



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
ELECTORAL MATTER NO. 4 of 2025**

(Before Honourable Justice Madalitso Khoswe - Chimwaza)

BETWEEN:

DANIEL BINDA.....CLAIMANT

MALAWI ELECTORAL COMMISSION.....DEFENDANT

CORAM : JUSTICE MADALITSO KHOSWE-CHIMWAZA

Khwima Mchizi - Advocate for the Claimant

Lawrence Kapinda -Advocate for Defendant

Malolo- Advocate for the defendant

Sikelo- Court Clerk/Official Interpreter

JUDGMENT

Chimwaza, J.

Introduction

1. This is the decision of the court on an application made by Mr Daniel Binda, the claimant herein, for review of the decision of the defendant, the Malawi Electoral Commission (MEC) to exclude the claimant from the official list of validly nominated candidates for Nkhotakota Liwaladzi

constituency. The application is filed pursuant to **Order 19 Part II, Rule 13 of the Courts (High Court) (Civil Procedure) Rules (2017)** as read with **Section 42 of the Presidential, Parliamentary and Local Government Elections Act. No. 10 Of 2023.**

2. The application is supported by a sworn statement of Daniel Binda who depones that he is a Malawian citizen by birth and prospective parliamentary candidate for Nkhotakota Liwaladzi constituency. On 17th June 2025 the defendant published a notice in which it informed members of the General public that collection of nomination papers for candidates intending to contest as members of parliament had commenced on 10th June 2025 and would run until the 30th of July 2025 which was the last day for submission of nominations. Attached exhibit 'DB1' copy of the notice.
3. Through the same notice, the defendant advised the general public that after the formal presentation of nomination papers, but before the close of the period allowed for nomination, the defendant would advise the candidate or his election representative of any defects in the candidates nomination papers or supporting documents, and the candidate or his /her election representative would be given a chance to rectify the defect before the closure of the nomination period.
4. The defendant further advised the public through a notice titled 'Determination of Nomination Fees for 2025 General Elections' which stated that for youth 'less than 35years' in the parliamentary elections category were supposed to pay a nomination fee of MK1,250,000. **Attached exhibit 'DB2'** General notice of nomination fees. On 17th June 2025, the claimant paid nomination fees of MK1,250,000.00 for a Parliamentary seat for Nkhotakota Liwaladzi Constituency having believed that he qualified as a prospective youth candidate under 35years. After paying nomination fees he collected nomination papers and presented his national identity card for verification if he qualified as a youth candidate at Nkhotakota MEC offices. After the process of pre-inspection he was told that everything was in order and he presented his nominations papers on 26th July 2025 and no issues pertaining to age were raised until 30th July,2025 the last day for receiving nominations.

5. On 14th August 2025 the defendant through its official facebook page published an official list of parliamentary candidates who had been duly approved by the Malawi Electoral Commission MEC to contest in the forthcoming elections on 16th September, 2025, surprisingly his name was not on the list. On 15th August the claimant received a notice and statement of rejection of nomination as a candidate for the forthcoming Parliamentary elections citing that he paid less than the required nomination amount of MK2,500,000.
6. He immediately instructed counsel from Clarkes Attorneys to demand the defendant that they review their decision of rejecting his nomination and give him a chance to top-up the difference of the nomination fees so that he can still contest not as a youth. The defendants were given 48hours to review their decision on rejection but there was no response hence the present proceedings. (**Attached exhibit 'DB5'** letter of complaint to the Commission dated 15th August, 2025 stamped with the Commission's registry stamp same date acknowledging receipt.)
7. The relief sought by the claimant is for the court to declare that the defendant's failure to communicate the defects in the nomination papers at the two stages of the process as per section 39 (2) when the papers were collected and were not yet submitted and 39 (3) of the PPLGE Act when the nominations were submitted but before close of period for submission of papers was unlawful. The defendant failed to discharge its duty by failing to communicate the defect as soon as possible so that they could be rectified. The claimant wants the decision rejecting his nomination to be set aside and that the claimant be allowed to pay the difference and be included on the list of candidates to contest.
8. They further asked the court to find that defendants definition of youth which was 'less than 35 years' was unlawful as it did not conform to the National Youth Policy which advocates that all Government institutions and agencies to include the youth who are defined to be between the age of 10-35. Therefore, the claimant being 35 years at the time he collected the nomination papers should not be penalised because of the definition of youth which the defendant adopted without referring to the Youth Policy. According to the claimant although he knew he was born on 8th January

1990, he believed he was a youth who could contest in the elections as a youth candidate that is why he paid nomination fees for youth category.

Defence case:

- 9.** In response the defendants filed a sworn statement by Davie Matumika Banda , Director of Legal Services who argued that the decision to reject the nomination was lawful as the claimant was not a youth at the time he paid the nomination fees or when he collected and submitted the nomination papers. The defendants argued that on 11th November, 2024, the Commission published a General Notice on the prescribed nomination fees for the 16th September, 2025 Election. The nomination fees for male candidates for Parliamentary election was Mk2,500,000.00. For purposes of inclusivity ‘leaving no one behind’ the nomination fees for women, the disabled, and the youth (less than 35years) was MK1,250,000.00.
- 10.** The defendant argued that the claimant had no basis for believing that he was less than 35years old because at the time he paid nomination fees and collected nomination papers or presented the same he was already 35years having born on 8th January 1990 according to his National Registration Bureau identity card which he attached to his nomination papers. The claimant deposited nomination fees and collected nomination papers on 17th June 2025 and on this date he was 35years and 5 months old. Therefore, he was not a person less than 35years as per the General Notice.
- 11.** The defendant further argued that it was the duty of the claimant to pay the prescribed nomination fees. The only duty of the commission was to determine and publish nomination fees which they did on 11th November, 2024, pursuant to Section 29 (2) (a) and (b) of the PPLGE Act. The commission or its officers had no duty to check the amount deposited before issuance of the nomination forms. The constituency returning officer either did not have the responsibility to inspect unless there was request made by the candidate/his election representative and they argued in this case the claimant did not make a request. However, in their sworn statement or submissions, the defendant did not address or challenge the evidence of the claimant that he submitted the papers for inspection before they were formally submitted to the returning officer. The defendant did not request that the claimant be cross examined on this point.

12.The defendant further challenged the jurisdiction of the court over the matter arguing that the claimants application was incompetently brought before court because the claimant had not yet exhausted the other remedies available which is to complain to the Commission and then bring the matter to the High Court as an appeal. The defendant cited **Section 76 (2) (c) and (d) and section 76 (3)of the Constitution** and the case of **Chisi vs Electoral Commission, Electoral case No. 1 Of 2014 (High Court) (Principal Registry)** unreported, where the Court discussed section 76 of the Constitution and the two types of jurisdiction that the High Court has over electoral matters. However, in their sworn statement and submission the defendant did not address or challenge the evidence of the claimant that he lodged a complaint on 15th August, 2025 and requested the commission to review its decision to reject his nomination within 48 hours.

13.The defendant further argue that the claimant did not deposit the prescribed nomination fees to contest as a member of Parliament since at the time of submission of papers he was already 35years. Therefore, the decision to reject his nomination was lawful and the matter should be dismissed with costs.

Issues for determination

1. Whether the proceedings were competently brought before court
2. Was the claimant justified to rely on the National Youth Policy as regards age for qualification as a candidate
3. Whether the decision to exclude /reject the nomination papers of the claimant was made unlawfully –out of non- compliance with the law?
4. Whether the claimant should be allowed to pay the difference and be included on the list of validly nominated candidates to contest.

REASONED ANALYSIS OF LAW AND FACTS

High Court Jurisdiction

14.Under **section 108 (1) of the Constitution**, the High Court has unlimited original jurisdiction to hear any matter, civil or criminal, under any law. Section 108 (2) of the Constitution empowers the High Court to review, for conformity with the Constitution, any law and any action or decision of

Government and this includes matters relating to elections and electoral processes.

The Electoral Commissions Juridical Powers

15. Under section 76 2 (c) and (d) of the Constitution creates the Electoral Commission as a juridical institution to hear petitions and complaints related to the conduct of elections and ensuring compliance with provisions of the Constitution and any Act of Parliament. It provides:

76. — (1) The Malawi Electoral Commission shall exercise such functions in relation to elections as are conferred upon it by this Constitution or by an Act of Parliament.

(2) The duties and functions of the Malawi Electoral Commission shall include—

(a) to determine constituency boundaries impartially on the basis of ensuring that constituencies contain approximately equal numbers of voters eligible to register, subject only to considerations of—

(i) population density;

(ii) ease of communication; and

(iii) geographical features and existing administrative areas;

(b) to review existing constituency boundaries at intervals of not more than ten years and alter them in accordance with the principles laid down in subsection (2)(a);

(c) to determine electoral petitions and complaints related to the conduct of any elections;

(d) to ensure compliance with the provisions of this Constitution and any Act of Parliament; and

(e) to perform such other functions as may be prescribed by this Constitution or an Act of Parliament.

16. Put simply, section 76 (2) (c) requires one to petition or complain to the Electoral Commission and the Electoral Commission to hear petitions and complaints. Section 76 (2) (d) requires the Electoral Commission, to ensure compliance with the provisions of this Constitution and any Act of Parliament.

17. Section 76 (3) gives the right of appeal from decision of the electoral commission to the High Court if a party is not satisfied. This provision presupposes that one has actually petitioned or complained to the Electoral Commission on both sections 76 (2) (c) and (d) and the Electoral Commission has determined or adjudicated on the matter: “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).

The Electoral Commission is in the nature of a tribunal of first instance in electoral matter while the High has appellate jurisdiction.

The High Court Appellate Jurisdiction

18. According to section 76, the primary way the High Court is seized of electoral matters from the Electoral Commission is by way of appeal. Section 76 (5) (a), dealing with judicial review, is without prejudice to section 76 (3) that invokes two circumstances for its exercise: sections 76 (2) (c) and 76 (2) (d). The case of **Chisi vs Electoral Commission, Electoral case No. 1 Of 2014 (High Court) (Principal Registry)**, demonstrates this position well.

Complaint procedure to be complied with first

19. Considering that the Electoral Commission has better and more insights on the processes of conducting elections and those involved, candidates and electoral staff, it is better placed to arbitrate on complaints or petitions which to the Electoral Commission are elementary and routine. Moreover, the framers of the Constitution must have wanted the Electoral Commission to correct the errors and filter them before resorting to this Court. section 99 of the PPLGE Act

Mode of Commencement

20. This matter commenced by way of an application **under Order 19 Part II rule 13 of the Courts (High Court) Civil Procedure Rules 2017 as read with section 42(2) of the .** Part II deals with election matters.

Order 19 Rule 13 provides that:

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.

21. The court is cognisant of the fact that the Parliamentary and Presidential election Act, the Local Government Elections Act referred to in that order was repealed and the current law is the Presidential, Parliamentary and Local Government Elections Act No. 10 of 2023.
22. These are the first elections cases dealing with rejected nominations after the enactment of the new law. According to the current Presidential, Parliamentary and Local Government Elections Act, No. 10 of 2023, in section 99 it provides that:

99. 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.
23. In this matter since the defendant did not respond to the complaint of the claimant dated 15th August, 2025, and did not determine any issue regarding the rejection of nomination, the claimant could not have proceeded before this court by way of appeal as envisaged by the cited provision.
24. This position was well put in the case of **Khembo vs Electoral Commission Electoral Law reports** [1994-2012] in which Chimasula J. stated :
- ‘The right to appeal presupposes a hearing and a determination *nisi prius* because the ordinary meaning of the words, ‘Appeal,’ in relation to courts, connotes a hearing, on the facts and/or law, by the authority from which impugned decision is appealed from. The High Court, therefore, has no jurisdiction where, after a complaint or petition to it, the Electoral Commission has not heard the matter and not made a determination.
25. In the absence of a hearing and determination on the complaint that was lodged to the commission, there was no decision from which to appeal could lie. Therefore, it is the finding of this court that the claimant rightly proceeded to commence action by way of an application for review under an order that specifically deals with election matters **Order 19 Part II rule 13 of Courts (High Court) Civil Procedure Rules** as read with **section 42 of the Presidential, Parliamentary and Local government Elections Act**.

Was the claimant justified to rely on the National Youth Policy as regards age for qualification as a candidate? No he was not.

26. The fact that the claimant was 35 years at the time he paid nomination fees and collected nomination papers has not been disputed. The claimant made an argument during the hearing that the he believed he qualified as a youth therefore the classification by the defendant that he was not a youth was not correct.

27. The claimant supported his argument with the definition of youth which is provided in the National Youth Policy of 2023 - 2028 where a youth is defined as ‘all persons from the of 10-35 years. The National Youth Policy is a blueprint formulated by the Government of Malawi to facilitate mainstreaming of youth programming in various development planning instruments and policies and where necessary, guide review of the legal and policy frameworks to ensure that they support the youth development agenda and enable the country to attain economic benefit known as the demographic dividend. It is a document that demonstrates commitment on the part of government to place young people at the centre of the national development agenda.
28. In the spirit of demonstrating commitment to inclusivity, the Malawi Electoral Commission applied special consideration in setting the nomination fees for women, persons with disability and the youth.
29. The claimant argued that the defendant as a government institution should have adopted the definition of youth as in the Youth Policy when publishing the nomination fees and not create a definition that appear to be contradicting the policy. He argued that such contradiction should be construed in favour of a citizen and in this case, the claimant should be allowed his name to appear as nominated Youth despite his age being above threshold published by the defendant. This court does not entirely agree with this line of thinking.
30. This court would like to draw the attention of claimant to the fact that a policy is not law and in terms of hierarchy a law or subsidiary legislation is ranked higher than a policy. A policy only gives guidance or direction which may culminate into legal reform but it is not binding, therefore to challenge the decision of a government institution which is in subsidiary legislation basing on a policy will be interfering too much. The moment the Malawi Electoral Commission determined the nomination fees in compliance with **section 29 (2) (a) and (b)** finally issued a General Notice in the gazette, this became a piece of subsidiary legislation which had authority over policy.
31. In any event, the defendant has demonstrated a commitment to include the youth in the exercise of political rights but on its own terms. The defendant had set parameters for the type of youth they want to work with to be those

‘less than 35 years’. This was properly published in November of 2024, if the claimant had issues with that age should have moved the Court to review that decision and publication. As it stands this was the age parameter that the claimant was supposed to meet. Where it says ‘less than 35 years’ it meant anyone aged 35 was excluded.

32. It is correct the National Youth Policy recognizes the age of youth to be 10 to 35 years, BUT for purposes of competing for a Parliamentary seat as a youth the age is less than 35years and this was supposed to be complied with.
33. The basis for the claimant’s belief therefore is unfounded and I find that he did not qualify as a youth as at the date he paid nomination fees. It is the finding of this court that the claimant was just reckless in assuming that he was qualifying. This mishap was self created and the court finds that the claimant contributed to his nomination being rejected. Therefore, the defendant will not shoulder the blame entirely.

Whether the decision to reject the nomination or exclude the claimant was made lawfully or unlawfully

34. We need to understand the status and position of a the returning officer and his role in this process. According to section 24 of the Presidential, Parliamentary and Local Government Elections Act, the Commission is the appointing authority for a returning officer. Clearly, a returning officer is an employee of the Commission. Although his duties are not clearly spelt out under this provision but where he is supposed to act, the law has made it clear what is expected of him as will be demonstrated.
35. The claimant in his evidence insisted that the defendant abdicated its duty through the returning officer by not examining the papers when they were first presented for inspection and gave him a go ahead to submit without advising him of any defects in terms of inadequate nomination fee as compared to his age, and before the close of period for submission of papers. This was contrary to law and the notice which the defendant published. section 39 (3) of the PPLGE and exhibit ‘DB1’ notice to the public.
36. The defendant in response has argued that it had no such obligation under the law, the only duty they had was to determine amount of nomination

fees and publish it. I beg to differ with the defendants argument as will be demonstrated below, the returning officer, an employee of the defendant had mandatory legal duty to discharge.

The claimant has relied on **Section 39 (2) and (3)** of the PPLGE which provides that:

- 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 nomination form completed and executed in the prescribed form;
 - (b) evidence, or statutory declaration by the candidate made before a magistrate or a 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 an 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 the 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. (emphasis supplied by court)
- (3) The 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. (emphasis supplied by court).

37. The above provisions are mandatory as they are using the term ‘shall’ in placing an obligation on the returning officer to diligently do his job in two scenarios. The first instance is where the law has given mandate to the candidate/ election representative to request that the nomination forms and supporting documents should be inspected/examined before they are formally presented to the Returning Officer. Upon examining the papers the returning officer is supposed to advise the candidate/ election representative whether in his opinion the nomination papers are in order.
38. The 2nd scenario is where the returning officer himself has been given mandate at the earliest opportunity and ‘before the close of the period allowed for nominations’, he should advise the candidate or his representative of any defects in the nomination papers and the candidate may rectify the defect before the close of the nomination period.

39. There is undoubted and onerous duty on the returning officer under the law to make sure that any defects are detected and rectified promptly before submission of the papers or before close of period allowed for submission of papers. Therefore, it is not correct for the defendant to claim that they had no obligation to communicate any defects in the papers.
40. The importance of this section is that it throws light on the intention of Parliament in so far as the correctness of the nomination papers in concerned before they are submitted and before close of period allowed for submission. It is also clear that the intention was to ensure that the defects are corrected in good time. In all scenarios it has been demonstrated that time is of the essence.

In the case of Khembo vs Electoral Commission and Another, [1994-2012] Malawi Electoral Law Reports, Chimasula Phiri, J. as he then was emphasized that ‘the operating word is before the close of the period allowed for nomination’. The Judge remarked that this was done to bring certainty in the law to ensure that issues of nomination should not be interfaced with other election matters such as voting and counting of votes. There must be an end to nomination challenges before casting of votes starts.’

41. In the present case, the defendants denied that they did not receive a request from the claimant, therefore the 1st scenario which required a request from the candidate was not triggered. Well, the claimant did not specify how the request was made and there was no evidence adduced to support that assertion. The law is silent on how the request ought to be made, but in my view it could be made orally, by phone call or in writing. Whichever way it was done, the returning officer was obliged to give feedback and advise whether the nomination papers were in order for submission or not. Section 39(2) of PPLGE Act.
42. The 2nd scenario did not require the candidate to make a request, the law has given mandate to the returning officer to exercise due diligence and advise the candidate or the election representative of the candidate of any defects in the nomination papers and the candidate is at liberty to rectify the defect before close of nomination period. Section 39 (3) of PPLGE.
43. To ensure that there is easy compliance with the requirement to communicate, the Presidential, Parliamentary and Local Government

Elections (Regulations) have devised form 7B which is supposed to be filled when communicating to the candidate or his election representative about any defects. It was so surprising to hear counsel for the defendant arguing in Court that he had searched the law and did not see anywhere where the returning officer is supposed to communicate to the candidate about defects.

44. The law appears to be in favour of identifying the defects and correcting them before the close of period for nominations, and failure to do that with diligence is fatal as these matter have a shortest time limit to be dealt with.
45. It has to be emphasized that the role of the returning officers and all officers involved in the running of the electoral process is very crucial for this nation to achieve successful, free and fair elections. Their knowledge of what they are supposed to do should be unmatched. They need to be conversant with the legal requirements at the bare minimum the procedures as provided in the electoral laws.
46. In section 42 of the PPLGE, the returning officer is further given power ‘after close of period for nomination of candidate but before polling day’ if he is of any opinion on issues outlined under 42(1) of the PPLGE to notify the candidate or his representative the rejection of his nomination and reasons for rejection forthwith. The candidate may request the returning officer to draw up and sign a statement of facts and his/her opinion based on those facts. Section 42(2) provides that:

42.—(1) If, after close of the period allowed for nomination of candidates but before the polling day, the returning officer is of the opinion that— (emphasis supplied by court)

(a) a candidate

(i) has not been duly nominated in accordance with this Act; or

(ii) is not qualified for election or has obtained nomination by fraud or false pretence;

(b) a symbol or abbreviation specified in respect of a candidate pursuant to section 37 (2) (d) and (e) is indecent or obscene or is too complex or elaborate to be reproduced on a ballot paper or so closely resembles the symbol of another candidate contesting the election in the constituency or ward concerned or is the recognized symbol or abbreviation of another candidate or of a political party, other than the political party, if any, for which the candidate concerned is standing or which is sponsoring him or her as to be likely to cause confusion;

(c) where the nomination paper states that a candidate is to stand for or to be sponsored by a political party, there is reason to believe that that fact is not true; (d) the nomination paper lodged with the returning officer is for any other reason not in order;

(e) the deposit referred to in section 41 was not lodged with the nomination paper of the candidate;

(f) a candidate is not qualified for election at that election; or

(g) a candidate has been duly nominated for election in another constituency or ward;

the returning officer shall forthwith notify the candidate or his or her election representative that the nomination has been rejected and giving reasons for such decision, and, if so requested by the candidate or his or her election representative, the returning officer shall draw up and sign a statement of the facts and his or her opinion based on those facts.

(2) Where a candidate refers any matter to do with his or her nomination to the High Court, the proceedings under sections 42, 43, 44 and 45 shall be suspended pending the determination of the matter.

47. In the present case ‘after the close of period for receiving nomination papers’ for candidates, which was the 30th July, 2025, the returning officer should have communicated to the candidate if he was of the opinion that his nomination had been rejected for any of the reasons cited above. Parliament was wise to give such a period immediately after close of period for nominations so that the candidate can take corrective steps of the defects that made them to reject his nomination or can file a complaint against the rejection before polling day. Remember an election is a process and every step is timed towards the final day of elections. Therefore, any delay at any stage of the process has an effect on the candidate’s chances to appear on the ballot.
48. The claimant in this case was not notified of the rejection until when he saw a notice publishing names of validly nominated candidates that his name was missing. The names of validly nominated candidates were published on 14th August and he only got the notification of rejection on 15th August, 2025.
49. A period of two weeks elapsed after the close of period for nomination of candidates and before publication of names. This was way too late. The returning officer only communicated after the publication of validly nominated candidates and not after the close of period allowed for nomination of candidates.

In the case of **MEC vs Dr. Sam Safuli Electoral matter No.3 of 2014**, in which the Commission had referred the matter to the High Court to determine on the rejection of nomination of Dr Sam Safuli. Nyakaunda Kamanga, J. as she then was emphasized the need for timeliness by the electoral body:

‘...Although s 40 of the Parliamentary and Presidential Elections Act authorises the Electoral Commission to reject the nomination papers of a candidate at any time before polling day, if the Electoral Commission receives any evidence that the candidate was wrongly nominated, the letter of inquiry to the University of Mzuzu⁵⁰ should have been done in a timely manner and definitely before the publication of the names of validly nominated candidates. The electoral body had the responsibility to scrutinise the nomination papers in a timely manner to ensure that the candidates conformed to the requirements of the Constitution and other laws and that they were qualified for nomination as candidates for members of Parliament’. (emphasis supplied)

50. I cannot agree more. Clearly, this was an irregularity on the part of the defendant through its returning officer in that he failed to discharge his statutory duty. Irregularity as defined under **section 2 of the PPLGE** with regard to the conduct of an election, means ‘non-compliance with the requirements of this Act, the Constitution and any other applicable law’. In this case the returning officer was under statutory obligation to advise/inform the candidate under section 39 (2) after a request was made, section 39(3) at the instance of the returning officer and section 42 after close of the period allowed for nomination of candidates. This Court finds that the decision to reject the nomination papers and exclude the claimant did not comply with the above provisions of the Presidential, Parliamentary and Local Government Elections Act and it was made unlawfully.

Whether the claimant should be allowed to pay the difference and be included on the list of validly nominated candidates.

51. Having found that the defendant did not discharge their legal obligation therefore their ultimate decision to reject nomination papers and exclude

the claimant was unlawful, they can not be expected to punish the claimant for their inefficiency.

52. Although the claimant contributed to his fate by assuming that his age of 35 would suddenly be less than 35 and paid nomination fees as a youth, but his guilt is less because it is correctable. Had it been that the returning officer had done his duty of exercising diligence and communicating the defect to the candidate, he could have rectified it. It is different from the failure of the electoral body that is entrusted by law to ensure that the nomination papers are well examined and defects identified and corrected in time.
53. The level of accountability on the electoral body is higher because it is a duty bearer, unlike an ordinary citizen who is pursuing his political rights. Therefore, the political rights of the citizen will not be traded with the inefficiency of an electoral body. Considering the seriousness of an election it is critical that the electoral disputes are handled in a manner that embodies fairness and legitimacy.
54. It is the mandate of the court to ensure that the electoral laws are respected as the election process is an exercise that seeks to serve public interest and not necessarily benefit the respondent.
55. The court has noted that the plain reading of the provisions under section 39(2) and (3), Parliament had intended that all defects should be identified by the returning officer and should be communicated to the candidate for possible rectification within the given timeframe. Therefore, rejection of nomination should be a last resort where the candidate has failed to rectify the defect. Had it been the returning officer had done his job as required by law obviously, the candidate could have rectified the defect by paying the difference of the nomination fees and these proceedings could have been avoided. The commission could have been justified to reject his nomination upon the claimant's failure to rectify the defect.
56. The intention of Parliament, was that the claimant should be advised of the defect and be allowed to rectify or correct it within the given timeframes. It is the considered view of this court that the claimant is entitled to an effective remedy and if the intention of parliament is to be achieved and the right of the claimant to participate in politics is upheld as provided under section 40(1) of the Constitution, then:

(i) The returning officer should allow the claimant to pay the difference of the nomination fees within 72 hours so that he can contest a male candidate, not as a youth and;

(ii) The returning officer should include the claimant's name on the list of validly nominated candidates for Nkhotakota Liwaladzi Constituency.

It is so ordered.

Costs:

Although the claimant has succeeded and according to Order 31 of the Court (High Court) Civil Procedure Rules, he was entitled to costs, this court having considered all factors surrounding this case it is of the considered view that it will exercise its discretion not to award costs. This is for the reasons that the claimant had a fair share of blame in this matter.

Made in Chambers this 8th day of September, 2025



Madalitso Khoswe-Chimwaza (Mrs)

JUDGE