



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

ELECTORAL PETITION NUMBER 69 OF 2025

IN THE MATTER OF SECTIONS 76 OF THE CONSTITUTION AND 101 OF THE
PRESIDENTIAL, PARLIAMENTARY AND LOCAL GOVERNMENT ELECTIONS ACT
& ORDER 19 RULE 13 OF THE COURTS (HIGH COURT) (CIVIL PROCEDURE)
RULES, 2017

IN THE MATTER OF THE UNDUE ELECTION OR RETURN OF HONOURABLE
IREEN MAMBALA AS MEMBER OF THE NATIONAL ASSEMBLY FOR BALAKA
MULUNGUZI CONSTITUENCY

IN THE MATTER OF ELECTORAL PETITION BY JAMES MAKHUMULA

BETWEEN:

JAMES MAKHUMULA..... PETITIONER
AND
MALAWI ELECTORAL COMMISSION..... 1ST RESPONDENT
AND
HONOURABLE IREEN MAMBALA..... 2ND RESPONDENT

Coram: **HON. JUSTICE CHARLOTTE WEZI MESIKANO- MALONDA**

Mr Mbwana, Counsel for the Petitioner

Mr Chapo, Counsel for the 1st and 2nd Respondent

Sellah Nyirenda, Court Clerk

JUDGEMENT

Mesikano-Malonda J

1. Introduction and Brief facts

- 1.1 The Petitioner and 2nd Respondent were among the contestants for seat of Member of Parliament for Balaka Mulunguzi Constituency in the General Elections that took place on 16th September, 2025.
- 1.2 Following the elections the 1st Respondent declared the 2nd Respondent as a winner of the elections.
- 1.3 It is alleged that the elections were marred by irregularities and consequently the Petitioner brought the Petition herein under **Sections 76** of the Constitution of the Republic of Malawi and **Section 101 of the Presidential and Parliamentary and Local Government Elections**.
- 1.4 The Petitioner brought this Petition under Section 101 of the Presidential, Parliamentary, And Local Government Elections Act, 2023 (herein after referred to as the PPLGE Act”) seeking an order to nullify the results of Parliamentary Elections for the constituency of concern, and he essentially alleges four kinds of irregularities. These are as follows:
 - 1.4.1 **Unsigned Polling Station Records of Results (Form 18B)**. Here the Petitioner tenders a number of Form 18Bs which he alleges he got from his representatives wherein the either the presiding officer and or the Polling Station Officers, and or party/candidate representatives did not sign.
 - 1.4.2 **Incomplete Polling Station Record of Results (Form 18B)**. Here the Petitioner tenders a number of Form 18B which he alleges he received from his representatives wherein some information is missing. The missing information includes (i) information in words for void votes (ii) totals number of valid votes.
 - 1.4.3 **Overwriting on duplicate results**. The Petitioner tenders Polling Station Record of Results allegedly received from his representatives wherein there is overwriting in ink on entries which appear faint.
 - 1.4.4 **Entries in ink on duplicate copies**. The Petitioner tenders Polling Station Record of Results allegedly received from his representatives with entries on duplicates in ink.

1.4.5 **Differences in final tally of votes** between votes polled by the winner as appear in the Constituency Summary of Results and the final announced results. The Petitioner alleges that the 2nd Respondent's votes moved from 8433 votes to 8,445 votes.

1.5 The Respondents contend that the alleged irregularities do not exist on the Original Copies of the Polling Station Record of Results which were used to determine the elections.

1.6 The Respondent further contends that the other allegations on discrepancy in the final tally and duplicates written in ink are based on a misguided understanding of the law and the electoral process. And that in any case they do not warrant nullification of the election.

1.7 In the present proceedings the Petitioner seeks the following reliefs:

- (i) *a declaration and an Order that the election of Honourable Ireen Mambala as the Member of Parliament for Balaka Mulunguzi Constituency is null and void.*
- (ii) *a declaration and an Order that fresh elections for a Member of Parliament be conducted for the Balaka Mulunguzi Constituency*
- (iii) *an Order for costs of these proceedings.*

1.8 The Court heard the parties on the Petition on 17th November, 2025.

2. **Issues to Determine**

2.1 Whether or not the elections herein were marred by irregularities?

2.2 Whether or not the elections herein were conducted in accordance with the Constitution of the Republic of Malawi and the law?

2.3 Whether or not the 1st Respondent correctly declared the 2nd Respondent as the duly elected Member of Parliament for Balaka Mulunguzi Constituency?

2.4 Whether or not the elections herein should be nullified and consequently fresh elections should be conducted?

3. **Law**

Burden And Standard of Proof

- 3.1 The Supreme Court of Appeal in **Raphael Joseph Mhone -v- The Electoral Commission and Symon Vuwa Kaunda Election Appeal Cause No. 14 of 2020** held that the Petitioner has a duty to establish a *prima facie* case on the issues in dispute and the Respondent has the duty to rebut the Petitioner's case on a balance of probabilities.

Electoral law

- 3.2 **Section 100 of the PPLGEA** provides that:

(1) An appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity and such appeal shall be made by way of a petition, supported by sworn statements, which shall clearly specify the declaration the High Court is being requested to make by order

- 3.3 **Section 101 of the PPLGEA** provides that:

(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...

- 3.4 **Section 92(1) of the Presidential, Parliamentary and Local; Government Elections Act (PPLGEA)** requires Presiding Officers to prepare a summary of results for Polling Stations and Constituencies. In terms of **Section 92(2)** the Results Sheets must be signed by the Presiding Officers and Polling Station Officers and at least one representative of political parties or candidates.

- 3.5 **Section 2 of the PPLGEA** defines an irregularity as:

"irregularity" in relation to the conduct of an election, means non-compliance with the requirements of this Act, the Constitution and any other applicable law";

- 3.6 **Section 92(4) of the PPLGE Act** provides that copies of Polling Station Record of Results are given to party/candidate representatives at the Polling Station.
- 3.7 Under **Section 95(1) of the PPLGE Act** the 1st Respondent is mandated to use records received through official system for determination of results of the elections. It must be noted that votes are polled and counted at Polling Stations under **Section 91 of the PPLGE Act**. Under **Section 92** of the Act, the records are prepared for dispatch to the national tally centre through the Constituency and District Tally Centres.
- 3.8 **Section 93(1) of the Act** provides that the record of results is transmitted under conditions of absolute security against loss, tampering or interference.
- 3.9 **Section 96(2) of the PPLGE Act** provides that the 1st Respondent has a duty under to examine void votes if the same may change the outcome of the election.

Case law

- 3.10 **Francis Renso v Malawi Electoral Commission and Walter Nyamirandu Manda Election Petition Number 54 of 2025**, Honourable **Mambulasa J** stated;

“An election is not to be lightly nullified both as a matter of principle and as well as in recognition of practical realities. It is not the duty of the courts to decide elections. It is the electorate that should do so. The duty of courts is to strive, in the public interest, to sustain that which the people have expressed as their will.”

- 3.11 In the case of **Professor Arthur Peter Mutharika and The Electoral Commission v Dr. Saulos Klaus Chilima and Dr. Lazarus McCarthy Chakwera [2020] MELR** the Court stated that:

“The Commission, therefore, has the singular duty under the Constitution as well as under all relevant statutes, to conduct elections that are ultimately free and fair. Free elections basically

denote the right to take part in an election; and fairness denotes conducting elections by the rules of engagement.”

Evidence

- 3.12 The Court heard the Petition on 17th November, 2025 and all parties were given an opportunity to be heard.
- 3.13 The Petitioner’s evidence was presented through the sworn statements of James Makhumula, Mirriam Lameck and Blessings Kambalame.
- 3.14 The 1st Respondent presented its evidence through the sworn statement of Mr. David Matumika Banda and the Honorable Justice Annabel Mtalimanja.
- 3.15 The 2nd Respondent adopted all the evidence submitted by the 1st respondent in its entirety, having raised preliminary objections which the Petitioner conceded and rectified.
- 3.16 There was no interest in cross-examination of deponents by the parties.
- 3.17 This Court would also like to place it on record that all preliminary issues were disposed of through no contest by all the parties, hence this Court did not dwell much on technicalities but rather on the substance of the case see ***Francis Renso v Malawi Electoral Commission and Walter Nyamirandu Manda Election Petition Number 54 of 2025***, considering the fact that the preliminary issues did not prejudice any of the parties.
- 3.18 This Court will now proceed to analyse the evidence and arguments submitted by the parties. The analysis will be based on the four issues for determination before this Court.

4. Analysis

Whether or not the elections herein were marred by irregularities?

- 4.1 The petitioner has submitted to this Court several alleged irregularities with the elections that took place in the constituency of concern.
- 4.2 These alleged irregularities include the following: The mandatory requirement for results sheets to be signed by presiding officers, polling station officers, returning officers and monitors was not met, in

compliance with PPLGEA. The petitioner submits that the Duplicate Results Sheets in their possession reveal that the Results Sheets for the following Polling Station did not indicate names and/or were not signed by Presiding Officers and/or Polling Station Officers:

- (i) **Mgoza J.P. School: Polling Station Code 1570210/01, (exhibit JM 1),**
- (ii) **Chilusa F.P. School in Nkalizi Ward: Polling Station Code 1570205/01 (exhibit JM 3),**
- (iii) **Chisinkha J.P. School in Nkalizi Ward: Polling Station Code: 1570218/02 (exhibit JM 4),**
- (iv) **Mbaza F.P. School in Nkalizi Ward: Polling Station Code 1570216/02 (exhibit JM 7);,**
- (v) **Buke F.P. School in Kangankundi Ward: Polling Station Code: 1570116/01 (exhibit JM 8),**
- (vi) **Buke F.P. School in Kangankundi Ward, Polling Station Code: 1570116/03 (exhibit JM 9),**
- (vii) **Buke F.P. School in Kangankundi Ward: Polling Station Code: 1570116/04 (exhibit JM 10),**
- (viii) **Utale II F.P. School in Nkalizi Ward: Polling Station Code 1570208/01 (exhibit JM 12),**
- (ix) **Utale II F.P. School in Nkalizi Ward: Polling Station Code: 1570208/02 (exhibit JM 13),**
- (x) **Wiliki Under 5 Clinic Ground: Polling Station Code: 1570226/01 (exhibit JM 14)**

4.3 The duplicates result sheets that are contentious were given to the Petitioner's Monitors after the counting of votes. In their response and submission, the petitioner admits that the alleged original results sheets for these polling stations which have now been filed by the 1st Respondent have signatures of Presiding Officers, Polling Station Officers and some have signatures of Monitors.

- 4.4 Effectively the information with respect to the signing of Presiding Officers, Polling Station Officers and Monitors on the Results Sheets tendered and produced in Court by the 1st respondent is different from the Duplicate Results Sheets that are in the possession of the Petitioners representatives. According to the petitioner, this raises a critical question namely: *Are the results sheets tendered by the 1st Respondent genuine and credible?*
- 4.5 The petitioner further submits that there are differences between the Results Sheets Monitors were given and the alleged original results sheets tendered by the 1st Respondent. This form is called Form 18B which is a polling station record of results.
- 4.6 The petitioner also elaborates that there are discrepancies in between the original results sheet and the duplicate results sheet and these have been exhibited **JM1 to JM13**, especially with regards to the handwriting (see Polling Station Code: 1570213/02), the order of the names of people when signing off (see Polling Station Code 1570213/01), and the numbers of valid and null and void votes (see Polling Station Code 1570213/01, which affects 329 votes), no names and signatures of polling station officers (see Polling Station Code 157025/01 exhibit **JM 3**), insufficient monitors signed (shortfall of two monitors , see Polling Station Code 1570116/03) , altered numbers of total votes cast (total number of votes is changed from 328 to 323, see Polling Station Code 1570213/02), Duplicate and portrayed it as original (see polling station 1570116/02) , votes of the Petitioner are 164 yet on the Duplicate Sheet marked JM 11 they are 165 (Polling Station Code 1570209/01). All in all, Duplicate Results Sheets tendered by the Petitioner were given to his monitors by the Presiding Officers and in the state, they have been tendered.
- 4.7 In response to the alleged irregularities the 1st Respondent contends that the alleged irregularities do not exist on the Original result sheets of the Polling Station Record of Results which were used to determine the elections. The Respondent further contends that the other allegations on

discrepancy in the final tally and duplicates written in ink are based on a misguided understanding of the law and the electoral process. At this point I am inclined to also highlight that in the event of observed differences and missing information between the tally sheets , see **John Malunga v Deus Texas Ndazion Banda Gumba & Malawi Election Petition Number 64 of 2025** the Court observed that where a Petitioner has doubts with or observes missing information in the copy of the Polling Station Record of Results given to her representative, the Petitioner has opportunity to verify with the Polling Station Record of Results posted at the Polling station under **Section 92 (5)** of the Act, which provides that :

92. (5) The presiding officer shall announce, declare and post at the polling station a copy of the duly signed summary of the final result of the poll at that polling station.

- 4.8 To support the allegation on Unsigned Polling Station Records of Results (Form 18B), Incomplete Polling Station Record of Results (Form 18B), and overwriting on duplicate results, the Petitioner tendered Polling Station Records of Results (Form 18Bs) as exhibits marked **JM1 to JM17**. In response, the 1st Respondent has, through the sworn Statement of Mr. David Matumika Banda, tendered copies of original Polling Station Record of Results for each Duplicate Polling Station Record of Results tendered by the Petitioner. The same are tendered as exhibits **MEC 1 to MEC 17** respectively.
- 4.9 I have taken time to consider the evidence placed before me by the parties and these are my findings.
- 4.10 It is suspicious why the petitioner did not bother to verify the results sheets his representatives gave him with the results sheets posted publicly at the polling station. I have not benefitted from any submissions from the Petitioner which question the record of results that were displayed at the Polling station even before the official results were announced. This question has exercised my mind as to the allegations raised by the

Petitioner against the 1st Respondent, that they doctored the results sheets.

- 4.11 In relation to Mgoza J.P. School: Polling Station Code 1570210/01, (exhibit JM 1). The 1st respondent has presented exhibit **MEC1**. The alleged irregularity with these results is that the Duplicate Results Sheets reveal that the Results Sheet did not indicate names and/or were not signed by Presiding Officers and/or Polling Station Officers. It is this Courts finding that exhibit MEC1 which was used to determine the results is duly signed by all polling stations officers and political party representatives, therefore the 1st Respondent relied on results sheet that were not irregular in reaching their decision.
- 4.12 The petitioner further admits that the irregularities in the Form 18 for the following polling stations , Chilusa F.P. School in Nkalizi Ward: Polling Station Code 1570205/01 (exhibit JM 3), Chisinkha J.P. School in Nkalizi Ward: Polling Station Code: 1570218/02 (exhibit JM 4), Mbaza F.P. School in Nkalizi Ward: Polling Station Code 1570216/02 (exhibit JM 7),; Buke F.P. School in Kangankundi Ward: Polling Station Code: 1570116/01 (exhibit JM 8), Buke F.P. School in Kangankundi Ward, Polling Station Code: 1570116/03 (exhibit JM 9), Buke F.P. School in Kangankundi Ward: Polling Station Code: 1570116/04 (exhibit JM 10), Utale II F.P. School in Nkalizi Ward: Polling Station Code 1570208/01 (exhibit JM 12), Utale II F.P. School in Nkalizi Ward: Polling Station Code: 1570208/02 (exhibit JM 13), Wiliki Under 5 Clinic Ground: Polling Station Code: 1570226/01 (exhibit JM 14). The Petitioner submits that:

The alleged original results sheets for these polling stations however have signatures of Presiding Officers, Polling Station Officers and some have signatures of Monitors. Effectively the information with respect to the signing of Presiding Officers, Polling Station Officers and Monitors on the Results Sheets the 1st Respondent has tendered and produced in Court is different from that in the Duplicate Results Sheets the

Presiding Officers provided to the Monitors. This raises a critical question namely: *Are the results sheets tendered by the 1st Respondent genuine and credible?*

- 4.13 The 1st respondent has addressed the alleged irregularities as follows:
- 4.14 The overwriting of names on the duplicate results sheet at Mlambe F.P polling station Code 1570108/01, was not present on the results sheet used to determine the election, see Exhibit **MEC2**. Furthermore, the overwriting was likely a result of overwriting by officers to make the text more legible due to multiple carbon papers between the original copy and the multiple duplicates.
- 4.15 On Form 18B for Chilusa FP Polling station Code 1570205/01, and alleged irregularity on placement of name and signature, is not an irregularity, and further does not appear on the original tally sheet, see Exhibit **MEC3**.
- 4.16 On Form 18B Chisinkha F.P. School Polling station Code 1570218/02, the irregularity of missing names and signatures is not present in the original sheets used to determine the election, see Exhibit **MEC4**.
- 4.17 On Form 18B for Maduwani Under 5 Clinic Polling station Code 1570203/01, the overwriting of 239 votes in favour of Irene Mambala, is the same as on the original tally sheet, see Exhibit **MEC5**.
- 4.18 The explanations are identical for the rest of the result sheets, up to Exhibit **MEC14**, which are the original Form 18B, which were used to determine the result of the election.
- 4.19 It is important to observe that the Petitioner has admitted that the irregularities exist only in duplicate copies in the possession of his monitors, but do not exist on the Form 18 which have been exhibited MEC 2 to MEC 17 by the 1st respondent. I agree with the 1st respondent that all the irregularities relating to the content of the Form 18Bs tendered by the Petitioner do not appear on the original sheets that the 1st Respondent has and used in the determination of results of the elections. They are only restricted to the copies that the Petitioner has, and the Petitioner had an opportunity to verify the contents of the results sheet using the results

sheets posted at the polling centre. It was therefore up to the Petitioner to resort to the available avenues to verify the credibility of the information in the results sheets that were in the possession of his monitors.

4.20 The Petitioner is therefore admitting that the 1st respondent has exhibited evidence that the results sheet they used in determining the results were not problematic because the missing information is now available. It is important to also be mindful of the definition of an irregularity. The Petitioner has taken issue with among other things, the order of the names of monitors, and difference in handwriting. Do these qualify as irregularities? Is there a violation of any law? In the case of ***Abida Sidik Mia v Llyod Laxton Enos Malola & Electoral Commission Election Case No. 58 of 2020***, the Court ruled that such differences to the results sheet do not violate the law and are do not qualify as irregularities.

4.21 In the current case, some of the issues referred to as irregularities are not referenced to the violation of any electoral or constitutional law. **Section 2 of the PPLGEA** defines an irregularity as:

“irregularity” in relation to the conduct of an election, means non-compliance with the requirements of this Act, the Constitution and any other applicable law”

4.22 I am of the view that the Petitioner has admitted that his allegations have been successfully impugned by the evidence of the 1st respondent. In that case, the petitioner has now pivoted by raising an additional question to doubt the authenticity of the documents that have been exhibited in this Court by the 1st Respondent. The petitioner has raised the question that the 1st Respondent has tendered and produced in Court Form 18B forms that are different from that the Duplicate Results Sheets the Presiding Officers provided to the Monitors.

4.23 I am of the view that this being a civil case, the petitioner still has a burden to prove that his recital or events is believable more than the recital of events by the respondents. The Supreme Court of Appeal in ***Raphael Joseph Mhone -v- The Electoral Commission and Symon Vuwa***

Kaunda Election Appeal Cause No. 14 of 2020 held that the Petitioner has a duty to establish a *prima facie* case on the issues in dispute and the Respondent has the duty to rebut the Petitioner's case on a balance of probabilities.

- 4.24 A petitioner must first establish his allegation before he can expect the respondent to assume any burden to answer back or explain itself, See **Professor Arthur Peter Mutharika and Electoral Commission –v- Dr. Saulosi Klaus Chilima and Dr. Lazarous Mac Carthy Chakwera [2020] MELR:**

“...our position is that the petitioner should discharge this initial burden of proof with a prima facie standard of proof, before the burden shifts to the Commission as a duty bearer. Once the burden so shifts, owing to the powers, functions, and duties the Constitution and the electoral statutes have conferred on the Commission, the Commission must discharge the burden of proof in rebuttal of the petitioner's allegations on a balance of probabilities...”

- 4.25 It is my finding that the petitioner has failed to discharge this burden of proof that the respondent has tendered in results sheets that are not genuine and credible. I have arrived at this conclusion because the Petitioner first of all presented his grievances with the results sheet that were in his possession purportedly from the 1st Respondent. Hence presenting his *prima facie* case of faulty results sheets. The 1st Respondent in his reply rebutted this evidence by presenting their version of the results sheet, which cleared up all the purported errors. The petitioner conceded that the 1st respondents' evidence had no anomalies, it is his tally sheets that had anomalies. He then decided to reposition himself by presenting arguments to question the credibility of the 1st respondent's evidence. Unfortunately, he presented no evidence to question the results sheets from the 1st Respondent except to speculate about their credibility. He did not even cross-examine the deponents. He simply relied on one line of

- questioning stating that 'Are the results sheets tendered by the 1st Respondent genuine and credible'. Unfortunately, this is not sufficient to raise a prima facie case to shift the burden on the Respondents to discharge their burden and prove credibility of their results sheets.
- 4.26 The petitioner has decided to simply extend his argument by creating another avenue to still question the Respondents evidence. The Petitioners case is based on the argument that the 1st Respondent tampered with the Results sheets from several polling stations hence resulting in irregularities that affected the result of the elections.
- 4.27 I am not compelled to treat such speculations seriously as they have been unsupported by any evidence whatsoever except that the Petitioner is the one who is in possession of result sheets that have discrepancies, whilst the 1st respondent has result sheets with no irregularities.
- 4.28 Another irregularity which the Petitioner has presented is the Tally Sheets for Polling Station at Utale 1 F.P. School which were taken to the Constituency Tally Centre by a motor cycle operator without any security escort to protect the Results Sheets from tampering which was a breach of the 1st Respondent's duty under Section 9.3 of the PPGLEA which requires the Presiding Officer to dispatch and deliver to the Returning Officer the Results Sheets under conditions of absolute security against inter alia tampering or interfering with the elections materials. However, it is not demonstrated how this impacted the electoral process and affected the outcome, because the 1st Respondent has shown that the Form 18B which was used to determine the results from that particular polling station has no discrepancies, see Exhibit **MEC11**.
- 4.29 Another irregularity which the Petition has touched on, is that there is a difference between the number of votes amassed by Honorable Irene Mambala on the Constituency Summary of result sheet i.e 8,433, this is different from the number of amassed votes announced by the 1st Respondent, i.e 8,445. The 1st respondent defended their announced result by explaining that they reviewed 317 void votes based on their

powers under **Section 96(1)** and **(2)** of the PPLGEA, and allocated the none void votes to the entitled candidates. It is their position that the allocation of corrected void votes did not prejudice the Petitioner at all because he was allocated 32 more votes as opposed to the 12 votes allocated to the 2nd Respondent, see exhibit **MEC18,19(a) and 19(b)**.

4.30 **Section 96(1) and (2)**, provide as follows:

(1) At the beginning of the determination of the national result of a general election, the Commission shall take a decision on any matter which has been a subject of a complaint and shall examine the votes which have been classified as void and may affirm or correct the determination thereof at the polling station or district tally centre.,

(2) Notwithstanding subsection (1), the Commission shall examine void votes only when such votes may have an effect of changing the outcome of the election.

4.31 It is my finding that there is no irregularity which has been established in determining the final vote as the allocation of void votes was undertaken by the 1st respondent in compliance with the law on determination of results. The fact that the Petitioner unknowingly benefitted from this exercise shows that the 1st respondent was objective because the law has put in place a methodology that seeks to triangulate the data, contributing to the credibility of the results due to the rigorous methodology.

4.32 It is therefore my finding that in answering to the issue of '**Whether or not the elections herein were marred by irregularities based on irregular Form 18B forms?**' My finding is that there were no irregularities in this election, and if any such irregularities did occur, they do not warrant this Court to nullify the elections in this constituency as they did not significantly affect the outcome of the elections.

4.33 Moving onto the next issue.

Whether or not the elections herein were conducted in accordance with the Constitution of the Republic of Malawi and the law?

- 4.34 The petitioner submits that the 1st respondent conducted the elections in a manner that breached their obligations under the constitution and he PPLGEA. A breach of its duty under Section 96(1) of the PPGLEA and Section 76(2) of the Constitution of Malawi. Under section 76 (2) (d) and (e) of the Constitution of the Republic of Malawi, the 1st Respondent is mandated to ensure compliance with the provisions of the Constitution and Acts of Parliament in the performance of its duties and functions.
- 4.35 It is the petitioner's submission that he wrote to complain to the 1st respondent about the irregularities with the elections on 20th September 2025, see ***Exhibit JM20***. However, it is his submission that the 1st respondent did not respond or address the complaint but went ahead to announce that the 2nd respondent had won the elections.
- 4.36 I have read all sworn statements and arguments of the petitioner and 1st respondent and have made several observations.
- 4.37 Firstly, the petitioner has exhibited a handwritten letter of complaint to the commission dated 20th September 2025 and ***exhibit JM20***.
- 4.38 On 12th November 2025, in an application before this Court for to amend the Petition, the Petitioner through his Counsel, in paragraph 9 deponed that:

“on Saturday the 7th of October 2025 the petitioner received through WhatsApp what purports to be a response to his complaint and the same was dated the 30th September 2025 wherein his complaints were rejected”

- 4.39 On another note, the Petitioner also filed the sworn statement of his representative/ monitor, Mr Blessings Kambalame, who refused to sign the Constituency summary of results, for Kankao Tally centre. He refused to sign because he recorded an incident in the log book, ***see exhibit 'BK1'***. The complaint in the log book was that a lady had delivered result forms

without an escort resulting in the papers being dumped in some empty cartons.

4.40 **Section 92 (1)** provides that,

The presiding officer shall cause to be prepared by the polling station officers...

(vii) complaints registered and responses thereto and the decisions taken thereon by the polling station officers; ...

4.41 The Malawi Electoral Commission has a duty and function to deal with and determine complaints, see **Francis Renso v Malawi Electoral Commission and Walter Nyamirandu Manda Election Petition Number 54 of 2025**. The 1st respondent has not addressed this issue in their submissions. However, I have taken time to consider this allegation of unresolved complaints. Looking closely at the sworn statement deposed in support to the amendment dated 12th November 2025, it is my finding that the complaints that the Petitioner filed before the 1st Respondent were dealt with, based on the Petitioners own admission. Whether this also included the issue entered into the log book as exhibited **"BK1"**, this Court cannot speculate as the Petitioner ought to have brought before this Court the response that they received from the 1st Respondent regards the handling of their complaint and dated 30th of September 2025.

4.42 The current Petition seems to assume that a complaint was made to the first respondent and they made a decision which the Petitioner is aggrieved of, yet at the time of filing the Petition, the Petitioner admitted that the 1st Respondent had not attended to their complaint, see **Section 100 of the PPLGEA**;

An appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity and such appeal shall be made by way of a petition, supported by sworn statements, which shall clearly specify the declaration the High Court is being requested to make by order.

4.43 However, the Petitioner has now amended his Petition to abandon the claim under Section 100 of the PPLGEA, but rather to pursue it under section 101 of the same Act, which is a Petition alleging an undue return in the absence of the Complaint being addressed by the 1st respondent. This is inline with the observation by **Mambulasa J**, see **Francis Renso v Malawi Electoral Commission and Walter Nyamirandu Manda Election Petition Number 54 of 2025**

“...Before the Court rests, it would like to observe in passing that, section 100 of the Presidential, Parliamentary and Local Government Elections Act cannot be relied upon by a petitioner in the absence of a decision by the Malawi Electoral Commission confirming or rejecting the existence of an irregularity...”

4.44 It is therefore my finding that the grounds of the Petition based on the failure to address complaints is therefore abandoned and the 1st Respondent did not breach their obligations under the constitution and electoral laws, see **Raphael Joseph Mhone -v- The Electoral Commission and Symon Vuwa Kaunda Election Appeal Cause No. 14 of 2020**.

4.45 The Petitioner also submitted another issue through the sworn statement of Mirriam Lameck, in which there is an allegation that the Monitors at Utale Polling station worked under intimidating circumstances as their phones were confiscated by the security officers. The deponent further outlined irregularities such as turning away of voters under the allegation that they were too young to vote, and that she signed some papers without her phone so she could not seek the advice from her superiors.

4.46 I am at a loss to attach any weight to this evidence as it is highly speculative. There is no supporting evidence, no exhibits, and just affidavit evidence that these are irregularities that were observed. The petitioner has not even supported these statements with legal arguments in the skeletal arguments. No witness from the community has been brought to

testify that they were denied their right to vote at this polling station due to the suspicion that they were under age. The Petitioner has been very speculative.

- 4.47 It is therefore my finding that the Petitioner has failed to show prima facie evidence that the conduct of elections at Utale polling station violated the law.
- 4.48 All in all, to answer the question ***Whether or not the elections herein were conducted in accordance with the Constitution of the Republic of Malawi and the law***, it is my finding that the elections were conducted in accordance with the Constitution and relevant electoral laws.

Whether or not the 1st Respondent correctly declared the 2nd Respondent as the duly elected Member of Parliament for Balaka Mulunguzi Constituency?

- 4.49 Based on my finding above, it is clear that there is no evidence to support that there were irregularities which resulted in the 1st respondent unduly declaring the 2nd respondent as an elected member of Parliament.
- 4.50 Moving on to the next question.

Whether or not the elections herein should be nullified and consequently fresh elections should be conducted

- 4.51 The Petitioner request the Court to make the following Orders:
- i. *a declaration and an Order that the election of Honourable Ireen Mambala as the Member of Parliament for Balaka Mulunguzi Constituency is null and void.*
 - ii. *a declaration and an Order that fresh elections for a Member of Parliament be conducted for the Balaka Mulunguzi Constituency*
 - iii. *an Order for costs of these proceedings.*

4.52 Based on the lack of evidence of irregularities and unlawful return of the 2nd respondent, I am not satisfied that there are good and sufficient grounds for declaring the election of the 2nd respondent void.

5. Decision

5.1 I am of the view that the Petitioner has failed to prove the allegations in his Petition that there were irregularities in the elections for Balaka Mulunguzi Constituency. He has failed to prove the undue return of Ireen Mambala as a member of the National Assembly for Balaka Mulunguzi Constituency.

6. Order

6.1 I hereby dismiss the Petition in its entirety.

6.2 The Petitioner made an undertaking to bear all costs in the event that the Petition is unsuccessful. I hereby condemn the Petitioner in costs, which, if not agreed by the parties, shall be assessed by the Assistant Registrar.

6.3 It is so ordered.

Delivered this 11th day of November 2025



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CHARLOTTE WEZI MESIKANO-MALONDA
JUDGE