IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL DIVISION

ELECTORAL PETITION NO. 80 OF 2025

(*Before Hon. Justice Masoamphambe*)

BETWEEN:

JUMA KHAMISA …….**……..……...…PETITIONER**

AND

MALAWI ELECTORAL COMMISSION……...…1ST RESPONDENT

CHIMWEMWE MAZABUKA CHIPUNGU ……...……2ND RESPONDENT

CORAM: HONOURABLE JUSTICE TS MASOAMPAHAMBE
Noel Supedi, of Counsel for the Petitioner
Andy Kaonga, of Counsel for the 1st Respondent
Steve Mponda, of Counsel for the 2nd Respondent
Ms Emily Chimang'anga, Official Court Interpreter
Ms Harriet Chiusiwa, Court Reporter

JUDGMENT

Introduction

[1] This petition comes before the Court in a form that is procedurally confused from the outset. Its commencement is marked by the simultaneous invocation of multiple legal regimes, some of which are mutually exclusive and prescribe fundamentally different procedural routes. Both the Notice of Petition and the Petition cite section 76 of the Constitution, sections 100 and 101 of the

Presidential, Parliamentary and Local Government Elections Act, 2023 ("the PPLGEA"), as well as Order 19 rule 17 of the Courts (High Court) (Civil Procedure) Rules ("the CPR").

[2] This blending of provisions, offered without explanation or distinction, makes it difficult for the Court to ascertain the true legal basis of the petition. As submitted, the petition is confusing in both form and substance. Rather than presenting a clear electoral claim grounded in a specific statutory pathway, it relies on multiple—and at times conflicting—sources of jurisdiction, seemingly in the hope that at least one might suffice. The Court was therefore compelled to sift through this undifferentiated mix of constitutional, statutory, and procedural references to determine the proper framework within which the petition should be considered.

[3] During the hearing, further clarification was sought from Counsel for the petitioner regarding the nature of the reliefs sought and the statutory foundation of the petition. In response to the respondents' submission that the petitioner's prayers for nullification of the election and for scrutiny or recount were inherently contradictory, Counsel for the petitioner disagreed. He maintained that no contradiction existed, contending that the prayers merely represented alternative forms of relief the Court could grant depending on its findings. In his view, they were simply distinct remedial pathways available within the Court's discretion and did not render the petition defective.

[4] A more fundamental issue arose regarding the jurisdictional basis of the petition, particularly the section of the PPLGEA under which the matter was said to have been brought. Counsel for the petitioner expressly informed the Court that the petition was filed in the Court's appellate jurisdiction pursuant to section 100 of the PPLGEA. He maintained that the petition had first been presented before the Malawi Electoral Commission (MEC), and that the MEC's failure to act on it amounted to a 'negative decision.' On that basis, he submitted that the petitioner was justified in approaching this Court under section 100 of the PPLGEA, treating the MEC's silence as a refusal capable of sustaining an appeal.

[5] Upon hearing that explanation, the Court sought confirmation from Counsel for the petitioner, asking whether, in his view, the petition had indeed been brought pursuant to section 100. Counsel answered unequivocally in the affirmative, and the Court duly noted that confirmation.

[6] Counsel for the petitioner further argued that the 1st respondent's silence, despite the complaint having been lodged within the statutory period, left the petitioner with no option but to promptly approach this Court. He submitted that, given the statutory timelines and the respondents' allegation that the petition was out of time, the petitioner was obliged to act swiftly once the MEC failed to issue a decision.

[7] It is therefore not surprising that the 2nd respondent, as will be seen below, filed what he termed a "with-notice application" to dismiss the matter as statute-barred. In the Court's judgment, and considering the strict timelines governing election petitions, it was appropriate that the application to dismiss the petition on grounds of limitation be heard together with the petition itself. I will revert to this issue later in the judgment. Meanwhile, during the hearing, Counsel for the 1st respondent orally raised preliminary objections, stating that he was uncertain under which regime or section the petition had been brought.

[8] Before addressing the preliminary objections and jurisdictional questions raised by the parties, it is necessary to set out the factual context in which this petition arose. A clear understanding of the events leading to the petition, the allegations made, and the respondents' responses is essential for appreciating both the procedural posture of the matter and the substantive issues the petitioner seeks to advance. The Court therefore turns to the factual background, against which the subsequent legal analysis must be understood.

Factual Background

[9] The petitioner, Juma Khamisa, contested as the Malawi Congress Party (MCP) candidate for Member of Parliament for the Luchenza Municipality Constituency in the tripartite elections held on 16 September 2025. The 1st respondent is the Malawi Electoral Commission (MEC), while the 2nd respondent is Chimwemwe Mazabuka Chipungu, the declared winner and candidate for the Democratic Progressive Party (DPP).

[10] Following the poll, on 27th and 28th September 2025, the 1st respondent conducted the formal determination of results and examined void votes pursuant to section 96 of the PPLGEA. The final figures recorded for the candidates, including the petitioner and the 2nd respondent, are set out in the sworn statement of MEC's Director of Legal Services.

[11] According to the 2nd respondent, after reviewing void votes, the 1st respondent declared him the winner on 30th September 2025. The final results showed the 2nd respondent receiving 2,584 votes and the petitioner 2,524 votes, a margin of 60 votes. The petitioner, however, contends that the declaration of the 2nd respondent as winner was made on 1st October 2025. This is one of the contentious issues the Court must determine, as it bears directly on the 2nd respondent's application to dismiss the petition as statute-barred.

[12] Meanwhile, on 18th September 2025, following polling, the petitioner claims to have lodged a written complaint with MEC alleging electoral irregularities. He maintains that the 1st respondent

failed to resolve the complaint before declaring the results. The 1st respondent, however, asserts that it responded on 28th September 2025, dismissing the complaint.

[13] Dissatisfied with the outcome, the petitioner filed the present petition on 8th October 2025, alleging multiple irregularities that compromised the integrity of the election.

The Petitioner's Case

[14] The present petition is supported by a sworn statement made by Juma Khamisa, the petitioner, who alleges that the election was marred by widespread irregularities affecting the integrity of polling, counting, and aggregation of votes across multiple polling centres. These irregularities include, but are not limited to: unsigned Forms 18B, denial of Forms 18B to monitors, discrepancies between polling centre results and constituency totals, harassment of monitors, exclusion from key processes, and anomalies in signatures or entries by presiding officers or party representatives.

[15] The petitioner asserts that his accredited monitors were present at all material stages and documented numerous irregularities, which he believes collectively affected the final outcome of the election.

[16] The petitioner avers that at Luchenza Secondary School (Stations 22040401/01 and 22040401/02), the polling and counting process was not conducted in accordance with electoral procedures. He claims that Form 18B was not signed by either the presiding officer or party representatives, that his monitors were prevented from recording the serial numbers of ballot boxes, and that monitors for the MCP were obstructed while monitors for other candidates were allegedly granted undue latitude. He contends that the absence of signatures on official result forms fundamentally undermines the integrity of the votes recorded at that station.

[17] The petitioner further avers that at Luchenza C.D.S.S (Stations 22040202/01 and 22040202/02), Forms 18B were left unsigned by the presiding officer, and that some signatures recorded as belonging to party representatives were either not genuine or could not have been present—particularly those purporting to represent AFORD, a party that fielded no parliamentary candidate in the constituency. He argues that the presence of such signatures indicates irregular handling of polling records.

[18] With respect to Thandizo CBCC (Station 22040402/01), the petitioner alleges that Form 18B was not signed by the presiding officer, thereby casting doubt on the authenticity of the results

recorded at that station and raising concerns that party representatives were not given an opportunity to verify or sign the results.

[19] In relation to Luchenza Catholic JP School (Stations 22040503/01 and 22040503/02), the petitioner alleges that Forms 18B were either left unsigned, signed irregularly, or contained incomplete entries. He asserts that the absence of proper attestation renders the results non-compliant with statutory recording requirements and creates uncertainty as to whether they accurately reflect the votes cast at those centres.

[20] The petitioner also challenges the results from Luchenza L.E.A School (Station 22040303/01), alleging that Form 18B lacked the presiding officer's signature and that his monitors were denied the opportunity to sign the form or obtain copies. He maintains that these omissions deprived the results of the transparency and accountability required by law.

[21] Regarding Widzo Private Secondary School (Station 22040101/01), the petitioner disputes the authenticity of various signatures on Form 18B, noting in particular the presence of an AFORD representative's signature despite the fact that no AFORD parliamentary candidate existed in the constituency. He maintains that these anomalies indicate improper or unreliable record-keeping.

[22] At Chiromo CBCC (Station 22040201/01), the petitioner alleges that Forms 18B were not signed by certain officers and that his monitors were prevented from signing or obtaining copies of the results. He asserts that the absence of signatures and the denial of access to result sheets compromised the integrity of the recorded vote count.

[23] Concerning Lutheran Church Ground (Station 22040103/01), the petitioner challenges the legitimacy of signatures attributed to party representatives and alleges inconsistencies between the results recorded at this polling station and the totals ultimately aggregated at the constituency level. He asserts that certain signatures appeared fictitious or inconsistent with the presence of the individuals purported to have signed.

[24] The petitioner further relies on allegations from monitors at Chibazi, Chiwindo, and Kaomba centres. He asserts that at Chibazi, DPP monitors were directing and influencing voters, particularly the elderly; that at Chiwindo, the number of votes cast exceeded the number of accredited voters and ballot papers bore double ink impressions; and that at Kaomba, DPP monitors were allegedly granted greater freedom of movement and influence, while his own monitors were restricted or intimidated by MEC officials.

[25] The petitioner further alleges that at the Constituency Tally Centre, his monitors and party representatives were prevented from witnessing the aggregation process and from inspecting or signing the constituency tally sheet. He asserts that the results announced at the constituency level differed materially from the totals reflected in polling station Forms 18B, and that he was denied copies of key tallies, thereby preventing him from verifying the accuracy of the final result.

[26] Finally, the petitioner alleges material discrepancies between his recorded votes and those of the 2nd respondent. He states that while polling station records reflected a total of 2,517 votes for him, the 1st respondent announced 2,524, and that the 2nd respondent's totals were similarly altered from 2,572 to 2,584. He attributes these discrepancies to flawed tallying, misrecording of votes, or mishandling of result sheets at various stages of the counting process.

[27] The petitioner additionally alleges that the independent candidate, Masauko Poverty White, was entirely omitted from some Forms 18B, suggesting incomplete or inaccurate preparation of result sheets and raising further concerns about the validity of the tally.

[28] The petitioner further asserts that he lodged a written complaint with the 1st respondent on 18 September 2025. He contends that the 1st respondent failed to address the complaint before declaring the final result, and he treats the respondent's silence as a rejection or failure to act.

[29] The petition therefore seeks:

i. a declaration that the 1st respondent breached its constitutional and statutory duties;
ii. a declaration that the parliamentary election was not conducted in accordance with the law and is therefore void;
iii. a declaration nullifying the return of the 2nd respondent; and
iv. an order for scrutiny and recount of all votes in the constituency.

The 1st Respondent's Case

[30] The 1st respondent denies all material allegations of irregularity and maintains that the election was conducted substantially in accordance with the Constitution and the PPLGEA. It asserts that none of the alleged irregularities occurred as described, or, if they did occur, they did not affect the outcome.

[31] The 1st respondent disputes the petitioner's account of events at each polling centre cited. It filed a sworn statement in response to the petition, sworn by Mr. David Matumika Banda, the Commission's Director of Legal Services and Secretary to the Commission. This statement, together with the formal Response to the Petition, sets out the Commission's factual and legal position in opposition to the reliefs sought.

[32] The 1st respondent contends that the Polling Station Record of Results (Form 18B) for each contested polling station was duly signed by the presiding officer and, where applicable, by party representatives. The Commission has produced signed copies of these forms in rebuttal.

[33] At Luchenza Secondary School, the 1st respondent denies the petitioner's allegations as factually incorrect. It states that the relevant Polling Station Records of Results (Form 18B) for both streams were signed by the presiding officers and, in some instances, by party or candidate representatives. The 1st respondent further clarifies that the signing of these forms by representatives is not a mandatory legal requirement and cannot, by itself, invalidate the results. It rejects as unsubstantiated the claims that party representatives were harassed or removed, noting that no evidence has been presented to demonstrate how such alleged actions affected the election process. The 1st respondent relies on signed copies of Forms 18B and the corresponding primary Records of the Polling Process (Form 17), which it exhibits as "MEC 1a, 1b, 2a, and 2b".

[34] At Luchenza CDSS, the 1st respondent contends that the allegations relating to this location are factually incorrect. It avers that the presiding officers, together with almost all party or candidate representatives, signed the relevant Forms 18B, which were used in determining the results. The presence of an AFORD party representative, which the petitioner challenges, is explained by the fact that AFORD fielded a candidate in the local government elections for that ward. The Commission reiterates that representative signatures are not legally mandatory and that allegations of harassment remain unsubstantiated. It relies on exhibits "MEC 3a and 3b."

[35] With respect to Thandizo CBCC (Polling Station Code 22040402/01), the 1st respondent denies the petitioner's allegation that the Form 18B for this station was left unsigned by his representatives. It avers that the form relied upon in determining the results was duly signed by all party and candidate representatives, including the petitioner's own monitor. The document is tendered in evidence as exhibit "MEC 4."

[36] With respect to Luchenza Catholic JP School, the 1st respondent asserts that the allegations are factually unfounded. It avers that nearly all relevant polling station officers, together with all party and candidate representatives, duly signed the Forms 18B. Moreover, it notes that the primary source documents, namely Forms 17, were likewise signed by all officers and representatives, and

that the vote counts recorded therein correspond with those reflected in the Forms 18B. The signed forms are tendered in evidence as exhibits "MEC 5a, 5b, 6a, and 6b."

[37] At Luchenza LEA School (Polling Station Code 22040303/01), the 1st respondent denies the allegation that the Form 18B for this station was unsigned. It avers that the form was duly executed by the presiding officer and is tendered in evidence as exhibit "MEC 7."

[38] At Widzo Private Secondary School (Polling Station Code 22040101/01), the 1st respondent denies the petitioner's allegation, averring that the presiding officer duly executed the Form 18B used in the determination of results. The said form is tendered in evidence as exhibit "MEC 8." With respect to the presence of an AFORD representative, the 1st respondent reiterates that AFORD fielded candidates in the local government elections for the ward, thereby rendering the representative's presence legitimate and not anomalous.

[39] At Chiromo CCBC (Polling Station Code 22040201/01), the 1st respondent avers that the allegation of an incident at this station is unsubstantiated and had no impact on the conduct or outcome of the election. It further points out that, as evidenced in the petitioner's own exhibit "JK 10," all party and candidate representatives, including the petitioner's monitor, duly signed the Form 18B. The 1st respondent emphasizes that it is incumbent upon political parties and candidates to appoint representatives who are duly conversant with their rights and obligations.

[40] At Lutheran Church Ground (Polling Station Code 22040103/01), the 1st respondent denies the allegation, averring that the Form 18B was duly executed by the polling station officers. The said document is tendered in evidence as exhibit "MEC 9." The 1st respondent further explains that the presence of an AFORD representative was occasioned by AFORD's participation in the local government elections for that ward, and was therefore legitimate.

[41] In response to the constituency-level tally and the review of void votes, the Commission provides a detailed account of its lawful procedure for the scrutiny of void ballots. It explains that, in accordance with Section 96(1) and (2) of the PPLGEA, it determined that the number of void votes in the Luchenza constituency exceeded the margin between the two leading candidates, thereby triggering its statutory duty to examine such votes.

[42] The Commission retrieved 128 void ballots for examination. Upon review, 102 votes were confirmed as void, while 26 were corrected and reallocated to the respective candidates. A detailed table annexed to the sworn statement sets out the allocation of these corrected votes, resulting in the final tallies. The petitioner's votes increased from 2,517 to 2,524, while the 2nd respondent's

votes increased from 2,572 to 2,584. The 1st respondent concludes that the variance between the initial polling station totals and the final announced results is wholly attributable to this lawful review and correction process, and not to any irregularity.

[43] With respect to the handling of the petitioner's complaint, and contrary to the petitioner's assertion that his grievances were disregarded, the 1st respondent avers that they were formally addressed. On 28 September 2025, the Commission issued a written determination dismissing the petitioner's complaints for want of merit. A copy of this determination is tendered in evidence as exhibit "MEC 11."

[44] In conclusion, the 1st respondent contends that the petition is wholly misconceived, devoid of both factual and legal foundation. It maintains that the election was conducted in strict compliance with the law, that the results faithfully reflect the will of the electorate, and that none of the alleged irregularities, even if established, were of such materiality as to affect the outcome. Accordingly, the 1st respondent prays that this Honourable Court dismiss the petition in its entirety, with costs.

The 2nd Respondent's Case

[45] The 2nd respondent filed a sworn statement in response to the petition, sworn by himself in his capacity as the duly declared and returned Member of Parliament for Luchenza Municipality Constituency. The statement sets out his factual and legal position in opposition to the reliefs sought, including:

(a) a full denial of all allegations of electoral irregularity;

(b) an assertion that the petitioner has not proved the presence of his accredited agents at the material time;

© a lawful explanation for the presence of AFORD representatives at certain polling stations;

(d) an endorsement of the Commission's lawful review and reallocation of void votes under section 96 of the PPLGEA; and

(e) a contention that the margin of 60 votes represents the genuine will of the electorate and that the Petition is devoid of merit and should be dismissed with costs.

Unsigned Polling Station Result Sheets (Forms 18B)

[46] The 2nd respondent denies the petitioner's allegation that certain Forms 18B were not signed by presiding officers or party representatives. He avers that the petitioner has failed to adduce any evidence establishing that his accredited representatives were present at the alleged polling stations

during the counting and signing process. He emphasizes that it was incumbent upon the petitioner to ensure that his representatives were duly registered and remained in attendance. The 2nd respondent further contends that all polling stations were manned by presiding officers and had candidate representatives available, who duly signed the result forms immediately upon the conclusion of counting.

[47] The 2nd respondent specifically addresses the allegations concerning Luchenza C.D.S.S. (Polling Station Code 2240202/02) and Luchenza Catholic J.P. School (Polling Station Code 2240503/01), annexing signed copies of the Forms 18B from these stations, which clearly bear the names and signatures of the respective presiding officers. These documents are tendered in evidence as exhibits "C.M.C 1(a)" and "C.M.C 1(b)." He further contends that any unsigned copies attached to the petition are likely faint duplicates or carbon copies and do not constitute the authentic records relied upon by the Commission.

Denial of Result Sheets to Petitioner's Representatives

[48] The 2nd respondent avers that the allegation that the petitioner's representatives were denied access to copies of the result sheets is unfounded and fabricated. He further reiterates that no evidence has been adduced to establish the presence of the petitioner's monitors at the relevant polling stations. He contends that those representatives who were in attendance duly received their signed copies in accordance with the prescribed procedure.

[49] Furthermore, he underscores that each polling station maintained an official complaint logbook, and the petitioner has adduced no evidence that any of his representatives lodged a contemporaneous complaint regarding the alleged denial of a result sheet. In his view, the absence of such a complaint, coupled with the lack of corroborating sworn statements from the purported representatives, demonstrates that these allegations were fabricated only after the declaration of results.

Presence of AFORD Representatives

[50] The 2nd respondent offers a cogent explanation for the presence of AFORD party representatives at polling stations where AFORD had no parliamentary candidate. He clarifies that AFORD did, in fact, field candidates in the Local Government elections for wards such as Thuchira and Namadzi. Given that the Presidential, Parliamentary, and Local Government elections were conducted concurrently at the same polling stations, the AFORD representatives were lawfully entitled to be present and to monitor all three ballots. Accordingly, it was neither irregular nor unlawful for an AFORD representative to sign a parliamentary result form. In support of this contention, he produces copies of the Polling Station Records of Results for the Local Government elections at Luchenza C.D.S.S (Polling Station Code 2240202/01) and Luchenza Lutheran Church

Ground (Polling Station Code 2240103/01), marked as Exhibit "C.M.C 2(a)" and "C.M.C 2(b)," which confirm the participation of AFORD candidates.

Constituency Level Tally and Review of Void Votes

[51] The 2nd respondent directly addresses the alleged discrepancy between the initial constituency tally sheet and the final announced results. He confirms that the initial tally showed a margin where the number of void votes (128) exceeded the difference between the candidates. In such a circumstance, he asserts that the 1st respondent was mandated by law under the relevant electoral act to examine the votes classified as void before making a final declaration. He states that the Commission conducted a lawful and transparent examination of these void votes in the presence of available representatives. The outcome of this verification process, which reallocated some of the void votes, yielded the final, lawful results of 2,524 votes for the petitioner and 2,584 votes for himself. He therefore denies that any irregularity occurred in the tallying or declaration process at the constituency level.

[52] The 2nd respondent categorically denies that any of the alleged irregularities occurred or that they could have materially affected the outcome of the election. He asserts that the margin of sixty votes reflects the genuine will of the electorate of Luchenza Municipality. He further avers that the petition is a mere afterthought, arising solely from the petitioner's dissatisfaction with the electoral loss, and that it discloses no credible evidence of wrongdoing nor any legal grounds to invalidate what he maintains was a free and fair process conducted in strict accordance with established procedures. Accordingly, he prays that this Honourable Court dismiss the petition in its entirety with costs.

Preliminary Issues/Objections

The 2nd Respondent's With-Notice Application to Dismiss the Petition

[53] On 12th October 2025, the 2nd respondent filed a with-notice application seeking the dismissal of the petitioner's election petition in its entirety. The application was brought pursuant to section 101(1) of the PPLGEA. The principal ground advanced for dismissal is that the petition was lodged outside the mandatory statutory limitation period and is therefore statute-barred.

[54] The application is supported by a sworn statement of Mr. Bob Chimkango, legal practitioner for the 2nd respondent. In his sworn statement, Mr. Chimkango observes that the petitioner alleges that the parliamentary elections for Luchenza Municipality were tainted by irregularities and that

the declaration of the 2nd respondent as Member of Parliament was unlawful. He affirms that the 1st respondent declared the 2nd respondent duly elected on 30 September 2025, and that the petitioner filed the present petition on 8 October 2025. On this basis, he contends that the petition was filed nine (9) days after the declaration, thereby exceeding the mandatory seven-day limitation period prescribed under section 101(1) of the PPLGEA.

[55] He further states that, because the petition was not lodged within the statutory timeframe, it is irregular, incompetent, and incapable of being sustained. In his view, the delay is 'inordinate, inexcusable, and fatal to the proceedings,' and he accordingly prays that the petition be dismissed for want of jurisdiction.

[56] The 2nd respondent has also filed skeleton arguments in support of the application. In those arguments, he identifies the sole issue as whether the petition is properly before this Honourable Court in light of the statutory time limit. Counsel relies on section 101(1), which mandates that any complaint alleging an undue return or undue election must be presented to the High Court within seven (7) days of the declaration of results, inclusive of weekends and public holidays. He further invokes section 32 of the Limitation Act to underscore that, where another written law prescribes a limitation period—as section 101(1) does—that period is absolute and cannot be varied by the Court.

[57] The 2nd respondent relies on several authorities, including *Bonny Edward Sauti v Electoral Commission*, Electoral Matter No. 33 of 2019, in which a petition filed outside the statutory time limit was struck out as irregular and incompetent, the court holding that expiry of the limitation period deprives the court of jurisdiction. He further cites *Tongwe Ngwenyanyama & Henry Ngwenyanyama v Collins Mkhaaya, P*ersonal Injury Cause No. 255 of 2020, and *Eliness Madozo v Samson Jussan*, Civil Cause No. 693 of 2019, both of which illustrate the dismissal of claims instituted outside statutory limitation periods.

[58] The 2nd respondent submits that limitation in election matters is not a mere procedural technicality but a jurisdictional bar grounded in public policy. He emphasizes that election disputes must be resolved expeditiously and that finality in electoral outcomes is imperative. Counsel underscores that strict adherence to statutory timelines safeguards both candidates and the integrity of the electoral process, while preventing uncertainty and prejudice to parties compelled to respond to allegations long after they arise.

[59] On this basis, the 2nd respondent contends that the cause of action arose on 30 September 2025, the date of declaration, and that the petition ought to have been filed no later than 7 October 2025. By lodging it on 8 October 2025, the petitioner commenced proceedings outside the statutory

window, thereby depriving this Honourable Court of jurisdiction to entertain the petition. The 2nd respondent accordingly prays that the petition be dismissed in its entirety with costs.

The 1st Respondent's Preliminary Objections

[60] During the hearing of the petition, learned Counsel for the 1st respondent, Mr. Andy Kaonga, raised preliminary objections and issues concerning both the competence of the petition and the procedural propriety of the manner in which it was commenced and prosecuted.

[61] First, Counsel submitted that the petition, as drafted, was fundamentally defective in that it was brought under both section 100 and section 101 of the PPLGEA. He argued that the two statutory pathways are mutually exclusive, rest upon distinct jurisdictional foundations, provide different remedies, and impose separate procedural preconditions. Section 100 proceedings, he emphasized, are appellate in nature, require the existence of a decision of the Commission confirming or rejecting an irregularity, and terminate at the High Court with no further right of appeal. Section 101, by contrast, invokes the Court's original jurisdiction to nullify an "undue return," is subject to a strict seven-day limitation period, and confers a right of appeal to the Supreme Court of Appeal.

[62] Counsel argued that, because the petitioner had simultaneously invoked two contradictory statutory regimes without specifying which grievances fell under which provision, the petition was incurably ambiguous. This ambiguity, he submitted, left the 1st respondent unable to discern whether the petitioner sought appellate review under section 100 or primary relief under section 101. In his view, this constituted a grave jurisdictional defect that rendered the petition incompetent ab initio.

[63] Furthermore, Counsel submitted that the petitioner failed to file skeleton arguments as required by Order 19, rule 15 of the Courts (High Court) (Civil Procedure) Rules. He observed that, after the respondents filed their sworn statements in response, the petitioner elected to reply with an additional sworn statement. Having done so, Counsel contended, the petitioner became obliged to file skeleton arguments articulating the legal foundation of his case—an obligation he wholly failed to discharge. This omission, Counsel maintained, was not a minor irregularity but a breach of mandatory procedure that prejudiced the respondents and impeded the Court's ability to identify and frame the legal issues.

[64] While the Court acknowledges that skeleton arguments ordinarily serve to clarify issues for determination, the Rule itself employs the permissive term 'may' rather than the mandatory 'shall.' Accordingly, the filing of skeleton arguments at that stage is discretionary rather than obligatory, and non-filing does not constitute a jurisdictional defect.

[65] More significantly, the issues were adequately articulated through the pleadings, sworn statements, and oral submissions. Even if the omission were to be regarded as a technical irregularity, the Court is vested with authority under Order 2 of the Courts (High Court) (Civil Procedure) Rules to regularize such defects where doing so advances the just and proportionate disposal of the proceedings.

[66] In the exercise of its discretion under Order 2, the Court is satisfied that the petitioner's reply should be treated as effectual notwithstanding the absence of skeleton arguments. To hold otherwise would elevate procedural formality above substantive justice in circumstances where the omission has not impeded the fair determination of the matter. The objection is accordingly noted but overruled.

[67] Expanding upon these themes in written submissions, the 1st respondent argued that the petition misconceived the statutory framework governing the resolution of election disputes. Relying on recent authorities, including *Francis Renso v MEC & Walter Manda*, Election Petition No. 54 of 2025, and *Johnstone Ndhlovu v MEC*, Electoral Matter No. 1 of 2025, Counsel submitted that the three procedural pathways—section 100 appeals, section 101 petitions, and judicial review—are distinct and must not be conflated. A party that pursues the wrong procedural route, the 1st respondent contended, must inevitably fail.

[68] Counsel emphasized that a petition brought under section 100 can never be employed to nullify an election on grounds falling outside section 100(3), nor may a section 101 petition be repackaged as a section 100 proceeding in order to circumvent statutory limitation periods or appeal rights. He submitted that the petitioner could not, in one breath, challenge the result as an undue return under section 101, and in another purport to appeal under section 100.

[69] Counsel further argued that the reliefs sought by the petitioner were inherently contradictory, in that he prayed both for nullification of the election and, simultaneously, for scrutiny or recount of the votes. Counsel submitted that nullification presupposes a fundamentally compromised electoral process, whereas scrutiny presupposes that the process was duly conducted and recorded but requires verification. According to Counsel, a litigant cannot meaningfully pursue both remedies at once, particularly where the jurisdictional foundations differ.

[70] For all these reasons, Counsel submitted that the petition was fatally defective, improperly instituted, and procedurally untenable, and that it ought therefore to be dismissed with costs.

The Petitioner's Response to the Application to Dismiss

[71] In response to the 2nd respondent's application seeking dismissal of the petition on the ground that it was filed out of time, the petitioner filed a supplementary sworn statement dated 27th October 2025, contesting the factual premise upon which the limitation objection is founded. The petitioner's position is that the petition was lodged within the statutory seven-day period because, contrary to the 2nd respondent's assertion, the election results for Luchenza Municipality Constituency were not declared on 30th September 2025, but rather in the early hours of 1st October 2025.

[72] The petitioner deposes that the 1st respondent had issued an official press release indicating that the parliamentary election results would be declared on 30th September 2025 at 11:00 p.m., which he exhibits as "JK14." However, he avers that, notwithstanding this announcement, the results for Luchenza Municipality Constituency were not declared at 11:00 p.m., but instead at 00:28:44 a.m. on 1st October 2025, as broadcast live on Times Television. He annexes a screenshot of the broadcast, marked as exhibit "JK15," which displays the timestamp of the announcement.

[73] The petitioner further avers that the audio recording of the results declaration, as transmitted on Times Television, is accessible via a Facebook link provided in his sworn statement. He reiterates that, for purposes of computing statutory time limits under section 101(1) of the PPLGEA, the operative moment of declaration is when the Commission publicly announces the results, rather than the time indicated in any prior press release.

[74] On this basis, the petitioner asserts that the declaration occurred on 1 October 2025, thereby making 8 October 2025 the seventh day of the statutory limitation period. He states that the petition was filed on 8 October 2025 and was, in his view, lodged within the prescribed time. He accordingly contends that the application to dismiss the petition on limitation grounds is misconceived and unsustainable.

[75] In reply to the 1st respondent's objection that the petition was improperly brought under both section 100 and section 101 of the PPLGEA, learned Counsel for the petitioner submitted that the reliefs sought—namely, nullification of the election on the one hand and scrutiny or recount on the

other—were not contradictory but rather constituted alternative remedies available to the Court. He argued that the Court was at liberty, depending on its findings, to grant either remedy, and that pleading them together did not render the petition incurably defective.

[76] Addressing the jurisdictional challenge, Counsel stated that the petitioner had deliberately invoked the Court's appellate jurisdiction under section 100, and that the essence of the petition was an appeal against the 1st respondent's failure to determine the complaint lodged before it. Counsel emphasized that the petition was initially presented to MEC, and that MEC failed to issue any decision within the period prescribed by law. In his submission, the 1st respondent's silence amounted to a negative decision, thereby giving rise to an appeal under section 100.

[77] During this exchange, the Court sought clarification in the following terms:

> COURT: "In other words, the petition is brought under section 100?"
>
> Counsel Supedi: "Yes."
>
> COURT: "Thank you."

[78] Counsel Supedi further submitted that, given the short and rigid statutory timeframes for presenting petitions, the petitioner was obliged to act promptly once the 1st respondent failed to respond. He explained that the petitioner reasonably construed MEC's inaction as a rejection of his complaint and moved expeditiously to bring the matter before this Court. Accordingly, he maintained that the petition was properly commenced under section 100, that the jurisdiction invoked was appellate in nature, and that the objection raised by the 1st respondent should therefore fail.

[79] In response to the 1st respondent's objection that the petitioner failed to file skeleton arguments as required under Order 19, rule 15 of the Courts (High Court) (Civil Procedure) Rules, learned Counsel for the petitioner submitted during the hearing that this requirement did not arise in the present circumstances. Counsel argued that the matter before the Court is a fully-fledged petition, not an interlocutory application, and that the parties are not adducing oral testimony.

[80] In his view, the proper expectation was that, once the pleadings and sworn statements had been filed, the matter would proceed in the ordinary course by way of substantive submissions at the close of the evidentiary stage, upon the Court issuing directions. Counsel explained that the petitioner, having filed a supplementary sworn statement in reply to the respondents' sworn statements, reasonably believed that skeleton arguments were to be filed only at the stage of final

submissions, once the Court had confirmed the procedure to be followed. He therefore contended that no procedural breach had occurred, and that the objection regarding skeleton arguments was misplaced and ought not to preclude the petition from being heard on its merits.

Issues for Determination

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

i. Whether the petition was properly commenced under the statutory framework of the PPLGEA; and

ii. Whether a valid written complaint was lodged and determined under section 99 of the PPLGEA so as to lawfully trigger the Court's appellate jurisdiction under section 100.

Law and Analysis

Disposal of the Preliminary Objections/Issues

[82] Before the Court may proceed to consider the substantive allegations raised in the petition, it is necessary first to address several preliminary questions bearing directly on whether this Court is properly seized of the matter. These questions concern the mode of commencement, the statutory foundation of the petition, and the existence of jurisdiction under the PPLGEA.

[83] More significantly, Order 16 rule 6 of the Courts (High Court) (Civil Procedure) Rules states:

> *"6.—(1) The Court may hear arguments by the parties in a proceeding on preliminary issues of fact or law between the parties where it appears likely that, if the issues are resolved, the proceeding or part of the proceeding will be resolved without a trial, or the costs of the proceeding or the issues in dispute are likely to be substantially reduced.*
>
> *(2) Where the parties have agreed on the facts but there remains a question of law in dispute, the Court may hear arguments from the parties about the question of law."*

[84] In my view, the applications seeking dismissal of the petition on the ground that it is statute-barred ought properly to have been brought under this rule. Section 101(1) of the PPLGEA does not operate as a procedural rule for raising objections; rather, it is an enabling provision that prescribes the substantive limitation period within which an election petition must be instituted.

The section establishes a statutory condition precedent to the right to petition, but it does not, in itself, delineate the procedural mechanism through which non-compliance may be contested.

[85] Accordingly, the Court must determine whether the present applications satisfy the threshold of a genuine preliminary objection. In undertaking this assessment, it is incumbent upon the Court to carefully and critically examine whether the objection advanced by the respondents is properly grounded in a jurisdictional issue warranting peremptory and immediate disposal.

[86] The classic definition of a preliminary objection was articulated by Law JA in *Mukisa Biscuit Manufacturers Ltd vs. West End Distributors Ltd* (1969) E.A 696 at Page 700. The judge had this to say:

> *"...so far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation...."*

[87] Lord President Sir Charles Newbold, at page 701B, further clarified:

> *"...A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop."*

[88] Applying these principles to the present applications, the question of whether the petition was filed within the seven-day period prescribed by section 101(1) is, on its face, a pure point of law. It turns on the interpretation of the statute and the computation of time from the alleged date of the declaration of results on 30th September 2025. The 2nd respondent's objection rests on the factual assertion that the results were declared on that date. The petitioner, however, has deposed and adduced evidence—namely, a press release marked "JK14" and a timestamped screenshot of a televised broadcast marked "JK15"—to contend that the actual public declaration for the Luchenza Municipality Constituency occurred at 00:28:44 a.m. on 1st October 2025.

[89] Consequently, although the issue of limitation is jurisdictional and potentially dispositive, the respondents' applications do not qualify as a true preliminary objection within the meaning of the *Mukisa Biscuit* test. The central factual allegation—the precise date of declaration—is sharply contested and must be established or refuted through evidence.

[90] The proper course, consistent with Order 16 rule 6, is for the Court to treat this matter as a preliminary issue requiring a limited hearing to resolve the disputed fact. The issue is amenable to preliminary determination because, if decided in favour of the respondents, it would dispose of the entire petition. However, it cannot be addressed summarily as a pure point of law without first establishing the necessary factual foundation.

[91] Upon reviewing the evidence adduced by both parties, the Court finds as a matter of fact that the official public declaration of the parliamentary election results for the Luchenza Municipality Constituency occurred at 00:28:44 a.m. on 1st October 2025. This finding is corroborated by the petitioner's exhibit "JK15," a timestamped screenshot from a live television broadcast, which the 2nd respondent has failed to rebut credibly. The earlier press release indicating a declaration on 30th September 2025 at 11:00 p.m. (exhibit "JK14") did not materialize in respect of this constituency. Accordingly, the operative date for calculating the limitation period under section 101(1) of the PPLGEA is 1st October 2025.

[92] The issue, therefore, is whether the petition filed on 8th October 2025 was presented "within seven days" of the declaration, as required by section 101(1). The resolution of this question turns on the proper method of computing time.

[93] Section 45 of the General Interpretation Act governs the computation of time for the purpose of any written law, including the PPLGEA, unless a contrary intention is expressed. Subsection (1)(a) of the said section provides as follows:

> *"(1) In computing time for the purpose of any written law, unless a contrary intention appears—*
>
> *(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;"*

[94] Applying section 45(1)(a), the day of the declaration—1st October 2025—must be excluded from the computation. The seven-day period accordingly commenced on 2nd October 2025.

Counting forward seven days, inclusive of weekends and public holidays as mandated by section 101(1), the permissible filing window extended from 2nd October 2025 to 8th October 2025.

[95] The petitioner filed the petition on 8th October 2025, being the seventh and final day of the statutory period. The petition was therefore lodged within the seven-day limitation period prescribed by section 101(1) of the PPLGEA.

[96] The preliminary objection that the petition is statute-barred accordingly fails. Ordinarily, this Court would be properly seized of the matter with respect to the timeliness of its commencement. However, as has been observed above and will be further demonstrated below, the petitioner abandoned the contention that the petition was instituted pursuant to section 101 of the PPLGEA. Consequently, the objection on the ground that the petition is statute-barred is without merit.

The Petitioner's Shifting Legal Basis and the Court's Position

[97] As previously observed, the petition relied upon a confusing amalgam of legal sources: section 76 of the Constitution, sections 100 and 101 of the PPLGEA, and Order 19 rule 17 of the Courts (High Court) (Civil Procedure) Rules. These provisions establish distinct procedural pathways and cannot logically operate concurrently. See *Johnstone Ndhlovu v MEC,* Electoral Matter No. 1 of 2025. Specifically, section 101 confers original jurisdiction in undue return petitions; section 100 provides a statutory right of appeal from decisions of the Malawi Electoral Commission; and Order 19 rule 17 governs ordinary civil applications.

[98] Although the Court has concluded that the petition was filed within the seven days prescribed under section 101(1) of the PPLGEA, a further difficulty arises from the manner in which the petitioner presented and argued his case during the hearing. The record reflects that, having vigorously opposed the 2nd respondent's objection on limitation and having insisted that the petition complied with section 101, learned Counsel for the petitioner subsequently altered his position and informed the Court that the petition was in fact brought under section 100 of the Act. This shift created uncertainty as to the precise statutory foundation of the petition. It remained unclear whether counsel was fully persuaded of the petition's pleaded basis, given that he argued in one breath that it complied with section 101's timeline, and in another disavowed that section as the source of the Court's jurisdiction.

[99] While the Court has determined, as a matter of fact and law, that the petition—if treated as one brought under section 101—was filed within time, the petitioner expressly abandoned reliance on section 101 when invited by the Court to clarify the statutory foundation of his claim. The petitioner elected instead to proceed under section 100, contending that the 1st respondent's silence

amounted to a negative decision capable of appeal. That concession binds him. In light of this explicit representation, the Court is constrained to proceed on the footing that the petition invokes section 100 and must therefore satisfy the statutory requirements governing appellate review from a decision or purported decision of the Commission.

[100] Before considering whether the present petition satisfies the statutory requirements governing appellate review from a decision or purported decision of the Commission, the Court must first address the difficulty presented by the reliefs sought therein.

[101] The petition seeks the following reliefs:

a. A declaration that the 1st respondent breached its constitutional and statutory duties;
b. A declaration that the parliamentary election was not conducted in accordance with law and is void;
c. A declaration nullifying the return of the 2nd respondent; and
d. An order for scrutiny and recount of all votes in the constituency.

[102] The difficulty presented by the reliefs sought in this petition is not novel. A similar issue arose in *Johnstone Ndhlovu v Malawi Electoral Commission* (supra), where the Court held that an election challenge had been wrongly commenced because the reliefs sought and the grounds advanced spoke entirely to judicial review, notwithstanding that the matter had been brought as an election application under the PPLGEA. The Court, observed that where the substance of a claim concerns alleged illegality, procedural unfairness, unreasonableness, or failure to discharge statutory duties, the proper route is the supervisory jurisdiction of the High Court under section 76(5) of the Constitution, commenced by originating motion, rather than by petition or any other election-specific mode of commencement.

[103] In the present matter, the same procedural defect is evident. Reliefs (i) and (ii), which seek declarations that the 1st respondent breached constitutional and statutory duties and that the election was not conducted in accordance with the law, are in substance judicial review remedies. They mirror, almost exactly, the grounds pursued in *Ndhlovu*, where the claimant challenged MEC's administrative conduct based on illegality, procedural unfairness, irrationality, and breach of constitutional duty. The Court held that such arguments "inescapably fit" within the framework of judicial review and cannot properly be pursued by petition under the PPLGEA.

[104] As emphasized, the mode of commencement is not a mere technicality but a jurisdictional question. Where a claimant alleges that the MEC acted unlawfully, unreasonably, or in contravention of section 43 of the Constitution, "the gravamen, pith or substance" of the matter falls within the supervisory jurisdiction of the Court, not its appellate or electoral jurisdiction, and

must be pursued by way of judicial review. In *Ndhlovu*, the Court dismissed the entire proceeding on the basis that the wrong procedural route had been chosen, holding that the defect was "fatal and incurable."

[105] Applying that reasoning to the present matter, the reliefs sought disclose the same fundamental mismatch between the nature of the grievances and the procedural avenue chosen. Reliefs (i) and (ii), which seek declarations of constitutional and statutory breach, fall squarely within the ambit of judicial review; relief (iii) could potentially be grounded in either section 100 or section 101, depending on the basis advanced; and relief (iv), concerning scrutiny and recount, is expressly tied to section 100(4). The petition thus conflates three distinct legal regimes without clearly articulating which is invoked, resulting in procedural confusion identical to that condemned in *Ndhlovu*.

[106] This petition was commenced as though all remedies—including administrative law challenges, appellate review, and election nullification—could coexist within a single procedural framework. They cannot. As the Court in *Ndhlovu* held, where principal legislation (in that case the PPLGEA) prescribes a specific mode of commencement, subsidiary legislation cannot override it, nor may a petitioner conflate judicial review with a petition under sections 100 or 101.

[107] Accordingly, the reliefs sought in this matter not only reveal the petitioner's uncertainty as to the proper jurisdiction but also demonstrate that several of the prayers—particularly those seeking administrative law declarations—are not available through a petition under either section 100 or section 101 of the PPLGEA. For these reasons alone, this petition must be dismissed.

[108] This Court is mindful of *Francis Renso v MEC & Manda* (supra), wherein it was held that election matters should, as far as possible, be determined on their merits rather than disposed of on technicalities. In that case, the Court made the following observation:

> *"In fact, the general principle of law is that election matters, being human rights in nature, should as far as possible, be decided on their merits and not technicalities, unless the technicalities are of such a nature that they cannot be waived or cured by the court."*

[109] However, this Court is equally mindful that the principle articulated in *Renso* (supra)—that election matters should, as far as possible, be determined on their merits rather than on technicalities—cannot be applied in the abstract, divorced from the statutory framework governing the Court's jurisdiction. The present case does not involve curable defects of form or nomenclature, nor errors capable of being waived without consequence. Rather, it implicates mandatory procedural preconditions imposed by the PPLGEA, including the prescribed mode of

commencement, the existence of an appealable decision under section 100, and strict compliance with statutory timelines.

[110] For this reason, as the Supreme Court of Appeal reaffirmed *in Illovo Sugar (Malawi) PLC v Malawi Revenue Authority*, MSCA Civil Appeal No. 08 of 2025, a court cannot waive or disregard non-compliance with statutory conditions that confer jurisdiction. To do so is not an exercise of judicial discretion; it is the assumption of jurisdiction that the statute has expressly withheld.

[111] Accordingly, while this Court respects the general guidance that electoral disputes should, where possible, be resolved on their merits, that approach cannot override the statutory preconditions that ground this Court's jurisdiction in the present matter. The defects here are not mere procedural niceties; they constitute failures to satisfy jurisdictional requirements. The Court is therefore compelled to examine whether the matter has been properly commenced and whether the procedural route chosen is compatible with the remedies sought.

[112] The finding of this Court is that the matter was not properly commenced and must therefore be dismissed. That notwithstanding, the Court will proceed to consider whether section 100 of the PPLGEA—under which Counsel submitted the petition was brought—has been properly invoked.

Parties' Arguments on whether Section 100 was Properly Invoked

Petitoner's Submissions

[113] The petitioner submits that he duly lodged a written complaint alleging electoral irregularities at various polling stations, particularly Luchenza Secondary School and Luchenza C.D.S.S. He avers that, on 18th September 2025, he addressed a letter to the 1st respondent detailing the alleged irregularities and requesting investigation, recount, and disqualification of the 2nd respondent. This communication was annexed as "JK14." On the following day, 19th September 2025, he supplemented the complaint with further attachments, including sworn statements and photographic evidence, which were transmitted to the 1st respondent via email marked "JK14b."

[114] The petitioner contends that these steps fully satisfy the requirements of section 99, which mandates only that a written complaint be submitted, after which the 1st respondent is obliged to examine and determine the complaint and, if irregularities are established, to take corrective action. He further asserts that section 99 presupposes that the complaint must first be raised at a lower level, and that his monitors duly reported the issues to presiding officers and the District Returning Officer, thereby properly escalating the matter to the Commission.

[115] The petitioner contends that the 1st respondent failed to discharge its statutory duty under section 99. Despite his letters of 18th and 19th September 2025, followed by a reminder on 29 September 2025, the 1st respondent neither initiated nor completed a proper investigation, nor did it render a determination on his complaints. He argues that MEC's conduct contravened section 99, section 97 of the Act, and section 76(2)(b) and (c) of the Constitution, all of which oblige the Commission to resolve complaints before declaring election results. In support, he relies on *Mutharika & Another v Chakwera & Another*, [2020] MELR, where the Supreme Court of Appeal emphasized that MEC must resolve all complaints prior to releasing results, and on *Promise Salima v Electoral Commission & Another,* [2013–2021] MELR 410, which held that MEC's failure to conduct a proper inquiry into a complaint constitutes an incurable irregularity.

[116] As regards the 1st respondent's reliance on the purported "determination" dated 28th September 2025, the petitioner contests both its authenticity and its legal effect. He argues that:

a. there is no evidence that it was ever served on him;
b. its date is inconsistent with his follow-up letter of 29th September 2025, which he would not have written had the complaint been resolved;
c. the document shows no record of investigations, witness interviews, deliberations, or findings as required by law; and
d. it contains an obvious factual error asserting that the petitioner contested local government elections, when in fact he stood for Parliament demonstrating, in his view, that 1st respondent never seriously engaged with the complaint.

[117] The petitioner submits that the 1st respondent's purported response does not constitute a valid decision under section 99, as the Commission neither examined nor determined the complaint in the manner required by statute. Instead, the Commission acted "casually and in a cavalier manner," and its failure to discharge mandatory duties rendered any subsequent declaration of results unlawful. The petitioner further contends that, in the absence of a lawful determination under section 99, the MEC lacked authority to declare the final results.

[118] With respect to section 100, the petitioner argues that the 1st respondent's failure or refusal to resolve his complaint amounted to a constructive rejection, thereby triggering a right of appeal under section 100(1). Alternatively, if the 1st respondent's determination of 28 September 2025 is treated as valid, it nonetheless constitutes a decision rejecting the existence of irregularity and is therefore appealable under section 100. In either scenario, the petitioner maintains that jurisdiction under section 100 is properly invoked, as the complaint was submitted pursuant to section 99 and MEC either rejected it or failed to decide it—both of which fall within the statutory scope of "*a decision … confirming or rejecting the existence of an irregularity*."

[119] The petitioner emphasizes that he sought a recount and scrutiny prior to the Commission's declaration of results, and that his inability to obtain relief at the administrative level left him with no alternative but to petition the Court. He contends that the 1st respondent's failure to address the complaint undermines the integrity of the electoral process, and submits that section 100 provides the appropriate remedial pathway in circumstances where the 1st respondent has abdicated its statutory duty.

The 1st Respondent's Submissions

[120] The 1st respondent contends that the petitioner has fundamentally misunderstood and misapplied the statutory framework governing electoral complaints. It is submitted that section 99 applies only where a valid written complaint has been lodged and duly escalated to the Commission, and that section 100 operates solely as an appellate mechanism in such circumstances. According to the 1st respondent, the petitioner's case satisfies neither of these statutory prerequisites.

[121] The 1st respondent further maintains that the petitioner did not submit any proper complaint to the Commission in accordance with section 99. It is emphasized that complaints must first be raised at the polling station level and recorded contemporaneously to enable prompt resolution. In support of this position, the 1st respondent cites *Ngalande v MEC & Bamusi*, Election Petition No. 74 of 2025, where the Court held that complaints must be lodged *"immediately as they are happening"* in order to preserve fairness and maintain order in the electoral process. At paragraph 49, the court said:

> *"It was the argument of the 2nd Respondent that the scheme of things during voting, is that the complaints are supposed to be lodged and recorded as they are happening at a polling station and not to wait. Common sense tells us that the rationale behind the requirement of lodging complaints immediately as they are happening is that they can be addressed promptly and this will assist in preventing things from getting out of hand, especially when one considers the fact that elections are highly emotive. Resolving issues on the spot means that they would not escalate into bigger problems. At the same time, it is easier to gather evidence and get witnesses statements when everything is still fresh. It is all about keeping the electoral process smooth, fair and nipping potential problems in the bud."*

[122] The 1st respondent contends that no Form 16A complaints were lodged at polling stations, and that the petitioner failed to adduce evidence demonstrating that his representatives submitted names to the Commission under section 67, were duly accredited, or exercised their rights under

section 68. It is therefore argued that the petitioner cannot rely on unverified, retrospectively assembled grievances as valid "complaints" within the meaning of section 99.

[123] The 1st respondent further submits that section 99 requires not merely the making of allegations, but that such allegations be formally presented to the Commission in the prescribed manner. In the absence of any such formal complaint, the 1st respondent argues that the statutory duty to "examine and decide" was never engaged.

[124] The 1st respondent argues, in the alternative, that even if a complaint had been properly lodged, the Commission duly examined and determined it, issuing a written decision dated 28th September 2025. That determination dismissed the allegations in their entirety and referred the issue of handouts to the Registrar of Political Parties. The 1st respondent relies on paragraph 28 of its sworn statement, asserting that this letter constituted the Commission's decision *"confirming or rejecting the existence of an irregularity"* within the meaning of section 99.

[125] On this basis, the 1st respondent contends that the petitioner's repeated assertions of Commission "silence" are factually unfounded. The Commission maintains that it acted, reached a conclusion, and communicated its decision, and therefore no legal foundation exists for a claim of constructive refusal.

[126] The 1st respondent submits that the petitioner's reliance on section 100 is wholly misconceived. It is contended that a petition under section 100 must take the form of an appeal from a decision of the Commission; it cannot serve as an original complaint, nor as a substitute for a challenge under section 101. The 1st respondent argues that the petitioner has failed to identify any specific decision of the Commission against which the present petition is directed.

[127] The 1st respondent further refers the Court to *Francis Renso v MEC & Manda*, where the High Court emphasized that petitions under section 100 and those under section 101 constitute *"very different regimes"* and must not be conflated. A petition under section 100 must challenge a discrete decision of the Commission, be filed within a reasonable time thereafter, and terminate at the High Court with no right of further appeal. The 1st respondent contends that the petitioner has not satisfied these requirements.

[128] The 1st respondent further relies on *Johnstone Ndhlovu v MEC*, where the Court affirmed the existence of three distinct procedural pathways: sections 99 and 100 for complaints determined by the MEC, section 101 for challenges brought after results have been declared, and judicial review for decisions requiring supervisory control. The Court held that where a party elects the wrong

procedural path, the action must necessarily fail. On this authority, the 1st respondent argues that the petitioner, by purporting to proceed under section 100 in the absence of a Commission decision, has adopted the wrong path and that the petition ought to be dismissed.

[129] The 1st respondent also underscores the internal inconsistency in the petitioner's case. While the petition cites both section 100 and section 101, the petitioner's oral submissions affirm reliance solely on section 100. The 1st respondent submits that this contradiction exacerbates the procedural defect, as the Court cannot properly determine its jurisdiction when the petitioner himself is uncertain as to which statutory route he seeks to invoke.

[130] In conclusion, the 1st respondent submits that no valid complaint capable of triggering section 99 was ever lodged. Alternatively, if any complaint did exist, the Commission determined it by way of its letter dated 28 September 2025. In either event, section 100 has not been properly invoked, as no appealable decision has been identified, the petition conflates two distinct procedural regimes, and the petitioner has pursued the wrong procedural pathway, thereby rendering the petition incompetent. The 1st respondent accordingly submits that the petition ought to be dismissed for want of jurisdiction.

The 2nd Respondent's Submissions

[131] The 2nd respondent submits that the petitioner has failed to demonstrate that any valid or cognizable complaint was lodged with the Malawi Electoral Commission in accordance with section 99 of the PPLGEA. It is contended that section 99 presupposes a complaint made in writing, presented at the lower level, and thereafter escalated to the Commission for examination and determination. None of these statutory requirements, the 2nd respondent argues, was satisfied in the present case.

[132] The 2nd respondent further emphasizes that the petitioner has not produced any contemporaneous written complaints from polling stations, tally centres, or the 1st respondent's district offices. Section 86(1) and (2) of the PPLGEA require that complaints at polling stations be made in writing, recorded in the logbook, and duly initialed. The 2nd respondent submits that no such complaints were lodged, and that the petitioner cannot rely on *ex post facto* allegations to invoke the 1st respondent's decision-making duties under section 99.

[133] It is further submitted that the petitioner has failed to establish that his alleged monitors were legally designated under section 67 of the PPLGEA. Since the petitioner did not formally submit the names of his representatives to the Commission, the 1st respondent argues that no proper basis

existed upon which any complaint could have been lodged. Consequently, no statutory obligation arose on the Commission to examine or determine any matter under section 99.

[134] The 2nd respondent submits that section 100 applies only where the 1st respondent has issued an actual decision, whether confirming or rejecting an alleged irregularity. It is contended that the petitioner's own pleadings undermine his reliance on this provision, as he repeatedly asserts that the 1st respondent did not decide at all on the alleged complaints. In the absence of such a decision, the 2nd respondent argues, there is nothing capable of appeal under section 100.

[135] The 2nd respondent relies on the decision in *Thom Frank Njirika v Mkumba & MEC*, Electoral Petition No. 59 of 2025, where the Court held that section 100(1) establishes an appellate procedure, which is triggered only where the MEC has rendered a decision on a complaint. In the absence of such a decision, a petitioner must proceed under section 101 or by way of judicial review, but not under section 100.

[136] In the present matter, the petitioner himself alleges in his pleadings that the 1st respondent was "silent" and made "no decision." The 2nd respondent contends that the petitioner cannot simultaneously assert the absence of a decision and yet purport to appeal from that very non-decision. This inconsistency, it is submitted, renders the petition incompetent under section 100.

[137] The 2nd respondent challenges the procedural validity of the petition on the ground that it was instituted under both sections 100 and 101, which provide distinct and mutually exclusive avenues of relief. Section 100 applies solely to appeals arising from the 1st respondent's decision, whereas section 101 governs situations where an aggrieved candidate contests an undue return absent any prior determination by the 1st respondent. The 2nd respondent contends that a petition cannot simultaneously constitute both an appeal and an original election challenge, as this would improperly require the Court to exercise appellate and original jurisdiction concurrently.

[138] The 2nd respondent submits that the petition is incurably defective, as it is predicated upon two contradictory statutory provisions and seeks mutually incompatible remedies—namely, nullification and recount. Within the framework of section 100, a recount may be ordered; however, nullification is permissible only on narrowly defined statutory grounds.

[139] The 2nd respondent further submits that, during the hearing, the petitioner informed the Court that the petition was brought under section 100, contending that the 1st respondent's silence should be construed as a constructive decision. The 2nd respondent argues that this contention directly

contradicts the petition's own averments, which assert that the 1st respondent made no decision whatsoever.

[140] The 2nd respondent submits that this inconsistency reflects confusion on the part of the petitioner and underscores the absence of jurisdiction. Where a petition is brought under section 100, the petitioner must identify a specific decision from which to appeal. Conversely, if the petition is grounded in section 101, it must be filed within seven days of the declaration. In the 2nd respondent's view, the petitioner satisfies neither of these statutory requirements.

[141] In conclusion, the 2nd respondent contends that no valid complaint was lodged to trigger the 1st respondent's obligations under section 99, and no identifiable decision was made by MEC, thereby rendering section 100 inapplicable. The petition is procedurally incompetent, having been improperly advanced under both sections 100 and 101. Moreover, the petitioner's shifting positions on jurisdiction further demonstrate that the Court lacks a statutory basis to entertain the matter. Accordingly, the 2nd respondent submits that the petition ought to be dismissed for want of jurisdiction.

Determination on whether Section 100 was Properly Invoked

[142] The petitioner's case rests substantially on the assertion that he lodged a written complaint with the Malawi Electoral Commission, and that the Commission failed to consider and determine it as required under section 99 of the PPLGEA. On this basis, the petitioner contends that he is entitled to invoke this Court's appellate jurisdiction pursuant to section 100. The respondents dispute both propositions. The central issue for determination is therefore whether the petitioner validly invoked the procedure prescribed under section 99.

[143] The PPLGEA establishes a hierarchical complaint mechanism, commencing at the polling station and escalating thereafter to the Commission. Section 86(1) confers upon representatives of political parties, candidates, or any voter present the right to lodge a written complaint concerning any irregularity occurring during polling. Section 86(2) obliges the presiding officer to initial the written complaint, record it in the Polling Station Complaint Logbook, and annex it to the polling record. The said subsection (2) is in the following words:

> *"(2) No polling station officer shall refuse to receive a complaint presented to the polling station officer under subsection (1) and shall initial every such presentation, record it in a log book referred to under section 66, and annex it as part of the official record of the polling station."*

[144] Section 99 stipulates that the Commission is required to examine and determine a written complaint only where such complaint "*is not satisfactorily resolved at a lower level of authority*." The said section provides as follws:

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

[145] The statutory framework is clear: a valid complaint under section 99 presupposes a valid complaint under section 86 that has progressed through the administrative chain. This interpretation has been consistently affirmed by the Courts. In *Ngalande v MEC & Bamusi*, cited by the 1st respondent, the Court held that complaints must be raised immediately at the polling station—the locus of any alleged irregularities—and must be recorded contemporaneously. The rationale is twofold: first, to preserve the integrity of the evidence, and second, to enable presiding officers to address issues promptly. Failure to utilize this mechanism renders subsequent complaints procedurally deficient and undermines their credibility.

[146] The High Court's judgment in *Lynda Khembo v MEC,* Electoral Petition No. 68 of 2025, provides authoritative guidance. At paragraphs 107–113, the Court held that section 86 is mandatory, not discretionary. A complaint must be reduced to writing on polling day and recorded in the logbook. A complaint lodged after polling, regardless of its detail, is not valid for purposes of escalation to the Commission under section 99. Such a late complaint cannot retroactively validate alleged irregularities and cannot constitute a proper basis for nullifying an election. The Court, in that case, made the following conclusion:

> *"The absence of a contemporaneous, logbook-recorded complaint significantly weakens the credibility of subsequent allegations and cannot constitute evidence of an undue election."*

[147] This holding is directly applicable to the present matter. The petitioner alleges that his monitors raised concerns at the polling stations. However, there is no evidence before this Court that any complaint was lodged in writing at the polling station; no evidence that any complaint was recorded in the Polling Station Complaint Logbook; no evidence that any written complaint was initialed by the presiding officer; and no copy of such a complaint has been annexed to the petition.

[148] The evidence adduced does not establish that any contemporaneous complaint was lodged at the polling station level. Although the petitioner asserts that his monitors raised concerns, he has

produced no evidence that such concerns were reduced to writing, submitted to the presiding officer, or recorded in the Polling Station Complaint Logbook as mandated under section 86 of the PPLGEA. None of the sworn statements filed by the petitioner indicate that his representatives attempted to lodge a formal written complaint, or that they were prevented from doing so.

[149] In these circumstances, and applying the principles articulated in *Ngalande* and *Khembo*, the Court finds that the petitioner failed to utilize the mandatory first-tier complaint mechanism under section 86. Consequently, there was no valid complaint before the "lower level of authority" capable of escalation to the Commission.

[150] The Court further finds that the written communications sent by the petitioner to the Commission on 18th and 29th September 2025, in the absence of any contemporaneous written complaint recorded in the Polling Station Complaint Logbook, cannot properly be regarded as an escalation within the statutory hierarchy contemplated by section 99. At best, these letters represent the initial invocation of the Commission's attention to the alleged irregularities, rather than the statutorily envisaged second-tier complaint arising from an unresolved polling station grievance.

[151] Nevertheless, the Court is mindful that the central focus of section 99 is not the procedural pedigree of how a complaint originates, but rather whether the Commission ultimately examined and determined the allegation of irregularity. In this regard, even if the petitioner's letters constituted the initial formal presentation of his grievances, the material question for purposes of sections 99 and 100 is whether the Commission, upon receipt of those letters, rendered a lawful decision capable of grounding an appeal. The procedural status of the letters dated 18th and 29th September is therefore secondary to the decisive issue of whether MEC's response amounts to a valid determination under section 99.

[152] The Commission relies on a letter dated 28th September 2025, asserting that it constituted its determination of the petitioner's complaint. The Court reproduces the salient portions of the letter, which:

a. describe the complaint as relating to local government elections;

b. state that the petitioner "did not participate in the parliamentary elections";

c. advise the petitioner to report the "handouts" allegation to the Registrar of Political Parties;

d. assert that the petitioner provided "no evidence"; and

e. conclude with a summary dismissal of the complaint.

[153] This letter contains material factual inaccuracies. The petitioner was, in fact, a parliamentary candidate, and his complaint pertained to the parliamentary election in the Luchenza Constituency. Any determination based on the erroneous assumption that the complaint concerned a different election, or that the petitioner contested a different office, cannot constitute a lawful examination of a complaint under section 99. Such reasoning exemplifies a clear non-application of mind.

[154] Section 99 imposes a mandatory obligation on the 1st respondent to examine and determine written complaints alleging electoral irregularities. In this case, the petitioner asserts that he submitted a formal written complaint to the Malawi Electoral Commission on 18th September 2025, followed by supporting documentation on 19th September 2025 (Exhibits JK14 and JK14b), and a follow-up letter on 29th September 2025. The complaints detailed alleged irregularities at Luchenza Secondary School and Luchenza CDSS polling centres, including harassment of monitors, improper signing of tally sheets, and voter inducement. The petitioner contends that these complaints were never addressed, and that the Commission proceeded to declare the results on 1st October 2025 without resolving them.

[155] On these facts, section 99 was duly engaged. Although the petitioner bypassed certain lower-level mechanisms, the critical issue remains whether the Commission discharged its statutory duty under section 99. The petitioner contends that it did not, as he received no substantive response or investigation prior to the announcement of results. In its defense, the 1st respondent refers to a *"determination"* dated 28th September 2025 (Exhibit MC11). The petitioner, however, disputes ever receiving this document and underscores its substantive deficiencies, including factual inaccuracies—such as the erroneous assertion that he contested local government elections. This indicates that, even if such a document was produced, it may not amount to a proper *"examination and decision"* within the meaning of section 99.

[156] The Court considers it necessary to underscore that the 1st respondent's handling of the petitioner's complaint fell significantly short of the standard mandated by section 99 of the PPLGEA. The purported determination is factually flawed, procedurally irregular, and substantively inadequate. While it contains language purporting to "dismiss" the complaint, such dismissal rests on the mistaken premise that the petitioner contested a different election altogether. A rejection grounded on an incorrect factual foundation cannot, in law, constitute the type of decision contemplated by section 99. To treat such a defective communication as a decision capable of invoking appellate jurisdiction under section 100 would improperly enlarge the statutory jurisdiction of this Court through the 1st respondent's own dereliction of duty. The law does not sanction such an outcome.

[157] The 1st respondent's abdication of its statutory responsibility cannot, in itself, confer jurisdiction upon this Court. Jurisdiction under section 100 remains contingent upon the existence of a lawful determination under section 99. The petitioner, who was legally represented, ought to have pursued judicial review to challenge the Commission's failure to act in accordance with the law. He did not. Resorting to section 100 cannot cure this jurisdictional defect. The Court accordingly finds that, whether characterized as administrative silence or as an unlawful nullity, the Commission's letter does not constitute an appealable decision within the meaning of section 100 of the PPLGEA.

[158] This conclusion should not be construed as endorsing the conduct of the 1st respondent. Rather, it reflects the constitutional principle that this Court cannot arrogate to itself jurisdiction which Parliament has not conferred, even where such jurisdiction might appear necessary to remedy administrative dereliction.

[159] Even taking the petitioner's position at its highest—that the 1st respondent never determined his complaint—the argument that MEC's silence or subsequent declaration of results amounts to a "constructive decision" for purposes of section 100 cannot be sustained. The statutory framework does not permit administrative inaction to be transmuted into an appealable decision.

[160] This point is conclusively settled in *Dr Jessie Kabwira v Malawi Electoral Commission & Enock Genasi Phale,* Electoral Case No. 40 of 2019. In that matter, the Court confronted a similar scenario in which a complaint had been lodged but remained undetermined prior to MEC's announcement of results. Justice Kenyatta Nyirenda observed that the Court's *"search for a decision of the Commission confirming or rejecting the existence of an irregularity was in vain."* The Court emphasized that an appeal under the equivalent of section 100 *"lies within a very narrow, circumscribed compass"* and may only be brought against an actual decision—not silence, not inaction, and not the mere act of declaring results.

[161] This position is further reinforced by the judgment in *Ex parte Ellock Band*a, Miscellaneous Civil Cause No. 64 of 2019, where the Court expressly rejected the contention that MEC's failure to act could amount to a decision capable of sustaining an appeal. At paragraphs 21–22, Justice Professor Kapindu stated:

> *"The Applicant alleges failure in the manner the Electoral Commission discharged its functions… the 1st Respondent never determined the complaint and yet proceeded to declare the results… If the complaint had been determined, the argument perhaps could have been that the Applicant could have proceeded by way of a petition of appeal under Section 114… But the allegation is that the*

complaint was not determined… An allegation of failure to determine the complaint… would entail failure by the Commission to properly discharge its functions. This is a core question that is amenable to the judicial review process… not a matter for an appeal." [Emphasis supplied]

[162] The legal consequence is inescapable: where MEC has not rendered a decision under section 99—whether reasoned, written, oral, or otherwise—there exists no jurisdictional foundation for invoking section 100. The petitioner's attempt to construe silence as a "negative decision" stands in direct contradiction to established authority.

[163] Accordingly, on the petitioner's own account that no decision was ever communicated to him, this Court lacks jurisdiction to entertain the matter as an appeal under section 100. The appropriate procedural mechanism, in circumstances of alleged non-determination, would have been judicial review under section 76(5) of the Constitution, read together with Order 19, rule 20 of the Courts (High Court) (Civil Procedure) Rules, which provides as follows:

"(1) Judicial review shall cover the review of—
(a) a law, an action or decision of the Government or a public officer for conformity with the Constitution; or
(b) a decision or action or failure to act in relation to the exercise of a public function in order to determine—
(i) its lawfulness;
(ii) its procedural fairness;
(iii) its justification of the reasons, if any; or
(iv) bad faith, if any,
where a right, freedom, interests or legitimate expectation of the applicant is affected or threatened." [Emphasis supplied]

[164] In conclusion, and having carefully considered the pleadings, sworn statements, documentary exhibits, oral and written submissions, together with the applicable law, this Court finds that the petition is fatally defective in its mode of commencement and cannot be sustained under section 100 of the PPLGEA. The petitioner expressly abandoned reliance on section 101 during the hearing and unequivocally confirmed that the petition was brought pursuant to section 100. However, the statutory precondition for invoking section 100—namely, the existence of a decision of the 1st respondent either confirming or rejecting an alleged irregularity—has not been satisfied.

[165] For the avoidance of doubt, and in light of the petitioner's abandonment of section 101 during the hearing, the Court makes no pronouncement on the merits of an undue return or undue

election, as those matters were not properly before the Court under the prescribed statutory procedure.

[166] n the circumstances, the petition stands dismissed in its entirety.

Orders

[167] The petition filed by Mr. Juma Khamisa, challenging the election of the 2nd respondent, Mr. Chimwemwe Mazabuka Chipungu, is dismissed in its entirety for want of jurisdiction under section 100 of the PPLGEA.

[168] The declaration of the Malawi Electoral Commission that the 2nd respondent, Mr. Chimwemwe Mazabuka Chipungu, was duly elected as Member of Parliament for Luchenza Municipality Constituency in the 2025 Parliamentary Elections remains valid and undisturbed.

[169] Costs follow the event. The petitioner shall bear the costs of the petition, which shall be assessed by the Registrar in the event that the parties fail to reach an agreement.

Made in open court this Wednesday, the 17th day of December, 2025 at Blantyre.

Texious Masoamphambe
JUDGE