constitution, every person shall have the right—*

- (a) *to form, to join, to participate in the activities of, and to recruit members for, a political party;*
- (b) *to campaign for a political party or cause;*
- (c) *to participate in peaceful political activity intended to influence the composition and policies of the Government; and*
- (d) *freely to make political choices.*

22. Thus, in a constitutional democracy, nothing perches itself above and beyond legal scrutiny, judicial review and such other relevant processes that are intended to ensure the supremacy of the very constitutions and laws upon which democratic values are affirmed. See **Mutharika & Anor. vs Chilima & Anor. (MSCA Constitutional Appeal 1 of 2020) [2020] MWSC 1 (8 May 2020) At page 33.**

23. That notwithstanding, constitutional avoidance is one of the doctrines that the courts in Malawi have emphasized. In **Republic vs Rt. Hon. Saulos Klaus Chilima, Criminal Case No. 10 of 2023** Justice R.E Kapindu stated;

*“The Court however does not find it necessary to go beyond this statement and deal with the intricacies of the law, practice and*

*constitutionality of the issues raised by the parties, especially by the defence. The Court states this in view of the general principle of constitutional law that where it is possible to decide any case, whether civil, criminal or sui generis, without reaching a constitutional issue, that is the course which should be followed. The principle of constitutional avoidance permits this Court to resolve an issue quickly, without miring itself in a painstaking exercise in discursive constitutional analysis, wherever such approach (that is to say constitutional avoidance), serves the interests of justice.*

24. I must say such is the case in the present matter. The principle of constitutional avoidance has persuaded me to resolve the main issue outlined herein quickly and without miring myself in a meticulous exercise in lengthy constitutional analysis. This approach, in my view, will still serve the interests of justice. I now proceed to the issues as outlined hereinbefore.

***i. Whether or not the matter herein has been incompetently brought before this Court***

25. Election proceedings are governed by **Order 19 Part II** of the Courts (High Court) (Civil Procedure) Rules, 2017. **Order 19 rule 13** which has been cited as the law under which these proceedings have been commenced states as follows:

*“An election matter shall commence in the manner specified under the Parliamentary and Presidential Elections Act, the Local Government Elections Act or, in any other event, by an application.”*

26. On 18<sup>th</sup> February, 2023, the President of Malawi assented to the Presidential, Parliamentary and Local Government Elections Act (Act. No 10 of 2023). It repealed the Parliamentary and Presidential Elections Act as well as the Local Government Elections Act to become the comprehensive law on the conduct of elections in Malawi. For the sake of purposive interpretation, that reference therefore is to be construed as referring to the Presidential, Parliamentary and Local Government Elections Act (Act. No 10 of 2023).

27. The Presidential, Parliamentary and Local Government Elections Act (Act. No 10 of 2023) does not provide, save for election petitions under its **Section 101**, for other modes of commencement for other electoral disputes. The election petition under **Section 101** of the Presidential, Parliamentary and Local Government Elections Act only covers instances after the conduct of an election and not before the conduct as is the case now. **Order 19 rule 13** of the Courts (High Court) (Civil Procedure) Rules, 2017 therefore verily becomes relevant to entitle the Claimant to commence the present proceedings by way of an application

28. Although **Order 19 rule 13** suggests that the mode of commencement in an election matter shall commence as specified in the Presidential, Parliamentary and Local Government Elections Act, the Constitution under **Section 76 (3)** also provides other manners in which a matter may be brought before this Court. It states as follows:

*“ (3) Any person who has petitioned or complained to the Electoral Commission shall have a right to appeal to the High Court against determinations made under subsections (2) (c) and (2) (d).”...*

*(5) Without prejudice to subsection (3)–*

*(a) the High Court shall have jurisdiction to entertain applications for judicial review of the exercise by the Electoral Commission of its powers and functions to ensure that such powers and functions were duly exercised in accordance with this Constitution or any Act of Parliament...”*

29. In the present case, the argument by Defendant is that the Claimant’s application is incompetent as he has jumped the gun by rushing to the court instead of lodging his complaint first to the Defendant Commission before coming to this Court considering that what he is raising are issues of irregularity. In so arguing, the Defendant has cited **Section 99** of the Presidential Parliamentary and Local Government Act 2023 and the case of **Chisi vs Electoral Commission, Electoral Case No. 1 of 2014 (High Court) (Principal Registry) (unreported)**, where the Court interpreted Section 76 of

the Constitution and outlined two types of jurisdiction that the High Court may exercise in electoral matters: appellate and judicial review.

30. In **paragraph 7** of the Defendant's skeleton arguments, it is submitted as follows:

*"In the present case, the decision under challenge is that of the Returning Officer. Under **Section 99 of the Presidential, Parliamentary and Local Government Elections Act, 2023**, the Claimant had the right to complain about that decision to the Commission..."*

31. In his response, the Claimant argues that he actually lodged a complaint with the Defendant Commission but there was no response and there was nothing he would do other than coming to this Court considering that time to the polling day was running out. In paragraphs 16 and 17 of his sworn statement in support of this application, the Claimant states as follows:

16. *"On the 15<sup>th</sup> of August 2025, Messrs Clarkes Attorneys wrote to the Defendant requesting a review of its decision to reject my nomination papers on the basis that I did not qualify as a youth candidate and that my nomination fees were therefore inadequate to contest as a candidate in the forthcoming parliamentary elections. I attach and exhibit hereto a copy of the letter from my lawyers to the Defendant, marked as exhibit "CJS 5."*

17. *"I have been informed by Messrs Clarkes Attorneys that they have not received any response to their letter, and thus I instructed them to commence the present proceedings."*

32. **Section 99** of the Presidential, Parliamentary and Local Government Elections Act provides as follows:

*"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."*

33. I am aware that in the case of **Chisi vs Electoral Commission** (*cited above*), the court held that where the law provides an internal complaint or appeals mechanism within the Commission for decisions made by lower electoral authorities (such as Returning Officers), an aggrieved party must exhaust that internal process before resorting to judicial review. This is a well-known principle in judicial review. In the *Chisi case*, a challenge against rejection of nomination by way of judicial review was dismissed on the ground that the correct procedure was for the Claimant to appeal the decision of the Returning Officer to the Commission and only make recourse to the High Court by way of appeal against the decision of the Commission.
34. Observably, the Defendant is correct in its interpretation of **Section 99**. The provision clearly envisions a hierarchical complaint handling mechanism, beginning with a decision or irregularity at the lower level in this case, by the Returning Officer, which must then be communicated to the candidate, thereby enabling a written complaint to be lodged with the Commission.
35. However, based on the facts presented before me in the present case, no such communication or decision was ever conveyed to the Claimant regarding the alleged defect in his nomination fee. Thus, the necessary precondition for invoking **Section 99**, a communicated irregularity or decision, was absent. In that regard, the Returning Officer's failure to inform the Claimant of any defect in his nomination effectively deprived the Claimant of the opportunity to utilize the internal complaint mechanism provided by law.
36. On account of this observation, it is my finding that the Applicant's application is not at all incompetent. Commencing the matter at the High Court was the only solution the Claimant had left with.

ii. **Whether or not the Claimant was eligible to pay the reduced nomination fee as a youth candidate at the time of his nomination**

37. On this issue, the Claimant argues that he paid K1,250,000.00 pursuant to the Defendant's issued notice titled "Determination of Nomination Fees for 2025 General Election" which provided that the youth candidates, that is persons less than 35 years, in the Parliamentary Election category were supposed to pay a nomination fee of MK1,250,000.00. His argument is that at the time he was making the payment on 18<sup>th</sup> June 2025, he believed that he qualified as a youth since he was born on 19<sup>th</sup> July 1990.
38. The Defendant is agreeable that it had indeed determined and published the applicable nomination fees in the said General Notice. According to this notice, the nomination fee of MK1,250,000.00 was indeed correctly applicable to youth candidates. The Defendant however, contends that having been born on 19<sup>th</sup> July 1990, the Claimant had, therefore, already attained the age of 35 by the time he presented his nomination papers on 27<sup>th</sup> July 2025. As such, he was not a youth and was not entitled to pay the reduced nomination fee applicable to that category.
39. Clearly from the evidence, which evidence is not in dispute, the Claimant was qualified to be a youth at the time he paid the nomination fee. As time went by, at the time he was presenting his nomination papers, he was no longer a youth. His youthfulness had ceased in the middle of the nomination process. What is striking here is that it appears the Claimant already had some doubts regarding his qualification as a youth. I wish to refer to **Paragraph 10** of his sworn statement in support of the application which states:

*"After submission of my nomination forms, I called the Constituency Returning Officer, the District Elections officer for Dedza and the Defendant's Director of Media and Public relations to wit Mr Sangwani Mwafulirwa who all confirmed that I qualified as a youth candidate since the Defendant had changed its calendar after I had already paid the nomination fees".*

40. This, to me, reveals that the Claimant was not all that certain as regards his qualification to be a youth considering that he had attained the age of 35 years at the time of presentation of his nomination forms. I must of course hasten to point out that the Claimant has provided no substantial evidence to prove, on a balance of probabilities, his claim made in paragraph 10 above. What he has shown the court is not proof enough that he called the mentioned Defendant's officers to enquire about his eligibility and that they confirmed the same. Moreover, Mr Mwafulirwa stated that he could not recall having had a conversation with the Claimant and that notwithstanding, all people who contacted him were duly advised to make sure that they pay the prescribed nomination fees at the time of presentation of nomination forms.
41. Be that as it may, one important question, which arises from the bone of contention herein is: *At what time should age of a candidate be reckoned for purposes of ascertaining whether or not he or she qualifies to be a youth?* Should it be at the collection of nomination forms as the Claimant seems to argue; or at the time of presentation of the said nomination forms as argued by the Defendant? To me, the latter makes sense and on that note I agree with the Defendant.
42. It must be noted from the evidence, which has also been conceded by both parties herein, that under the current legal regime, collection of nomination form is contemporaneous to payment of the equivalent nomination fee. It is in the evidence of Mr David Matumika Banda that at all material times, the procedure was that prospective candidates or their representatives would deposit nomination fees at the bank and then bring the deposit slip to the District Elections Officer for issuance of the general receipt. Thereafter, the prospective candidate was allowed to collect nomination forms from the Constituency Returning Officers. This has equally been reflected in **Paragraph 9** of the Claimant's sworn statement in support of this application
43. It must further be noted, albeit at the risk of saying the obvious, that nomination is not a once off activity. It is a process which commences from collection of nomination forms and concludes with the submission of these

forms. At every moment of this process, a candidate ought to make sure that he or she qualifies in all aspects. According to Exhibit CJS2, for the 2025 General Elections, the nomination period was from 10<sup>th</sup> June to 30<sup>th</sup> July 2025. It is not in dispute that the Claimant submitted his nomination papers on 27<sup>th</sup> July 2025, eight days after his 35<sup>th</sup> birthday. Even on a plain reading of the notice referred to by the Claimant, his 35<sup>th</sup> birthday fell within the nomination period. Thus, at the very same time of collection of his nomination form, the Claimant knew or ought to have known that he would attain the age of 35 at the time of submission. I therefore find merit in the Defendant's position as it is clear that the Claimant was not below the age of 35 at the time of submission of his nomination papers and was, accordingly, not eligible to pay the reduced nomination fee designated for youth candidates.

iii. **Whether or not the Defendant, through its Returning Officer, duly exercised its statutory duties in its dealings with the Claimant**

44. The first point of reference on this issue is Section 39 of the Presidential, Parliamentary and Local Government Elections Act. Section 39 provides as follows:

*39(1) A candidate or his or her election representative shall at the time of his or her nomination deliver to the Returning Officer -*

*(a) A nominated form completed and executed in the prescribed form;*

*(b) Evidence, or statutory declaration by the candidate made before a magistrate or commissioner for oaths, that the candidate -*

*(i) is a citizen of Malawi and has attained the minimum age of twenty-one; and*

*(ii) is able to speak and read the English language well enough to take active part in the proceedings of the National Assembly or the council; and*

*(c) Evidence that he or she is a registered voter in any constituency or ward.*

*(2) A Returning officer shall, upon request by a candidate or an election representative of a candidate, examine the nomination form and supporting documents of the candidate before the nomination papers are formally presented to the Returning Officer and advise the candidate or the election representative whether in the opinion of the Returning Officer, the nomination papers are in order*

*(3) A Returning Officer shall, at the earliest opportunity, and in any case before the close of the period allowed for nominations, advise the candidate or the election representative of the candidate of any defect in the nomination papers, and the candidate may rectify the defect before the close of the nomination period.*

45. In his submission, the Claimant has indirectly argued that the blame in all this should be shouldered by the Returning officer for failing to communicate to him of the fee defect in his nomination form until the close of the nomination period. He said after submission of his nomination forms, he called the Constituency Returning Officer, the District Elections officer for Dedza and the Defendant's Director of Media and Public Relations to wit Mr Sangwani Mwafurliwa who all confirmed that he qualified as a youth candidate since the Defendant had changed its calendar after he had already paid the nomination fees. Mr Mwafurliwa has filed a sworn statement in reply to this allegation and all what he has said is that he cannot recall having a conversation with the Claimant regarding the subject matter of his eligibility to pay the nomination fees of a youth candidate.

46. In **Paragraph 11** of his sworn statement in support of this application, the Claimant however states, and I quote:

*"By the 30th of July 2025, which was the last day for receipt of nominations, I had not received any communication regarding any defect in my nomination for a parliamentary seat for the above-named Dedza Mtakatika Constituency."*

47. I would like to agree with the Claimant that the Returning Officer failed his statutory duties regarding the Claimant's nomination process. The law is clear. Where a nomination paper is found to be defective, it is a 'must' for the Returning Officer to inform the candidate '*at the earliest opportunity*', and in any case '*before the close of the nomination period*' of this defect. The Claimant stated that he presented his nomination form to the Returning Officer for pre-inspection and only the issue of the symbol of his logo was pointed out to be defective to which he addressed. In my view, the issue of his nomination fee was equally a defect that would have been cured easily by advising the Claimant to pay the remaining balance and would have been done within the shortest time possible.
48. In its submission in reply, the Defendant relies on **Section 42(1)** of the same Act which provides that the decision to reject a nomination is made at the close of the nomination period. However, I wish to point out that this section must be read in conjunction with **Section 39**, particularly subsections (2) and (3) which clearly assign to the Returning Officer the duty to examine the nomination form and its supporting documents and communicate to the candidate all that is in order before the close of the nomination period.
49. It is a well-established principle of statutory interpretation that statutes must be read as a whole rather than in isolation. See **Nseula v Attorney General & Anor. (Civil Cause 63 of 1996) [1997] MWHC 26 (30 September 1997)**. If the Defendant's reasoning were to be accepted that the decision on a nomination can only be made at the close of nominations, then one would have to accept the implication that **Sections 42(1)** and **39(3)** are inconsistent with each other. That cannot be the correct interpretation.
50. **Section 39(3)** states that where a nomination paper is found to be defective, the Returning Officer shall inform the candidate "*at the earliest opportunity, and in any case before the close of the nomination period.*" This provision complements, rather than contradicts, **Section 42(1)**. The Court is of the view that **Section 39(3)** merely reinforces the procedural responsibility placed upon the Returning Officer to act diligently and promptly when dealing

with nomination papers which never happened with regard to the Claimant's nomination papers.

51. It is on account of these observations that I find that the Returning Officer failed in that responsibility. The Claimant's assertion that he received no communication regarding any defect in his nomination by the close of the nomination period stands unchallenged by any credible evidence from the Defendant. Had the Returning Officer discharged his statutory duty with due diligence and in accordance with **Section 39(3)**, this matter would likely not have reached this stage. The lack of communication constitutes a procedural failure on the part of the Commission through its Returning Officer. Accordingly, I find in favour of the Claimant on this issue.

### **Conclusion**

52. Having considered the facts, submissions, and applicable law, the Court finds that the Claimant was not below the age of 35 at the time of submission of his nomination papers and was, accordingly, not eligible to pay the reduced nomination fee designated for youth candidates. However, the Malawi Electoral Commission, through its Returning Officer, failed to duly discharge its statutory duty under **Section 39(3)** of the Presidential, Parliamentary and Local Government Elections Act, No. 10 of 2023, by not notifying the Claimant of this defect in his nomination papers within the prescribed time. The failure to communicate the alleged irregularity specifically, the issue regarding the Claimant's age and the applicable nomination fee, deprived the Claimant of the opportunity to rectify the defect or to utilize the internal complaint mechanisms set out in **Section 99** of the Presidential, Parliamentary and Local Government Elections Act.

53. In light of the foregoing findings, this Court makes the following orders:

- i. That the decision of the Defendant to exclude the Claimant from the final list of parliamentary candidates for Dedza Mtakatika Constituency is unlawful and should be set aside.

- ii. That the Defendant should include the Claimant on the final list of duly nominated candidates for Dedza Mtakatika Constituency for the 2025 General Elections.
- iii. That the Claimant should, **within 48 hours** from the date of this order, pay the balance of the nomination fee applicable to candidates aged 35 and above, failing which his nomination shall stand invalid.
- iv. Each party to bear their own costs

**MADE IN Open Court**, this 9<sup>th</sup> day of September 2025 at Lilongwe High Court Registry.

A handwritten signature in black ink, consisting of a stylized 'H' followed by a large, sweeping 'P'.

Howard Pemba  
**JUDGE**