



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY CIVIL DIVISION

CIVIL DIVISION

ELECTORAL PETITION NUMBER 68 OF 2025
(Before Honourable Justice Masoamphambe)

BETWEEN

LYNDA KHEMBO

PETITIONER

AND

MALAWI ELECTORAL COMMISSION

1ST RESPONDENT

GEOFFREY ONSEWA

2ND RESPONDENT

CORAM: HONOURABLE JUSTICE T S MASOAMPHAMBE

Nyondo, of Counsel for the Petitioner

Kaonga, of Counsel for the 1st Respondent

Tepeka, of Counsel for the 2nd Respondent

Chiusiwa, Court Reporter

Mathanda, Official Court Interpreter

Key Dates

- a. 3rd October, 2025 - Filing of the Petition
 - b. 10th October, 2025 - Application to add parties
 - c. 16th October, 2025 - Ruling
 - d. 16th October, 2025 - Application for Injunction
 - e. 24th October, 2025 - Ruling
 - f. 10th November, 2025 - Application to strike Sworn Statement
 - g. 25th November, 2025 - Judgment
-

JUDGMENT

INTRODUCTION

[1] This petition arises from the 2025 parliamentary elections for Chikwawa North Constituency. Lynda Khembo, hereinafter referred to as ‘the petitioner’, contested the election as the candidate for the Democratic Progressive Party (DPP). Following the polls held on 16th September 2025, the Malawi Electoral Commission, hereinafter referred to as ‘the 1st respondent’, on 30th September, 2025, declared Mr. Geoffrey Onsewa, hereinafter referred to as ‘the 2nd respondent’, as the duly elected Member of Parliament for the constituency.

[2] Aggrieved by this outcome, the petitioner presented this election petition under section 101 of the Presidential, Parliamentary, and Local Government Elections Act 2023, (PPLGEA), seeking a declaration that the 2nd respondent was unduly returned and that the election should be nullified for irregularities.

[3] After filing the petition, the petitioner, on 10th October, 2025, brought an application to add parties pursuant to Order 6, rule 5 and Order 10, rules 1–3 of the Courts (High Court) (Civil Procedure) Rules (the CPR). The Court, by its ruling dated 16th October 2025, granted the addition of Mr. Geoffrey Onsewa as the 2nd respondent but declined the request to join the Honourable Chief Justice. The court held the view that such joinder was misconceived and lacked merit.

[4] The petitioner subsequently, on 10th October, 2025, applied for an interlocutory injunction to restrain the declared winner from taking the oath of office as Member of Parliament pending determination of the petition. That application was heard *inter partes* and in the end it was dismissed. The Court held that section 101 does not envisage such interim suspension of representation and that the balance of justice and public interest lay against granting the injunction.

[5] The petition, thereafter, proceeded to a full hearing on the merits. Witnesses for the petitioner and the respondents testified, were cross-examined, and re-examined where necessary. Upon completion of the evidentiary phase, all parties filed their respective closing submissions.

The Petitioner’s case

[6] It is important to note, at the outset, that the petitioner did not file a sworn statement in support of the petition at the time of filing. The only sworn statement providing a substantive factual narrative at that early stage was the one filed in support of the interlocutory application for an injunction, in which the petitioner set out what she alleged to be the irregularities affecting the conduct of the election. Additional sworn statements purporting to support the petition were filed later, on 27th October, 2025, as supplementary sworn statements. Whether those supplementary sworn statements properly form part of the evidentiary record given the statutory timelines under section 101 of the PPLGEA, remains a matter in issue and shall be examined, analyzed, and disposed of later in this judgment. For present purposes, the factual allegations advanced by the petitioner relate to the conduct of polling and tallying at various stations, the handling of

complaints, and the 1st respondent's alleged failure to ensure a free, fair, and transparent electoral process.

Unsigned and Improperly Completed Results Forms

[7] The petitioner alleges that at Mfera Polling Station, the official results sheet (Form 18B) was not signed by the required representatives or party agents. Instead, the presiding officer allegedly signed on behalf of all monitors, contrary to sections 68 and 86 of the PPLGEA. She further avers that when she sought copies of the results forms, she was told that all forms were "already signed," yet she later obtained a copy showing missing or irregular signatures.

Denial of Access to Results

[8] The petitioner avers that at Dulansanje Polling Station, presiding officers denied her representatives access to the results or copies of the signed Form 18B. According to her, similar difficulties were encountered at Chimoto Polling Station, where she alleges that only partial results were made available to party monitors. The rest were tallied in the absence of her monitors.

Failure to Address Complaints

[9] The petitioner avers that she submitted formal complaints to the 1st respondent through the prescribed Form 16A, as well as a written letter and WhatsApp communication, requesting review of the irregularities. However, the 1st respondent allegedly failed to acknowledge or act upon these complaints before proceeding to declare the 2nd respondent as the winner.

Irregular Conduct of Electoral Officers

[10] She deposes that one presiding officer admitted that he had signed on behalf of representatives "due to time pressure," an action she says demonstrates deliberate procedural non-compliance. She states that this practice was widespread and amounted to manipulation of official results documentation.

[11] The petitioner's sworn statement is accompanied by exhibits, including copies of Form 18B from Mfera and other polling stations, Form 16A, complaint letters, correspondence with 1st respondent, and a copy of 1st respondent's *Gazette* declaration of results. She relies on these documents as evidence that the election was not conducted in accordance with the law.

[12] The petitioner maintains that these irregularities, viewed cumulatively, materially affected the credibility and outcome of the election. She contends that the 1st respondent's failure to properly manage complaints and enforce procedural compliance rendered the entire result invalid and calls into question the legitimacy of the 2nd respondent's election.

[13] The petitioner prays for the following orders:

- a. A declaration that Mr. Geoffrey Onsewa was unduly returned as Member of Parliament for Chikwawa North Constituency;
- b. A declaration that the election was not conducted in accordance with the PPLGEA and is therefore null and void;
- c. An order for fresh elections in the constituency; and

d. Costs of the proceedings.

Supplementary Sworn Statements Evidence Filed by the Petitioner

[14] In addition to the sworn statement verifying the petition and the sworn statement filed in support of the interlocutory injunction, the petitioner later filed two supplementary sworn statements purporting to support the petition. The admissibility and timeliness of these sworn statements is a matter that the Court will address in detail later. For present purposes, the Court summarises their contents as they form part of the factual allegations relied upon by the petitioner. The first is a joint sworn statement sworn by Symon Goodson, Joyce Pondo, and Alesi Luciano and the second was sworn by Christina Pilingu. Both were filed on 27th October 2025.

Joint Sworn Statement of Symon Goodson, Joyce Pondo and Alesi Luciano

[15] The three deponents aver that they were the petitioner's authorised party representatives assigned to Dulansanje Polling Station in Chikwawa District on 16th September 2025.

[16] At paragraph 2.1, they assert that the polling station "had five streams," and that they were present during the polling process.

[17] They further aver that after the counting was concluded, the presiding officer only allowed them access to results for one stream, and that Joyce Pondo signed the result sheet for that stream. These results were later exhibited by MEC as "AM 4."

[18] They state that for the remaining alleged four streams, the presiding officer denied them access to the results and allegedly rejected their requests despite repeated demands. They assert that no copies were made available to them.

[19] They claim that because they were denied copies of the results for four of the streams, they "do not know" whether the aggregated results declared at the district level "reflected the actual voting pattern."

[20] They conclude by asserting that the conduct of the Presiding Officer deprived them of the opportunity to verify the results, thereby allegedly undermining the credibility of the final tally.

The Sworn Statement of Christina Pilingu

[21] Christina Pilingu depones that she was the petitioner's duly authorized party representative for Chikwawa North Constituency. She avers that on polling day, she and two fellow representatives, Fales Laston and S. Petro, were assigned to Mfera Polling Station.

[22] She claims that when they arrived at Mfera prior to the opening of polls, they were denied access to the polling station by the presiding officer. She states that the presiding officer proceeded to conduct the polling process and to record results without their involvement.

[23] She further avers that she later discovered that her name appeared as having signed on Form 18B result sheet for Mfera. She states that when the presiding officer, Mashonga Hassan Mussa, was questioned, he allegedly admitted that he had signed on her behalf.

[24] She denies the respondent's assertion that petitioner's representatives were absent at Mfera. She argued that they were present but were deliberately sidelined by the presiding officer.

[25] She concludes by asserting that the presiding officer "confessed" to having signed the results on her behalf, and that she and her colleagues were improperly excluded from the polling process.

Petitioner's submissions

[26] In both oral and written submissions, Counsel for the petitioner, advances several legal propositions to support the claim that the election was conducted in substantial breach of the PPLGEA and that the 2nd respondent was unduly returned.

Mandatory Nature of Statutory Requirements on Signing of Results Forms

[27] Counsel for the petitioner submits that sections 92(2), 92(4) and 94(3)(b) of the PPLGEA, which require that results forms be signed by political party representatives "present," employ the term "shall", indicating that these provisions are mandatory. Reliance is placed on *Mwalwanda v Stanbic Bank Ltd*, MWHC 22, where the High Court held that "shall" in a statute denotes an obligatory duty. The petitioner argues that the signing of Form 18B by representatives is not a mere procedural formality but a substantive safeguard of transparency, and non-compliance amounts to a serious irregularity.

Proven Acts of Forgery and Fabrication of Electoral Documents

[28] The petitioner's counsel contends that this is not a case of "alleged" irregularities, but one where proven acts of forgery have been demonstrated on the evidence. He told the court that:

- i. At Mfera Polling Station, the presiding officer, Mashonga Hassan Mussa, admitted under oath to forging the signature of the Petitioner's party representative, Christina Pilingu, on Form 18B.
- ii. At Dulansanje Polling Station, the petitioner's monitor, Simon Goodson, testified that the signature appearing on the Form 18B was not his, and that Misheck Lonadi, a person who was not an accredited monitor signed the form.

[29] It is submitted that the 1st respondent ultimately based the declaration of results on documents tainted by fraud and fabrication, which the Supreme Court of Appeal strongly condemned in *Mutharika & Another v Chilima & Another* [2020] MELR 406. The petitioner argues that once fraud infects the electoral record, the credibility of the entire tally collapses.

Post-Declaration Signing and Logical Contradictions in the Record

[30] The petitioner emphasizes that the presiding officer's own testimony reveals that he forged the signature after the district results had already been announced. The logical inference is that the results used for aggregation at district level were based on unsigned or otherwise irregular documents. Counsel submits that this raises an irreconcilable contradiction: what results were actually aggregated if signing occurred after the declaration?

1st Respondent's Failure to Properly Address Complaints and the Doctrine of Estoppel

[31] The petitioner acknowledges the 1st respondent's position that the Form 16A complaint was procedurally irregular but argues that, on the facts, this procedural objection cannot stand. The evidence shows the presiding officer himself gave the petitioner Form 16A and advised her to lodge a complaint. The same officer saw the complaint written down and testified that the Constituency Returning Officer (CRO) indicated that it would be addressed.

[32] The petitioner, therefore, invokes the principle *qui facit per alium facit per se*, arguing that the 1st respondent, through its officers, waived the procedural requirement and cannot now rely on technicalities to justify inaction. He who acts through another acts through himself. Counsel, contends that the 1st respondent is estopped from asserting that the complaint was invalid when its own officer facilitated its submission.

Substantial Qualitative Failure of the Election

[33] Counsel for the petitioner submits that this is a case calling for a qualitative, rather than purely quantitative, assessment, as recognized in *Chilima & Another v Mutharika & Another* [2020] MELR 406. Where the integrity and credibility of the process is compromised, it is not necessary to show that the exact number of votes affected would change the result. She argues that the proven forgeries, unexplained signatories, after-the-fact signing, and 1st respondent's failure to address complaints together constitute a qualitative breakdown of the electoral process.

Broad Jurisdiction for Nullification under Section 101

[34] Finally, the petitioner relies on the wording of section 101(1)(3) of the PPLGEA, which permits nullification for "irregularity or any other cause whatsoever." She argues that the phrase "any other cause whatsoever" grants the Court a wide jurisdiction to nullify an election whenever the overall process fails to meet constitutional and statutory standards of transparency, fairness, and credibility.

[35] The petitioner prays that the Court:

- a. declare the election of the 2nd respondent undue;
- b. nullify the election for Chikwawa North Constituency; and
- c. order fresh elections pursuant to section 101(3)(b) and (4) of the PPLGEA.

The 1st Respondent's case

[36] The 1st respondent, filed a sworn statement in response to the petition, made by Mr. David Matumika Banda, the 1st respondent's Director of Legal Services and Secretary to the Commission. The statement, together with the formal Reply to the Petition, sets out the Commission's factual and legal position opposing the reliefs sought.

[37] Counsel Matumika Banda avers that the petition is misconceived, lacking factual and legal foundation, and that the 2025 Parliamentary Election for Chikwawa North Constituency was conducted in full compliance with the law. He states that the results were duly determined at a

properly convened Commission meeting held under the Malawi Electoral Commission Act after the verification of all constituency-level documentation.

[38] He explains that in the determination of results, the Commission relied on:

- a. Form 17 (Record of Polling Process),
- b. Form 18B (Polling Station Record of Results),
- c. Form 19B (Constituency Record of Results by Polling Station), and
- d. Form 20B (Constituency Summary of Results).

[39] He emphasizes that all presiding officers and accredited party representatives participated fully in the voting, counting, and signing of results. Copies of the relevant forms were produced and exhibited to the sworn statement, demonstrating that the results forms were duly signed by the monitors present at each polling station. Accordingly, the allegation that unsigned or forged results were used is described as false and unsupported.

[40] With respect to the alleged complaint at Dulansanje Polling Station, the Commission asserts that the logbook clearly shows that the complaint was:

- a. lodged by the petitioner herself, contrary to procedure since candidates are not permitted to lodge polling complaints personally;
- b. lodged after polling day (on 19th September 2025) instead of on the polling day; and,
- c. lacked the signature or acknowledgment of any 1st respondent's officer, contrary to the requirements under sections 65(h), 86, and 92(1)(vii) of the PPLGEA.

[41] He therefore contends that no valid complaint was lodged within the meaning of the Act.

[42] The deponent further avers that no political party representative was denied access to polling materials or tallying processes. To the contrary, all the party representatives, including those of the DPP, were present throughout and signed the requisite forms, as evidenced by the annexed records ("AM2"—"AM7").

[43] As for the allegation of forged signatures, he maintains that some representatives who could not write appended thumbprints, and that no proof of forgery has been presented. Moreover, no such complaint was lodged at the time of the election, and the allegation is deemed an afterthought.

[44] Regarding the claim that 1st respondent failed to address complaints before declaring results, he explains that only validly lodged complaints are subject to determination under the law, and that the one purportedly submitted by the petitioner did not meet the statutory requirements and thus could not be processed.

[45] He concludes that the petition does not disclose any breach of the law or irregularity capable of affecting the outcome of the election and therefore prays that it be dismissed with costs.

1st Respondent's submissions

[46] In its submissions, the 1st respondent reiterates that the legal and evidential burden rests squarely on the petitioner to prove, on a standard slightly higher than the usual civil threshold, that irregularities occurred and that such irregularities were substantial enough to affect the result of the election. The 1st respondent cites *Semion Harrison v MEC & Others*, Electoral Petition Cause Number 10 of 2019, *Dr Ellen Nakansa v MEC & Jobobala*, Electoral Petition Cause Number 20 of 2019 and *Chilima & Another v Mutharika & Another* (supra) to emphasize that the burden never shifts from the petitioner.

[47] The 1st respondent further raised a fundamental procedural objection. The 1st respondent argues that the petitioner did not file the primary evidence required to support her own case. The only evidence she gave is to be found in support of the injunction. Accordingly, the central allegations of the petition stand unsupported by primary sworn statement evidence.

[48] Further to that, the 1st respondent objects to the evidence provided by the petitioner's witnesses, arguing it was filed in violation of the statutory timeframe. The 1st respondent restates its objections to the evidence of people that swore the evidence beyond the 7 days as provided by the Act. Unlike the petitioner, the said documents were filed out of time and no application to use them was ever made until the hearing was conducted.

[49] Despite these procedural objections, the 1st respondent states they will still address the substance of this late-filed evidence “merely out of abundance of caution,” indicating they are confident their case is strong even if the court considers all the evidence.

[50] Thus, on the alleged irregularities at Mfera Polling Station, 1st respondent accepts that the presiding officer signed for the petitioner's representative, Christina Pilingu. However, 1st respondent stresses that the signing occurred after votes had been counted and recorded, the figures on Form 17 (Part J) and Form 18B are identical and there is no evidence of alterations or tampering with the numerical entries. The 1st respondent submits that the purpose of signing is to provide transparency, not to alter results, and since the figures remained unchanged, no prejudice arose.

[51] The 1st respondent further submits that the presiding officer's act of signing for the petitioner's representative was done under pressure from the petitioner's own agents, and therefore the petitioner cannot seek to benefit from wrongdoing attributable to her side. The 1st respondent relies on the principle that a party cannot find a cause of action on its own impropriety.

[52] With respect to Dulansanje, the 1st respondent argues that the petitioner's account was factually incorrect. The petitioner alleged five streams existed, but the 1st respondent demonstrates, through exhibits AM5 and AM6, that only two polling stations existed. The 1st respondent notes that, under cross-examination, the petitioner's witness conceded this error. The 1st respondent further submits that the petitioner failed to produce any alternative set of results or tally sheets, despite the legal requirement that results be posted outside every polling station.

[53] On the allegation involving an unaccredited signatory, Misheck Lonadi, the 1st respondent asserts that Lonadi was in fact a representative of the petitioner's own party. The petitioner neither filed a sworn statement from Lonadi nor called him as a witness. The 1st respondent urges the Court to draw an adverse inference, following *Gangata v Zulu & MEC*, Election Cause No. 52 of 2025, that the witness's evidence would not have supported the petitioner's allegations.

[54] Regarding the alleged complaint about Form 16A, the 1st respondent contends that the document was lodged on 19th September 2025, contrary to statutory requirements which mandate same-day lodging at the polling station. It was also lodged by the candidate herself, contrary to law. The 1st respondent argues that even if it were accepted, that the complaint should have been addressed, this cannot render the election undue, as the present proceedings are not a judicial review of administrative conduct, but a statutory petition governed by section 101. The 1st respondent relies on *Thom Frank Njirika v Ishmael Mkumba & Another*, Election Cause No. 59 of 2025 and *The State and Electoral Commission, Ex parte Friday Jumbe and others*, Judicial Review Case No. 38 of 2014, for the proposition that results may lawfully be published notwithstanding pending or improperly lodged complaints.

[55] On the legal meaning of "undue return", the 1st respondent relies heavily on *Chilima & Another v Mutharika & Another* (supra). That judgment defined an undue return as an improper declaration of a winner, arising from falsified aggregation, arithmetical errors, or declaring the wrong person based on the documentary record. The 1st respondent submits that none of the petitioner's allegations go to the accuracy of the final declaration. They relate to procedural issues at the polling station, not falsification of results. Since the tallies on Forms 17, 18B, 19B and 20B all match, the 1st respondent argues that the petitioner has failed to demonstrate undue return as contemplated by section 101.

[56] The 1st respondent further submits that the petitioner has failed to satisfy either the quantitative or qualitative tests required for nullification. Quantitatively, the 1st respondent argues that the margin of over 1,500 votes was never challenged, and no alternative tally was produced. Qualitatively, the 1st respondent maintains that the petitioner's allegations fall far below the systemic failures found in cases like *Chilima & Another v Mutharika & Another* [2020] MELR or *Ulemu Msungama v The Electoral Commission*, Misc Case Number 64 of 2014, and do not demonstrate that the electoral process had broken down to a level that no reasonable tribunal could uphold it.

[57] In conclusion, the 1st respondent submits that the petition lacks evidential foundation, misapprehends the legal requirements for nullification, and fails to prove that the 2nd respondent was wrongly declared winner. The 1st respondent, therefore, prays that the petition be dismissed with costs, assessed on an indemnity scale.

The 2nd Respondent's Case

[58] The 2nd respondent, Mr. Geoffrey Onsewa, was not originally a party to this petition. He was added following an application by the petitioner when she sought an interlocutory injunction

restraining him from taking the oath of office as Member of Parliament for Chikwawa North Constituency. Although he did not file a sworn statement in response to the petition itself, he entered appearance for the interlocutory application and has since fully participated in the proceedings. He cross-examined the petitioner's witnesses during the hearing, made oral submissions before the Court, and subsequently filed detailed written closing submissions. His position, distilled from that participation, is summarized below.

[59] The 2nd respondent submits that the petitioner's case should be dismissed in its entirety for a failure to discharge the burden of proof. His case is that the election in Chikwawa North Constituency was conducted freely and fairly, and that the petitioner has failed to prove any irregularities capable of vitiating the result. He relies on the evidence elicited during cross-examination of the petitioner's witnesses.

Lack of Supporting Evidence from the Petitioner

[60] The 2nd respondent highlights that the petitioner did not personally offer any testimony or file a sworn statement in support of her own petition. Consequently, the core allegations within the petition remain unsubstantiated by its principal proponent.

Failure of the Petitioner's Witnesses

[61] The 2nd respondent argues that the witnesses called by the petitioner failed to prove the alleged irregularities. The testimonies of Symon Goodson, Joyce Pondo, and Alesi Luciano were confined to the Dulansanje Polling Station and did not address the key allegations concerning Mfera Polling Station. Furthermore, these witnesses were inconsistent and contradictory in their accounts, particularly regarding the number of voting streams at Dulansanje. Crucially, they confirmed under cross-examination that they witnessed the vote counting, agreed with the final vote counts, and one witness even affirmed that she considered the election at Dulansanje to be free and fair.

Absence of Evidence for Mfera Allegations

[62] It is submitted that the serious allegations of irregularities at the Mfera Polling Station are entirely unsupported by evidence. None of the petitioner's alleged electoral representatives or representatives from Mfera Polling Station were called to testify, rendering these allegations speculative and unsubstantiated. The 2nd respondent contends that the testimony of the presiding officer, Mashonga Hassan Mussa, in fact demonstrated bad faith on the part of the petitioner and her agents, who allegedly threatened him to obtain a signed result sheet after the fact.

No Proof of a Formal Complaint

[63] The 2nd respondent states that the petitioner led no tangible evidence to show that she formally lodged a complaint with the 1st respondent using the established channels and procedures, as required by law.

The Quantitative Margin Renders Irregularities Immaterial

[64] The 2nd respondent points to the significant vote margin of 1,594 votes between himself and the petitioner. He argues that, even if any irregularities were accepted by the court, the petitioner

has failed to lead any evidence to demonstrate how such irregularities could have materially affected this substantial difference in the election result.

Conclusion and Prayer

[65] Based on the foregoing, the 2nd respondent humbly prays that the Court finds he was duly elected, dismisses the petition in its entirety, and condemns the petitioner to pay the costs of the action.

Issues for Determination

[66] From the pleadings, sworn statements, and submissions of the parties, the following issues arise for determination:

- i. Whether the petition was properly supported by a sworn statement;
- ii. Whether the supplementary sworn statements should be struck out;
- iii. Whether the 2025 Parliamentary Election for Chikwawa North Constituency was conducted in accordance with the provisions and principles of the PPLGEA;
- iv. Whether the alleged irregularities constitute substantial non-compliance with the law so as to render the election of the 2nd respondent undue;
- v. What remedies, if any, the petitioner is entitled to.

Law and Analysis

Whether the Petition was Properly Supported by a Sworn Statement

[67] Before turning to the substantive merits of the petition, the Court must first address a foundational procedural issue raised by the respondents, that is, whether this petition was properly supported by a sworn statement at the time of filing, and the legal effect of the supplementary sworn statements filed outside the statutory seven-day period.

[68] It is the 1st respondent's argument that a petition under section 101 of the PPLGEA must be filed within seven (7) days of the declaration of results. The petition must not only be filed within that time, but must be complete, that is, accompanied by a sworn statement verifying the petition, and a sworn statement in support, setting out the factual basis of the allegations.

[69] The sworn statement in support constitutes the primary evidence on which the petitioner relies. Without it, a petition ordinarily contains allegations without evidential foundation.

[70] It is the 1st respondent's argument that the petitioner filed her petition on 3rd October 2025, accompanied by a sworn statement verifying the petition. At that point, no sworn statement in support of the petition was filed. The only sworn statement by the petitioner on the record at that time was the one filed later in support of her application for an interlocutory injunction dated 22nd

October 2025. That sworn statement does include factual averments, but it was not filed within the statutory seven-day period, nor was it filed as a supporting sworn statement for the petition.

[71] The petitioner subsequently filed two sets of supplementary sworn statements on 27th October 2025, well outside the seven-day statutory window, a joint sworn statement by Symon Goodson, Joyce Pondo, and Alesi Luciano and a sworn statement by Christina Pilingu. These sworn statements clearly purport to support the petition. However, they were filed approximately 27 days after the declaration of results.

[72] In addressing this issue, the Court is guided by the binding authority of the Supreme Court of Appeal in *Gondwe & Another v Gotani-Nyahara* [2005] MLR 121. In that case, interpreting the predecessor to the present statute, the Court held that a petition challenging an election need not be accompanied by supporting sworn statements. The Court drew a statutory distinction between petitions under the then section 100, now section 101 of the PPLGEA, and appeals under the then section 114, now section 100 of the PPLGEA, holding that only the latter required supporting sworn statements.

[73] The Supreme Court of Appeal, in that case, had this to say:

“Counsel for the 1st appellant argued that the petition was required to be presented together with the supporting affidavit. We do not agree. Section 100 does not provide for such requirement. It is section 114(1) relating to appeals to the High Court which requires that the petition must be supported by affidavits of evidence. We take the view that the relevant statutory provision was adequately complied with when the respondent presented the notice of petition in the Court below.”

[74] This Court is bound by that holding. Likewise, section 101 does not mandate that a petition be filed together with a supporting sworn statement. What is required is that the petition be filed within the seven-day statutory period, accompanied by a verifying sworn statement, which was done in this case.

[75] The petitioner filed her petition on 3rd October 2025, with a verifying sworn statement thereby fully complying with section 101 as interpreted by the Supreme Court of Appeal. The absence of a supporting sworn statement at the time of filing does not render the petition defective.

Whether the supplementary sworn statements must be struck out

[76] Since section 101 imposes no requirement that supporting sworn statements be filed within seven days, the supplementary sworn statements filed on 27th October 2025, cannot be struck out on statutory grounds. Their admissibility is governed, instead, by the CPR and the Court’s case-management discretion.

[78] Again, the 1st respondent’s sworn statement in reply sworn by Counsel Matumika Banda expressly states that he read the sworn statement verifying the petition “and the sworn statement supporting the petition.” This is despite no such supporting sworn statement existing at that point. Although the 1st respondent now argues that a sworn statement may only respond to facts already deposed to, nevertheless, Counsel Matumika Banda’s sworn statement demonstrates that the 1st respondent was able to respond fully and suffered no prejudice from the absence of a supporting sworn statement at the time of filing.

[79] The Court’s conclusion is further fortified by the reasoning of the High Court sitting in a constitutional matter in *Chilima & Another v Mutharika & Another* (supra), in which a similar objection was raised. In that case, the 1st respondent argued that although the petition was filed within seven days, the verifying sworn statement was filed one day late, and that this rendered the entire petition a nullity. The Constitutional Court rejected that argument.

[80] The Court held that section 100 of the PPEA, the predecessor to the present section 101 of the PPLGEA, does not require a verifying sworn statement at the time of filing a petition. The statute merely requires that a complaint be “presented by way of petition” within seven days. Since the statute is silent on sworn statements, the courts cannot impose such a requirement through judicial creativity.

[81] The application to strike out the supplementary sworn statements stands on shaky ground and is therefore dismissed. The petition remains properly supported, and the Court proceeds to determine it on its merits.

Statutory Framework Under Section 101 of the PPLGEA

[82] This petition is brought under section 101 of the PPLGEA. The section creates the statutory mechanism through which a candidate may challenge the validity of an election or the correctness of a return made by the Malawi Electoral Commission. Section 101 thereof is in the following words:

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

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

or

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

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

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

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

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

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

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

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

(a) becomes disqualified;

(b) dies; or

(c) is otherwise incapacitated,

before the fresh elections are conducted.

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

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

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

[83] For present purposes, two distinct concepts arise. First is undue election concerning the legality, fairness, or propriety of the electoral process; and second, undue return concerning the propriety of the declaration, including incorrect aggregation, falsification of results, or declaring a person winner when documentary records show otherwise.

[84] Section 101(3) empowers the Court, after hearing a petition, either to confirm that the person declared elected was duly elected, or to declare that the person was not duly elected. A finding under subsection (3)(b) automatically triggers a fresh election, pursuant to subsection (4).

[85] It is, therefore, an extraordinary remedy. Nullification of an election is a measure reserved for circumstances where irregularities are proven and are shown to be so grave as to affect the outcome, either quantitatively or qualitatively.

Legal Burden and Standard of Proof

[86] Indeed, it is trite that the burden of proof lies squarely on the petitioner. This position is well-established in a litany of authorities including *Gondwe & Another v Gotani-Nyahara*, supra, and was recently reaffirmed in *Rashid Abdul Gaffar & Another v Veronica Pempho Ndalama & Another*, Election Cause No. 61 of 2025, where the court dismissed a petition because the petitioners' "far-reaching allegations... [were] not supported by the totality of the evidence."

[87] While an election petition is a civil matter, the standard of proof is a little higher than a mere balance of probabilities because an election represents the sovereign will of the people and courts must be slow to overturn that democratic choice without compelling evidence. As stated in *Dr. Ellen Nakanga v Electoral Commission and Jobobala*, supra, and applied in *Rubyna Delsilva v MEC*, Election Cause No. 83 of 2025, it was stated as follows:

"In election petitions, petitioners have the burden of proof in election matters, the standard is slightly higher than proof on a balance of probabilities".

[88] The petitioner must therefore provide cogent and compelling evidence to discharge this burden. See *Rashid Abdul Gaffar & Another v Veronica Pempho Ndalama & Another* (supra).

[89] Furthermore, the Supreme Court of Appeal in *Mutharika and Another v Chilima and Another*, supra, clarified the interplay of burdens, holding that "a petitioner needs to prove a case based on a *prima facie* standard of proof before the burden shifts to the Malawi Electoral Commission. The 1st respondent has a right of rebuttal on a balance of probabilities." It remains to be seen whether the petitioner in this case has met this initial *prima facie* threshold.

[90] It is the considered view of this Court, therefore, that the petitioner must establish that irregularities occurred and that such irregularities substantially affected the result, whether quantitatively or qualitatively. Failure to prove either limb is fatal to the petition.

Whether the Petitioner Proved an Undue Return

[91] The High Court sitting in a constitutional matter in *Chilima & Anor v Mutharika & Another*, supra, gave a precise definition of undue return: 'it is an improper declaration of a person as winner, typically arising from falsification of tally sheets, arithmetical errors in aggregation, incorrect recording of figures, or declaring a person winner when the actual documentary record shows another.'

[92] It is necessary to consider the statutory rights and duties of party representatives at polling stations under section 68 of the PPLGEA. Section 68(1) grants representatives the right to be present, monitor operations, verify ballot materials, request information, and participate in resolving operational questions. Conversely, section 68(2) imposes duties upon such representatives, including the duty to act conscientiously, to cooperate with polling station officers, and not to interfere unjustifiably with the casting or counting of votes.

[93] The petitioner's complaints regarding unsigned or allegedly forged signatures on Forms 18B must therefore be assessed against this statutory framework. Section 68 does not impose a mandatory obligation on party representatives to sign result sheets. Rather, the statutory obligation under section 92(2) of the PPLGEA is that the presiding officer shall sign and that any representative who is present may sign. A representative's absence from the signing process whether due to inattention, disengagement, deliberate choice, or failure to exercise the rights and duties under section 68 does not, without more, constitute an irregularity attributable to the 1st respondent.

[94] This position is consistent with the holding in *Rubyna DeSilva v MEC*, supra, where the Court emphasized that the absence of signatures of party representatives does not, by itself, invalidate the results so long as the numerical figures remain intact and unchallenged. The signing of result forms by party representatives is an additional safeguard, not a statutory precondition to the validity of the results. The law protects the right of representatives to sign; it does not convert that right into a mandatory statutory requirement, nor does it penalize 1st respondent where representatives fail to execute their duties under section 68. In *Rubyan DeSilva v MEC* the Court held:

“Section 92 (2) of the Presidential, Parliamentary and Local Government Elections Act, 2023 (PPLGE Act 2023) makes it clear that the signing of the Record of Results by party or candidates’ representatives is an option dependent on their availability. Section 26 (2) of the same PPLGE Act 2023 makes it clear that the absence of political party or candidate representative does not invalidate the electoral process. Holding otherwise would open the process to abuse as candidate representatives would deliberately withhold their participation to hold the process to ransom once they see that their principal is not polling to their expectation.”

[95] In the present case, the petitioner's own witnesses conceded under cross-examination that they were present at the Dulansanje polling station, witnessed the counting, agreed with the tallies, and raised no objection at the material time. This is significant: where a representative is present, exercises their rights at the count, and accepts the correctness of the tallies, the subsequent refusal or failure to sign the result sheet cannot retroactively amount to an irregularity. As the Court held in *Rashid Abdul Gaffar & Another v Veronica Pempho Ndalama & Another*, supra, the seriousness

of an allegation must be matched by the cogency of the evidence, and procedural omissions by party representatives cannot be elevated to grounds for nullification absent proven prejudice.

[96] Accordingly, any absence of signatures on Form 18B, or any belated signing by the presiding officer, does not establish non-compliance with the PPLGEA and does not in any way impeach the accuracy or legality of the recorded figures. Applying the statutory framework of section 68, the responsibility lay with the party representatives to exercise their rights and fulfil their duties on polling day. Their failure to do so cannot be transferred onto the 1st respondent, nor can it ground a finding of undue election or undue return.

[97] The petitioner in this case alleges that some Forms 18B were forged or improperly signed. However, she did not demonstrate that the figures on those forms were altered or that any alternative tally would produce a different winner or that the 2nd respondent benefitted from any numerical manipulation.

[98] The evidence, instead, shows that the figures on Form 17 (polling process), Form 18B (station results), Form 19B (constituency record), and Form 20B (constituency summary) all match perfectly. The petitioner did not produce a single polling station with contradictory numbers. In my considered view, without proof that the declared totals were wrong, the petition cannot meet the strict threshold of an undue return. On this ground alone, the petition must fail.

[99] The evidence before this Court, consistent with the outcome in *Rubyna Delsilva v MEC*, shows a perfect correlation between the figures on Form 17 (the record of the polling process), Form 18B (polling station results), and the subsequent aggregation forms. The petitioner did not produce a single polling station where the numbers were contradictory or an alternative tally showing a different outcome. In the absence of any proof that the declared totals were numerically wrong, the allegation of an undue return must fail.

Whether the Petitioner Proved an Undue Election

Alleged forgery at Mfera and Dulansanje

[100] The petitioner alleged forgery of signatures. The presiding officer's admission that he signed for an absent representative, while it is a procedural irregularity, it does not, by itself, establish that the vote figures were falsified, especially when the numbers themselves are not in dispute.

[101] This position is fortified by the established legal principle that an electoral irregularity, by its mere occurrence, is insufficient to void an election. As cogently articulated in *Francis Renso v MEC & Another*, Election Petition No. 54 of 2025, a court's finding of a procedural breach must be coupled with demonstrable evidence that the breach substantively impacted the electoral outcome. In that case, the Court acknowledged the distribution of money to voters as a clear irregularity but dismissed the petition because the petitioner "dismally failed to prove... that the irregularity affected the result of the election." The same reasoning applies directly in the present case.

[102] The Presiding Officer at Mfera admitted that he signed for a party representative on Form 18B. He also testified, without contradiction, that he did so after being threatened and pressured by individuals claiming to be the petitioner’s representatives. This testimony was not rebutted by any witness from the petitioner’s side, nor did any alleged representative from Mfera come forward to contradict the presiding officer’s account. The alleged forgery therefore stands not as evidence of deliberate falsification by an electoral officer, but rather as conduct undertaken in response to coercion by the petitioner’s own agents.

[103] Even if the alleged procedural irregularity were to be accepted by the court, the petitioner still failed to prove that the act of signing on behalf of a representative altered any figures, affected the counting process, or introduced any falsification; the numerical entries on Forms 17, 18B, 19B and 20B remain uncontested and internally consistent. In the absence of evidence linking the alleged impropriety to a distortion of the recorded votes, the irregularity remains a technical breach, not one that meets the stringent legal threshold for invalidating the will of the electorate.

[104] The Court accepts the 1st respondent’s explanation that the numerical entries were not altered, the signatures do not affect the figures, and the petitioner did not demonstrate prejudice flowing from the act of signing.

[105] The petitioner’s credibility on factual matters is further undermined by the incorrect allegation that there were five streams at Dulansanje, when the evidence clearly demonstrated that there were two only. This kind of material inaccuracy, which was admitted by the petitioner's own witness under cross-examination, severely damages the reliability of the petitioner's overall factual foundation. This principle was emphasized in *Rashid Abdul Gaffar and Another v Veronica Pempho Ndalama and Another*, supra, where the court, faced with unsubstantiated allegations, found that the failure to provide basic particulars like the names of alleged wrongdoers left the court ‘in doubt.’ In paragraph 32 of the judgment, the Court made the following crucial observation about the quality of the petitioners' evidence:

“32. The other witnesses, namely Frank Macheso, John Chida, Madalitso Kachopwa and Peter Kajiya, have referred to Ms Ndalama’s agents bribing voters, however, no single name has been mentioned or any positive identification of the so called agents. The Court is, therefore, left in doubt.”
[Emphasis supplied]

[106] Similarly, in the present case, the fundamental error regarding the number of polling streams creates significant doubt about the accuracy and reliability of the petitioner's entire case.

Alleged failure to address complaints

[107] The statutory mechanism governing complaints at polling stations is set out in section 86 of the PPLGEA. The section is explicit that any voter present, not only party representatives, may raise doubts or lodge a complaint in writing during polling. Section 86(2) further states that no polling station officer shall refuse to receive such a complaint; rather, the officer must initial it,

record it in the logbook referred to under section 66, and annex it to the official record of the polling station.

[108] In my view, these procedural steps serve two critical purposes, first, they ensure contemporaneous documentation of complaints and second, they provide an objective record against which later allegations may be tested. Where a complaint is properly lodged, section 86(3) requires the polling station officers to deliberate on it and resolve it, either immediately or at the close of polling.

[109] In the present case, no such written complaint was lodged on the polling day at Mfera, Dulansanje, or any other polling station. None of the petitioner's party representatives testified that they reduced any concern into writing, submitted it to a polling station officer, saw it being recorded in the logbook, or had any such complaint initialed and annexed to the polling station's record as required by law. The logbook entries produced in evidence are consistent with this; no complaint appears recorded.

[110] The petitioner's reliance on a Form 16A allegedly lodged after polling does not satisfy the statutory regime under section 86. As noted in *Rubyna DeSilva v MEC*, supra, a complaint that is not lodged contemporaneously at the polling station in accordance with section 86, cannot retroactively validate alleged irregularities, nor can it form a proper basis for attacking the validity of the election. The procedural scheme requires complaints to be raised immediately, not after the fact.

[112] As this Court has already established, the petitioner's Form 16A was not lodged by an authorized representative. It was filed after the polling process had closed, and it was not recorded in the prescribed manner. In my view, the absence of a properly lodged complaint at the polling station significantly weakens the credibility of subsequent allegations and cannot constitute evidence of an undue election.

[113] Accordingly, the Court finds that the petitioner did not lodge any complaint under section 86 on the polling day. This statutory omission is material: without a contemporaneous complaint, the petitioner cannot demonstrate that polling station officers failed to address an issue that was never formally presented to them. Nor can she rely on the 1st respondent's alleged inaction when the statutory procedure was not triggered.

Qualitative assessment and Quantitative assessment

[114] The Court has considered the qualitative standard in *Chilima & Another v Mutharika & Another*, supra, where widespread non-compliance rendered the entire process fundamentally compromised. The present case falls far short of that standard. In the present case there is no evidence:

- a. of systematic irregularity,
- b. of widespread malpractice, and
- c. that the integrity of the election as a whole was undermined.

[115] The 2nd respondent won by a margin of over 1,500 votes. The petitioner did not produce:

- a. an alternative tally,
- b. station-by-station discrepancies, or
- c. evidence showing that the alleged irregularities involved enough votes to overturn the result.

[116] It is therefore the finding of this Court that the alleged irregularities taken individually or cumulatively do not meet the threshold of substantial non-compliance. The petitioner has not demonstrated that the election was conducted in violation of fundamental principles, nor that the irregularities affected the result.

Orders

[117] Having considered the petition, sworn evidence, exhibits, cross-examinations, and the comprehensive submissions of counsel, the Court is satisfied that the petitioner has not proved the allegations of an undue return or undue election within the meaning of section 101 of the PPLGEA.

[118] The petitioner has failed to establish, to the requisite legal standard, that the 2nd respondent was improperly declared winner, or that any alleged irregularities whether in the form of signing of results, procedural complaints, or conduct of polling staff materially affected the outcome of the election, either quantitatively or qualitatively.

[119] It must always be appreciated that the legislative remedy under section 101 is exceptional, and operates only where credible evidence demonstrates that the democratic choice of the electorate has been fundamentally compromised. On the totality of the evidence before the Court, no such conclusion can be reached.

[120] Accordingly, pursuant to section 101(3)(a) of the PPLGEA, the Court hereby declares that:

- (a) The 2nd respondent was duly elected as Member of Parliament for Chikwawa North Constituency in the 2025 Parliamentary Elections.
- (b) It follows that the election “shall be and remain valid as if no petition had been presented,” in accordance with section 101(3)(a) of the PPLGEA.
- (c) As to costs, the general rule is that costs follow the event. Nothing has been presented to justify departure from this principle. The petitioner shall therefore bear the costs of this petition. The same shall be assessed by the Registrar, if not agreed.

Made in open court this Tuesday, the 25th of November, 2025, at Blantyre.



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JUDGE