IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL DIVISION

ELECTION CASE NO. 70 OF 2025

RAMUZANI JUMA MAHOMMED ..... PETITIONER

AND

MALAWI ELECTRAL COMMISSION ..... 1ST RESPONDENT

AND

THOMSON KAMANGIRA ..... 2ND RESPONDENT

CORAM: HON. JUSTICE E. CHANZA

Mr. K. B. Soko, Counsel for the Petitioner

Mr. A. Kaonga, Counsel for the 1st Respondent

Mr. Khonyongwa and Mr. Chimkango, Counsel for the 2nd Respondent

Ms. F. Ngoma, Court Clerk

Mr. Mutinti, Court Reporter

JUDGMENT ***Chanza J***

A. Introduction and Background

1. This is the judgment that follows the hearing of an election petition which was brought under Section 101 of the Presidential, Parliamentary and Local Government Elections Act ("the Act")

2. The Petitioner, Ramuzani Juma Mahommed, was one of the eight candidates who contested for the election to the National Assembly of the Republic of Malawi for Nsanje South Constituency in the General Elections that were held on 16th September 2025; and as such, he is entitled to bring the Petition under the Act.

3. On 30th September 2025 the Malawi Electoral Commission, the 1st Respondent in this Petition ("the Commission" / "the 1st Respondent") through its Chairperson, the Honourable Justice Annabel Mtalimanja, through a written speech made the final announcement of the determination of the results of the parliamentary elections, including that of Nsanje South Constituency.

4. Among other things, the Chairperson of the Commission informed the Malawi nation that in accordance with Section 96(1) and (2) of the Act the Commission had examined votes that had been classified as void at the polling stations where the total void votes were such as to have the effect of changing the outcome of the election.

5. The purpose of examining the votes, classified as void at the polling stations, was to either affirm or correct the decisions of the Presiding Officers regarding those votes.

6. The Chairperson of the Commission informed the people of Malawi about the constituencies where the examination of void votes had taken place. The Chairperson further stated that the effect of the changes would be reflected in the final tally. The total number of affected constituencies was reported to be fifteen, including Nsanje South.

7. She thereafter proceeded to declare the candidates who had been elected as Members of Parliament in the various constituencies, including Nsanje South Constituency, in accordance with Sections 96(1) and (2), 97 and 98(1) (b) and 98 (2) of the Act. The Petitioner was declared the winner for Nsanje South Constituency with 7,497 votes.

8. On 2nd October 2025, the Commission issued a Corrigendum to the Parliamentary Election Results Announcement in respect of Nsanje South Constituency ("the Corrigendum"), in which it purported to inform all stakeholders and the general public that, following the examination of void votes, adjustments had been made to the results initially declared, and that the examination of the void votes had the effect of changing the outcome of the election in the constituency. The Commission then declared the 2nd Respondent, Thomson Kamangira, as the duly elected Member of Parliament for Nsanje South Constituency with 7,558 votes.

Reliefs Sought

9. It is against this background that the Petitioner seeks the following reliefs:

    a. That this Court should declare that there was an undue return of Mr. Thomson Kamangira as the winner of the Nsanje South Parliamentary election;

    b. That this Court should direct the 1st Respondent to uphold the declaration that it issued on 30th September 2025, that Mr. Ramuzani Juma Mahommed was the one who had won the Nsanje South Parliamentary election;

c. That alternatively, this Court should direct the 1st Respondent to hold a fresh election in Nsanje South Parliamentary Election; and

d. The 1st Respondent should be ordered to pay the costs of this petition.

The Petitioner's Case

10. The Petitioner has raised two main issues in this petition. Firstly, the Petitioner pleads that there was an undue return of the 2nd Respondent as the winner of the Nsanje South Parliamentary election; and in the alternative, he pleads that there was an undue election of Mr. Thomson Kamangira.

11. Regarding the allegations of the undue return of the 2nd Respondent, the Petitioner argues that the reclassification of the void votes to valid votes and the subsequent issuance of the Corrigendum were proceeded with irregularity and in a manner which undermined the credibility and integrity of the election.

12. The Petitioner states that despite having duly accredited representatives to observe all polling processes, including the determination of the national result, the 1st Respondent examined the void votes without inviting the Petitioner to send a representative to observe the process, which was the Petitioner's entitlement and right under Section 95(4) of the Act.

13. He further asserts that by failing to avail the Petitioner the necessary facilities to enable him to exercise the right to observe the examination of the void votes, the 1st Respondent rendered the Petitioner's right under Section 95(4) of the Act illusory and meaningless, and the resultant altered outcome wanting in credibility.

14. He also asserts that the Corrigendum issued by the 1st Respondent, which purported to declare the election results outside the prescribed fourteen-day period set by law, is null and void. In this regard, the Petitioner contends that it would have made no legal difference even if the Corrigendum had been issued within the prescribed fourteen-day period, as the 1st Respondent lacks the legal competence or authority under the Constitution, the Act or the Malawi Electoral Commission Act to alter a duly published election result, as per Section 98(1) of the Act.

15. Regarding the alternative claim of an undue election of the 2nd Respondent, the Petitioner asserts that the 1st Respondent determined the election result for Nsanje South Constituency based on unsigned result sheets and in non-compliance with the duty that is imposed on it under Section 92(2) of the Act.

16. In this regard, the Petitioner alleges that records from the following polling stations were illegible and were not signed by the Presiding Officers and/or other polling staff:

    a. Ntowe CDSS [Polling Station Code 2290212/01]

    b. Ntowe CDSS [Polling Station Code 2290212/02]

    c. Ntowe CDSS [Polling Station Code 2290212/03]

    d. Ntowe CDSS [Polling Station Code 2290212/04]

    e. Marka FP School (Polling Station Code2290222/01]

    f. Marka FP School (Polling Station Code2290222/02]

    g. Nansongole JP School.

    h. Makoka FP Scool

i. Thundu ADMARC

j. Mbalae F.P. School

k. Kamphinda FP Scool

l. Mchacha CBCC

m. Nyachilenda FP School [Polling Station Code 2290215/01]

n. Nyachilenda FP School [Polling Station Code 2290215/03]

o. Kavulunthenga FP School

p. Lulwe School for the Blind

q. Nkapako FP School.

17. He further avers that if at all duly signed and legible records were delivered to the 1st Respondent on the basis of which it determined the results for the subject matter election, then the 1st Respondent breached its duty under Section 92(4) of the Act in that some of the summaries of the results given to the Petitioner's representatives in respect of the affected polling stations mentioned above were not signed by the presiding officers and all polling station staff as required, while others were not legible.

18. The Petitioner filed a Sworn Statement Verifying and Supporting the Petition, which is accompanied by a copy of the relevant parts of the 1st Respondent's Final Announcement and Declaration of the Results of Parliamentary Elections 2025, a copy of the Corrigendum to the Parliamentary Election Results Announcement - Nsanje South Constituency issued by the 1st Respondent on 2nd October 2025, copies of Form 14A – Submission of Political Party/Independent Candidate

Representatives, a total of 16 copies of Form 18B - Record of Results for Parliamentary Election for the allegedly affected polling station. The Petitioner also filed his skeleton arguments and written closing submissions to close his case.

1st Respondent's Reply to the Petition

19. The 1st Respondent asserts that the Parliamentary election for Nsanje South Constituency was conducted in compliance with the requirements set out in the Constitution, the Act, and the Regulations made thereunder.

20. That in accordance with Section 96 (1) of the Act, it examined the votes that had been classified as void and proceeded to make corrections where necessary, and accordingly allotted the corrected votes to the respective candidates who competed for election to the National Assembly for Nsanje South Constituency.

21. It is the 1st Respondent's case that the announcement of the final results was made on radio and television on 30th September 2025 within the statutorily prescribed time limits, but that in its announcement of the final results, it inadvertently declared the Petitioner as the winner in error.

22. The 1st Respondent explains that the error occurred during the preparation of the declaration speech, which the Chairperson read out when announcing the final results. This error was noted by the 1st Respondent, and a public notice in the form of the Corrigendum dated 2nd October 2025 was issued to communicate the corrected results.

23. The 1st Respondent further states that it is its duty to ensure that the election results announced are free from errors and accurately reflect the will of the electorate as expressed through the votes.

24. The 1st Respondent also avers that it is not correct that the results for the parliamentary election in Nsanje South were determined based on the result forms from the polling stations singled out by the Petitioner, as the original copies held by it were legible and duly signed.

25. It further avers that the examination of void votes is an exclusive responsibility of the Commission.

26. The 1st Respondent filed a Sworn Statement of Facts and a Supplementary Sworn Statement of Facts in response to the Petition, sworn by the Honourable Justice Annabel Ntalimanja, the Chairperson for the 1st Respondent; skeleton arguments, and closed its case at the hearing by filing written closing submissions.

2nd Respondent's Reply to the Petition

27. The 2nd Respondent was not originally made a party to this petition. He was joined as a party after his application to be added as a party to the proceedings, which was not objected to by both the Petitioner and the 1st Respondent, was granted this by the Court.

28. The 2nd Respondent filed a sworn statement in opposition to the Petition, which was sworn by the 1st Respondent himself, skeleton arguments in opposition to the Petition, and supplementary skeleton arguments in opposition to the Petition. He also closed his case by filing written closing submissions.

29. The 2nd Respondent case is, in substance, similar to that of the 1st Respondent. To avoid unnecessary repetition, I will not reproduce the 2nd Respondent's case in this ruling, but will address all the legal issues raised later in this judgement.

30. Suffice it to say that, in summary, it is the position of the 2nd Respondent that the Commission was within its statutory mandate and duties in issuing the public notice through the corrigendum, which it published on 2nd October 2025 to communicate the corrected results so as to reflect the will of the electorate in Nsanje South Constituency.

The Petitioner's Arguments and Submissions

31. The Petitioner argues that the 1st Respondent, being a creature of the Constitution and a public body, can only exercise powers that have been clearly granted to it. This being the case, the actions of the 1st Respondent must be measured against the law, and any action that the 1st Respondent takes must have a basis in the law.

32. It was therefore argued for the Petitioner that the publication of results for a general election is governed by Section 98 of the Act, which provides for "how" and "when" the results should be published.

33. It was submitted that on the "how" part, Section 98 of the Act requires that the 1st Respondent must publish the results in the Gazette and in at least one issue of a newspaper in general circulation, and by radio and television.

34. In this respect, the Petitioner argues that the 1st Respondent partially complied with the "how" part when it published the results of the election on radio and television on 30th September 2025 but did not publish in the Gazzete.

35. Counsel for the Petitioner submits that failure to publish in the Gazzette is, however, not necessarily fatal, and he quotes paragraph 1387 in the judgement of the case of Chilima and another v. Mutharika and Another [2020] MELR 1, as authority for this proposition.

36. Counsel for the Petitioner argues that Section 98 of the Act does not authorise the publication of results by way of a Corrigendum, and that the 1st Respondent has no legal power to publish results in this manner. He asserts that the 1st Respondent could only publish the results in a manner that complied with Section 98 of the Act.

37. In this respect, he has cited the cases of The State (on the Application of) Lin Xiaoxiao & Others v. The Director General - Immigration and Citizenship Services and Attorney General Judicial Review No. 19 of 2020, and The State v Malawi Communications Regulatory Authority and Others Constitutional Reference Case No. 3 of 2019

38. The Petitioner argues that Section 98(1)(b) of the Act clearly requires the results of a parliamentary election to be published within fourteen days of the last polling day.

39. He submits that a court has a duty to obey a statute and not refuse to give it effect, and that neither a court nor the 1st Respondent can extend the time limits for publishing election results as set out in Section 98(1)(b) of the Act. In this respect, Counsel cited the case of The State and Electoral Commission Ex Parte Friday Jumbe and Others, Judicial Review Cause No. 38 of 2024.

40. The Petitioner further submits that the law, as laid down in Ex Parte Friday Jumbe, has been followed religiously in other cases both in this jurisdiction and in other jurisdictions. From this jurisdiction, he has cited a number of cases that he asserts have followed the position in Ex Parte Jumbe, including the cases of Banda and

Others v. Electoral Commission and Others,[2013-2021] MELR 250; The State (on the Application of Kazembe t/a Mackenzie and Patricks Associates) v. Malawi Law Society, Judicial Review Cause No. 21 of 2024; and Chilima and Another v. Mutharika and Another [supra.

41. From other jurisdictions, the case of Bowles v Russell, 551 US 205 (2007) has been cited. The Petitioner avers that in the Bowles v Russell case, the Supreme Court of the United States also stated that statutory time limits are jurisdictional and cannot be altered by a court order.

42. He submits that the period for publishing the election results under this provision is mandatory, and that once the period elapses, the 1st Respondent lacks legal competency or authority to make a declaration of the results; therefore, the 1st Respondent lost jurisdiction to declare any parliamentary election results after 30th September 2025.

43. Counsel for the Petitioner further submits that even if what the 1st Respondent published on 30th September 2025 was erroneous, it had no power to correct the error for want of jurisdiction, and that the best it could have done once it realised that an error had been made was to nullify the process and start all over again.

44. On the examination of void votes by the 1st Respondent, the Petitioner argues that a candidate has the right to witness the determination of the results, including the determination of the national result at the National Tally Centre as per Section 95 of the Act, and that the 1st Respondent cannot take this right away.

45. In this respect, Counsel for the Petitioner submits that the examination of void votes under Section 96(1) of the Act is part of the determination of results and therefore

subject to the rights that a party representative has under Section 95(4) of the Act, i.e., the right to be present when the Commission is looking at these votes.

46. He argues that a right granted to a candidate by statute cannot be simply ignored by the 1st Respondent, and that the 1st Respondent has no option but to invite the candidates to participate in the process of examining the void votes.

47. He submits that it was absolutely crucial for the transparency and integrity of the process for the affected candidates to be invited to witness the process of determining void votes through their representatives.

48. Counsel for the petitioner has cited the cases of Chilima and Another v. Muthalika and Another [supra], as well as the MSCA decision in Mutharika and Another v. Chilima and Another [2020] MELR 406, quoting the extensive discussion that the two courts made on the role of monitors and party representatives in elections and the rights that they enjoy once they have been registered.

49. The Petitioner asserts that in the present circumstances no one apart from the Commissioners of the 1st Respondent will know what went on inside the room where the examination of the void votes took place, and that it would not be known for sure if the task was indeed carried out by the Commissioners themselves or some hired hands with no authority.

50. On the issue of ineligible and unsigned result sheets that are alleged to have been given to the Petitioner's representative, Counsel argues that under Section 92 of the Act, there is a very clear duty on the part of the 1st Respondent to provide summaries of the results to candidates' representatives that are legible and signed by the presiding officer and each of the other Polling Station Officers.

51. He therefore argues that by giving the Petitioner's representatives the alleged illegible and unsigned summaries of results, the 1st Respondent violated the law, specifically Section 92(2) of the Act.

The 1st Respondent's Arguments and Submissions

52. On the publication of the election results, the 1st Respondent submits that, in terms of Sections 6 and 12 of the Constitution, the power to govern must always come from the people; and that, in accordance with Section 40 of the Constitution, principles of free and fair elections also come into play, and that people should be able to make a free political choice and that every person's vote should count.

53. Counsel for the 1st Respondent therefore avers that the interplay between Sections 6, 12, and 40 of the Constitution and the duty of the 1st Respondent in an election is the one that ensures that these rights are fully enjoyed by Malawians.

54. The 1st Respondent submits that the duty to supervise elections in Malawi lies with the 1st Respondent, and that Section 76 of the Constitution provides for it to exercise such functions in relation to elections as are conferred upon it by the Constitution or by an Act of Parliament.

55. Counsel for the 1st Respondent, while agreeing that the scheme of publication of results as per Section 98 of the Act contains both the question of "how" and "when" and that they are both couched in mandatory terms, argues that the Petitioner cannot pick and choose which part is mandatory and jurisdictional and which one is not.

56. He argues that Section 98 of the Act does not say that the 1st Respondent shall not publish the results outside the prescribed fourteen days. He submits that the

provision separates the jurisdiction to publish results and the mandatory requirement to publish them within a specified period.

57. He further argues that Section 98 of the Act cannot be jurisdictional because it is not the first and primary provision that grants the 1st Respondent the power to publish election results. In this respect, he submits that the mandate is prescribed in Section 95(1) of the Act, which provides that: *"The Commission shall determine and publish the national results of the general election based on the records delivered to it from the district tally centres and polling stations."*

58. It has been submitted that according to the legal duty prescribed under Section 95(1) of the Act, the 1st Respondent is supposed to publish from what it has determined, and it must determine based on what has been given from polling stations and district tally centres, as well as the reclassification of the void votes, if any, under Section 96 of the Act.

59. It has been argued for the 1st Respondent that the correction that was sought to be made through the Corrigendum published on 2nd October 2025 did not in any way change the substance of what had actually happened on 30th September 2025. It was submitted that the same meant to communicate the results as determined by the 1st Respondent, i.e., the results that include the mandatory examination and reclassification of void votes where necessary.

60. Counsel argues that if the 1st Respondent publishes what has not been determined, this constitutes an error that must be corrected. Counsel submitted that the Corrigendum merely corrected an incorrect reference to a winner who was no longer

a winner at the time of the final determination of the election results for the constituency.

61. To support these arguments, Counsel has cited cases and instances where corrigenda were used to provide clarity when clerical errors were discovered in filed or published documents.

62. He has cited the cases of Laurent v. Sale & Co. (A Firm) [1963] 2 ALL ER 63 where a corrigendum was issued correcting the name of the judge who had heard the case; Nahimana and Others v. Prosecutor ICTR-99-52-A where a separate corrigendum was filed by a party to correct a clerical error in a motion that was before a court; AC-ATEL Electronics Vertriebs GmbH v. Hauptzollamt Muenchen-Mitte (preliminary rulings) [1994] euecj c-30/93 (2 June 1994) in which the Court of Justice of the European Communities upheld a corrigendum published in the Official Journal of the European Communities on 10 February 1990 which made a series of corrections withdrawing all references to CN code ex 8542 11 71 and replacing them with references to new CN codes 8542 11 41, 8542 11 43 and 8542 11 45.

63. Counsel further argues that if the 1st Respondent were not to correct the error made, the same would lead to absurd results. The results as published, if maintained, would have vitiated the rights of the people of the constituency as exercised under Section 40(3) of the Constitution and the results would be contrary to the will of the people as exercised through their vote. Counsel therefore submits that the error had to be corrected.

64. In this respect, he submits that Section 8 of the Malawi Electoral Commission Act, specifically subsection 1(n), and Section 76 of the Constitution give the 1st Respondent powers to take such measures and to do such other things as are necessary for conducting free and fair elections; and that the correction purported to have been done through the issuance of the Corrigendum on 2nd October 2025 falls within the measures and actions envisaged in these powers.

65. On the determination of national results without the involvement of the Petitioner's representative, the 1st Respondent submits that in terms of Section 67 of the Act the duties of party or candidate representatives are restricted to the polling station and no other place. He argues that these representatives have not been assigned any other duties regarding the National Tally Centre. He asserts that by expressly limiting the duties of the representatives, the legislature limited what activities these people can do, what rights they have, and where they can exercise these rights.

66. Counsel submits that apart from the 1st Respondent, no one else has the authority to handle issues involving votes, make decisions, or determine results, and that the law does not provide for such representatives to be present when examining void votes.

67. He further avers that, in any case, the political party/ candidate representatives at the National Tally Centre are allowed to observe the arrival of the materials from the District Tally Centres and satisfy themselves that the records received are indeed from the polling stations and District Tally Centres, and are indeed received under conditions of absolute security from interference and tampering. He therefore submits that this eliminates the need to participate in the actual deliberations of the Commission over these void votes.

68. On the alleged breach of Section 92(2) of the Act, i.e., that the Petitioner's representatives were given unsigned or illegible Forms 18B (Polling Station Record of Results forms) for some of the polling stations, the 1st Respondent counters this assertion and submits that it had legible result sheets that were used in determining the results herein.

69. He argues that if the Representatives were indeed given the forms in the state as the Petitioner alleges, they could have easily filed a complaint using Form 16A at the polling station. He further submits that, in any event, the alleged illegible and unsigned result sheets cannot be said to have affected the results of the election.

The 2nd Respondent's Arguments and Submissions

70. The 2nd Respondent's submissions and arguments are, in most respects, similar and take almost the same position as the one advanced by the 1st Respondent on the issues raised by the Petitioner.

71. On the issue of the publication of the results on 30th September 2025 and the Corrigendum on 2nd October 2025, the 2nd Respondent submits that the general powers and duties of the 1st Respondent under the electoral laws allow for corrections in the declaration and publication of election results in order to achieve a free and fair election. Otherwise, there could be an improper election of a losing candidate if a correction, as contained in the Corrigendum, was not made.

72. He argues that Section 8(1)(n) of the Electoral Commission Act, along with the broad functions and powers conferred on it by the Commission, gives the 1st Respondent the power and authority to make such a correction.

73. Counsel for the 2nd Respondent further argues that Section 98 of the Act, which provides for the publication of election results, does not delineate the powers and functions of the 1st Respondent, as it only specifies a duty of publication of national results at the end of the voting process. He avers that Section 98 of the Act does not purport to do away with the powers and functions entrusted to the 1st Respondent.

74. In this respect, he submits that the mere existence of Section 98 of the Act does not mean that the 1st Respondent must stop taking measures and doing things that are necessary for conducting free and fair elections. He argues that this duty is a continuing duty and cannot be suspended without running the risk of conducting an illegal or improper election.

75. In support of this proposition, Counsel cites the case of The State v. Malawi Electoral Commission ex parte Friday Jumbe et al. [supra] in which the court observed as follows:

> *"... There can be no clearer indication of the latitude given to the Respondent than the words in Section 8 (1)(m) of the Electoral Commission Act, that is, "to take measures and to do such other things as are necessary for conducting free and fair elections." The only limitation that I find is that S 76(2)(d) of the Constitution requires that whatever the Respondent does, "it must ensure compliance with the provisions of this Constitution and any Act of Parliament." As long as the measures and actions are necessary for conducting free and fair elections and they do not run afoul of S76 of the Constitution, such measures and actions would, in my considered view, be within the powers of the Respondent."*

76. Counsel argues that Section 98 of the Act does not prohibit the correction of errors in the publication of national results, and that the maxim *"what is not forbidden is allowed"* holds true in the circumstances in view of Section 8(1)(n) of the Electoral Commission Act, which he asserts allows the 1st Respondent to do all things necessary to ensure free and fair elections.

77. He therefore urges this Court that in interpreting Section 98 of the Act and Section 8 of the Electoral Commission Act, it should adopt the purposive approach to statutory interpretation and give effect to the express intention of the legislature, gathered from the language used and the apparent policy of the enactment under consideration, and avoid the absurdity that may result in a person who has not been elected by the electorate being declared the winner of the election.

78. In support of this, he has cited the cases of National Insurance Company v. Mzimu and others [2002 -2003]MLR 178; Gani v. Chande MSCA Civil Appeal No. 6 of 2003; Adler v. George [1964] 2 QB 7 and Sokalankhwazi v. SUCOMA [2008] MLR 348 among others.

79. Counsel further submits that the law does not provide for consequences for not publishing the general elections within the stipulated period, except for the criminal offence under Section 115 (g) of the Act, which states that a person who, without justification, neglects to fulfil obligations imposed on him or her under the Act commits an offence.

80. He argues that the failure to publish the results within the stipulated fourteen days cannot, therefore, disenfranchise the electorate that voted and cannot upstage a proper winner of an election.

81. He submits that, according to Section 95(6)(b) of the Act, elections are won on the basis of the number of valid votes cast and not on the basis of the election results published; and that the non-publication of results does not vitiate valid votes cast or the validity of the election.

82. He similarly asserts that the publication of the results through the corrigendum published by the 1st Respondent on 2nd October 2025 cannot vitiate the validity of the election of the 2nd Respondent as a member of Parliament for Nsanje South Constituency.

83. To support his argument that the publication of results is not the basis for winning elections, the Counsel refers to the results of a rerun, which he claims have no legal requirement to be published. Yet, the winners in these elections are recognised as such only based on the number of votes determined in the election.

84. He further submits that, under Section 99 of the Act, the 1st Respondent has the power to correct an irregularity and its effects upon a complaint submitted in writing alleging any irregularity at any stage of the election. He, therefore, argues that the use of the words "at any stage" means the 1st Respondent can take corrective measures for an irregularity even after the publication of the results.

85. On the issue of the Petitioners' representatives not being present during the examination of void votes by the 1st Respondent under Section 96 of the Act, the 2nd Respondent argues that the duty under this provision lies squarely with the 1st Respondent.

86. He further argues that Section 95(4) of the Act, which provides for the entitlement of representatives of political parties or candidates to observe the determination of

the national result, does not include the observation of the determination of complaints and the examination of void votes.

87. He submits that had Parliament intended to include candidates' representatives in the determination of complaints and the examination of void votes, it could have expressly done so in Section 96 of the Act.

88. He further submits that the absence of a candidate's representatives in the electoral process is not fatal; therefore, the absence of the Petitioners' representatives at the examination of the void votes by the 1st Respondent is not fatal to the election of the 2nd Respondent as a member of Parliament for Nsanje South. In support of this assertion, Counsel has cited the case of Mutharika and Another v Chilima and Another [supra] in which the Supreme Court observed that whereas the Act acknowledges the role of political party representatives throughout the electoral process, their presence is not mandatory, and that their absence does not affect the validity of the polls.

89. On the issue of unsigned and/ or illegible result sheets given to the Petitioner's representatives, Counsel submits that the Polling Station Record of Results in the custody of the 1st Respondent which are the official records, must prevail over the copies in the custody of the Petitioner and his representatives.

90. He asserts that under Section 95(1) of the Act, the 1st Respondent is mandated to use records received through the official system for the determination of election results, and that these records are transmitted under conditions of absolute security against loss, tampering, or interference.

91. He has therefore urged this Court to verify the accuracy and credibility of the parliamentary results for Nsanje South Constituency.

Main Legal Issues for Determination

92. The main legal issues for the determination of this Court are as follows:

a. Whether there was a violation of the Act when the 1st Respondent proceeded with the examination of void votes and the resultant correction or affirmation of the said votes in the absence of the Petitioner's representatives;

b. Whether the 1st Respondent, having made the declaration and publication of the Parliamentary Elections results for Nsanje South Constituency on the 30th September 2025, had the legal authority and/or competency to correct the declaration and the publication of the election results through the Corrigendum it issued on the 2nd October 2025; and

c. Whether the copies of the Polling Station Record of Results that were given to the Petitioner's representatives, which the Petitioner alleges to have been either unsigned or illegible, amount to irregularities that would have affected the result of the Parliamentary Election for Nsanje South Constituency.

Other issues

93. Apart from these three main legal issues, the parties also raised other ancillary issues. These are regarding the burden of proof applicable in election matters, irregularities pertaining to the 1st Respondent's sworn statements of facts as sworn by its Chairperson, and the admissibility of some evidence that is before this Court.

94. These issues will be addressed as I look into the analysis of the relevant law and the determination of the main issues as highlighted.

Analysis of the Applicable Law and Determination of Issues

Burden of Proof

95. The Supreme Court in Mutharika and Another v. Chilima and Another [supra], in confirming the position by the court in Chilima and Another v. Mutharika and Another [supra], devoted considerable time analysing the subject matter of the burden of proof applicable in election matters, as had been addressed in other decided cases in this jurisdiction as well as those of other jurisdictions.

96. The position on this matter, as confirmed by the Supreme Court in the case of Mutharika and Another v. Chilima and Another [supra], is that a petitioner in an election matter shoulders the legal burden of proof on all the issues that he or she alleges. The standard of proof that is placed on the Petitioner is one of *prima facie*. Once this burden is discharged, the burden shifts to the respondent, and the same must be discharged by the 1st Respondent as a duty bearer on a balance of probabilities.

97. Counsel for the 1st Respondent has taken issue with the position taken by the Supreme Court on the level of standard of proof that the petitioner must shoulder in election matters. He argues that the court in Mutharika and Another v. Chilima and Another [supra] having quoted several authorities, did not provide reasons for departing from the established standard of a balance of probabilities in civil matters to introduce one of *prima facie*.

98. He submits that it cannot be the basis that simply because the 1st Respondent ran an election, it must bear the burden to refute allegations that may not even be within its control.

99. This Court observes that while Counsel may have his own views on this subject matter that may be contrary to the position taken by the Supreme Court in Mutharika and Another v. Chilima and Another [supra], on the principle of *stare decisis*, in our jurisdiction this Court is bound by the legal pronouncements of the apex court.

100. The burden of proof applicable in the present matter and the interplay between that which is shouldered by the Petitioner and that placed on the 1st Respondent is therefore as pronounced by the Supreme Court in Mutharika and Another v. Chilima and Another [supra].

Whether there was a violation of the Act when the 1st Respondent proceeded with the examination of void votes and the resultant correction or affirmation of the void votes in the absence of the Petitioner's representatives.

101. Sections 95 and 96 of the Act are pertinent in the determination of this issue. Section 95 of the Act provides as follows:

> *(1) The Commission shall determine and publish the national result of the general election based on the records delivered to it from the district tally centre and polling stations.*
>
> *(2) The determination of the national result of a general election shall begin immediately after the Commission has received records from all districts and shall, subject only to subsection (3) continue uninterrupted until concluded.*
>
> *(3) If a record from any district or other element necessary for the continuation and conclusion of the determination of the national result of the*

election is missing, the Chairperson of the Commission shall take necessary steps to rectify the situation and may, in such case, suspend the determination of the results for a period not exceeding seventy-two hours.

(4) Representatives of political parties and representatives of candidates designated in writing to the Commission shall be entitled to observe the determination of the national result of the election.

(5) The Commission may prescribe the number of representatives of political parties and representatives of candidates to observe the determination of the national result of the election.

(6) Subject to this Act, in any election.

(a) The candidate for election to the office of President who obtains the majority of more than fifty per cent of the valid votes cast at the poll shall, in accordance with the Constitution, be declared by the Commission to have been duly elected; and

(b) The candidate for election as a member of the National Assembly or as a councillor, who obtains the greatest number of valid votes cast at the poll, shall be declared by the Commission to have been duly elected.

102. Section 96 of the Act on the other hand provides that:

"(1) At the beginning of the determination of the national result of a general election, the Commission shall take a decision on any matter that 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 and district tally centre.

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

103. It is very clear from these two provisions that the process of determining the national result of a general election must begin immediately after the Commission has received records from all districts, and subject only to Section 95 (3) of the Act. The same continues uninterrupted until concluded. A determination of the national result is therefore a process comprising a number of activities and not just one event that happens at a specific point in time.

104. It must be noted that there are no intervening activities stipulated by the law between receipt of the records from all districts by the Commission and the commencement of the determination of the national result.

105. However, Section 96 of the Act has specifically provided for the activities that must be carried out by the 1st Respondent at the beginning of this process of determining the national result.

106. One of those activities is the examination of the votes that have been classified as void at the polling tally centre. The 1st Respondent is mandated to decide whether to affirm or correct the determination classifying a vote as void.

107. It is therefore clear from the reading of these two provisions (Sections 95 and 96 of the Act that the examination and reclassification of void votes, where necessary, is part and parcel of the process of determining the national result. In this respect, as per Section 95 (4) of the Act, representatives of political parties and

representatives of candidates that have been designated in writing to the Commission are entitled to observe the determination of the national result of the election, which, in the view of this Court, includes the examination and reclassification of the void votes.

108. Section 95 (5) of the Act gives the 1st Respondent the power to prescribe the number of representatives of political parties and representatives of candidates that can observe the determination of the national result. The only limitation on a designated representative's ability to exercise his right, as stipulated in Section 95 (4) is when the 1st Respondent has prescribed a number that does not accommodate all the designated representatives.

109. The role of the representatives of political parties and candidates in the determination of the national result is to observe the process and not to participate in the decision-making regarding the void votes. The decision of whether to affirm or correct the classification of void votes is the exclusive responsibility of the 1st Respondent.

110. This role contrasts with the role representatives play at the polling station under Sections 67 and 68 of the Act, where their role is to monitor the voting unlike at the national tally centre, where the representatives are merely there to observe the process.

111. At the polling station where the representatives are monitoring the voting, the detailed specific rights and duties that they are entrusted with are provided in great detail in Section 68 of the Act. These duties do not extend to when the determination of the national result is taking place at the National Tally Centre.

112. There is a distinction between having representatives at polling stations or district tally centres, who are governed by Sections 67 and 68 of the Act, and having representatives at the National Tally Centre, who are governed by Section 95(4) of the Act.

113. Therefore the argument by Counsel for the 1st Respondent that in terms of Section 67 of the Act the duties of party or candidate representatives are restricted to the polling station and no other place does not hold as the guiding provision for their role in the determination of the national result is Section 95(4) of the Act and not Section 67 of the Act on which he based his argument.

114. This Court also observes that the criteria for classifying a vote as void are set in Section 87 of the Act which provides the definition of a void vote. Each vote cast must, therefore, be assessed against this criteria before it is classified as either valid or void.

115. This assessment is first done at polling tally centres, where determination to classify particular votes as void is done. At the polling tally centre this determination is made in full view of the political parties and representatives of candidates.

116. In the examination of the void votes by the 1st Respondent, the same criteria must be used to assess each individual void vote against the same criteria used at the polling tally centre. Even at this level each vote must be assessed against the criteria as set in Section 87 of the Act.

117. This Court does not see any justification why the classification of a vote as void at the polling tally centre should be done in the presence of the representatives

among other stakeholders, but the reclassification of the void vote to a valid one should not be, when Section 95 (4) of the Act clearly provides otherwise.

118. More especially that the exercise of examining the void votes at the national tally centre may have the effect of changing the outcome of the election as determined at the lower-level structures for determining election results.

119. This Court does not also agree with the Respondents' argument that if the Legislature intended that the examination of the void votes should be done in their presence, the provision permitting them to observe the exercise would have been included within Section 96 of the Act itself and not in Section 95 of the Act. It is the view of this Court that Section 96 must not be read in isolation. The same should be read together with Section 95 of the Act.

120. This Court further observes that issues of practicality pertaining to allowing representatives of political parties and representatives of candidates to exercise their statutory right under Section 95(4) of the Act have, to a great extent, have been addressed through Section 96(2) of the Act, which requires the 1st Respondent to only examine void votes when such votes may have an effect of changing the outcome of the election; and through Section 94(5) which gives the 1st Respondent the power to prescribe the number of representatives that can observe the determination of the national result.

121. It is therefore the view of this Court that if the Petitioner had complied with Section 95(4) of the Act in that he had representatives that had been designated in writing to the Commission for the National tally Centre, his representatives had the right to observe the determination of the national result at the national tally centre, including the examination of the void votes.

122. In his sworn statement of facts, the Petitioner exhibited Forms 14A (Submission of Political Party/ Independent Candidate Representatives) marked "RMJA 3A", "RMJA 3B", "RMJA 3C", "RMJA 3D" and "RMJA 3E" designating individuals as his representatives for various locations. On RJM 3D the Petitioner designated two individuals as his representatives for "tally centre" but he did not state the specific tally centre in respect of these individuals.

123. In this respect this Court finds that the Petiotioner did not have any representatives designated for the national tally centre.

124. This notwithstanding, this Court's view is that in fulfilling its mandate under Section 96(1) of the Act, the 1st Respondent owes a duty to all the stakeholders that are likely to be affected by the examination of void votes, as well as any interested parties in the election, to notify them of the intended examination of void votes for the affected constituencies prior to carrying out the exercise. This is one of the principles of natural justice which the 1st Respondent ought to apply whenever exercising its quasi-judicial functions such as the one in Section 96(1) of the Act - See Mutharika and Another v Chilima and Another [supra]

125. In this case the stakeholders affected include the electorate, the people who actually cast their votes in the affected constituencies, the contestants, their sponsors according to the 1st Respondent's record and the public at large.

126. The court in Namasasu v Msungama and The Electoral Commission, Civil Appeal Cause No. 8 of 2016 made MSCA 3 of 2005, the following observation in respect of an electoral petition which this Court is of the view that the sentiments expressed in this case equally apply to the process of examination of void votes by the 1st Respondent:

"... It is our view that all this would have been avoided had the second respondent informed all interested parties; the other contestants, their sponsors, according to its record, and the public generally of the petition. While we agree with our brother judge in the case of Loveness Gondwe and Malawi Electoral Commission v Caherine Gotani Nyahara that section 100 of the PPEA does not require that the candidates, the front runner in elections should be consulted; it is trite that other contestants be made aware of the challenge to the election and allowed to be present should they wish. This was clear from the text of the petition, it also reflects the spirit of sections 73 and 89 on the rights of representatives, their political parties and, indeed any voter who may have doubts or complaints about the voting process"

127. However, much as the representatives have the right to observe the determination of the national result as stated in this judgement, including the examination of the void votes, subject, of course, to the provisions of Section 95(5) of the Act, their absence per se while an irregularity is not fatal to the results of the election. It does not have the effect of invalidating the national result of an election as determined by the 1st Respondent, because the decision to correct or affirm a vote classified as void at the polling tally centre is exclusively for the 1st Respondent. Their presence is merely for the integrity of the election processes.

128. It is therefore the finding of this Court that the absence of representatives during the examination of the void votes by the 1st Respondent in accordance with Section 96(1) of the Act for Nsanje South Constituency was an irregularity. However, the same could not per se have affected the validity of the results of the election for the said constituency.

Whether the 1st Respondent, having made the declaration and publication of the Parliamentary Elections results for Nsanje South Constituency on 30th September 2025, had the legal authority and/or competency to correct the declaration and the publication of the election results through the Corrigendum it issued and published on 2nd October 2025.

129. The circumstances surrounding the issuance and publication of the Corrigendum by the 1st Respondent are not so much in dispute. The parties' point of departure is its legality in the scheme of elections as provided under the various applicable electoral laws.

130. The 1st Respondent's mandate regarding the management of general elections is a constitutional one as it derives the same from the Constitution of the Republic of Malawi. See Section 75 of the Constitution.

131. Section 76 (1) of the Constitution mandates the 1st Respondent to exercise such functions in relation to elections as are conferred on it by the Constitution or by an Act of Parliament.

132. Section 76 (2) of the Constitution provides for the following as the duties and functions of the 1st Respondent:

> *(a) to determine constituency boundaries impartially on the basis of ensuring that constituencies contain approximately equal numbers of voters eligible to register, subject only to considerations of*
>
> *(i) population density;*
>
> *(ii) ease of communication; and*
>
> *(iii) geographical features and existing administrative areas;*

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

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

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

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

133. Additional functions and powers are conferred on the 1st Respondent under Section 8 of the Malawi Electoral Commission Act, which provides that *"in addition to the broad functions and powers conferred on the Commission by the Constitution and, subject to the Constitution, the Commission shall exercise general direction and supervision over the conduct of every election and, without prejudice to the generality of such functions and powers, it shall have the following further functions—*

a. *to determine the number of constituencies or wards for the purposes of elections;*

b. *to undertake the demarcation of boundaries of constituencies and wards;*

c. *any ward created in accordance with section 8(1)(c) repealed by this Act shall continue to be in force until re-demarcated in accordance with this section; provided that the Commission shall, when undertaking the demarcation of wards, ensure that ward boundaries do not cross into local authority boundaries.*

d. to organise and direct the registration of voters;

e. to devise and establish voters' registers and ballot papers;

f. to print, distribute and take charge of ballot papers and voters registers;

g. to approve and procure ballot boxes;

h. to establish and operate polling stations;

i. to establish and devise, in consultation with political parties, other means of voting, voting materials, and registration of voter materials for the purpose of improving the efficiency of electoral processes, including the registration of voters, voting, counting of votes, and transmission of results;

j. to establish security conditions necessary for the conduct of every election in accordance with any written law governing elections;

k. to promote public awareness of electoral matters through the media and other appropriate and effective means and to conduct civic and voter education on such matters;

l. to promote and conduct research into electoral matters and into any matter pertaining to its functions and to publish the results of such research;

m. to perform the functions conferred upon it by or under any written law; and

n. to take measures and to do such other things as are necessary for conducting free and fair elections."

134. Section 95(1) of the Act deals with the issues of declaration and publication of the national result. It specifically provides that the Commission shall determine

and publish the national result of a general election based on the records delivered to it from the district tally centres and polling stations. However, subsequent to this provision, the Act deals with these two activities in separate provisions as two distinct and separate processes in the election process.

135. While Sections 95(2) to 97 of the Act deal with the process and the manner in which the determination of the national result will be carried out, Section 98 of the Act deals with the publication and broadcasting of the results. It specifically provides for "when" and "how" the publication and broadcasting of the national result must be done.

136. Specific to parliamentary elections, Section 98 (1) (b) of the Act provides that *"The Commission shall publish in the Gazzette and in at least one issue of a newspaper in general circulation and shall, by radio and television, broadcast results of parliamentary elections within fourteen days from the last polling day."*

137. It is clear from these provisions that the publication and broadcasting of the national result must take place after the determination of the national result.

138. In this respect Section 97 of the Act provides for the final activities that must happen in the process of determining the national result before the publication and broadcasting of the results in Section 98 of the Act takes place.

139. In accordance with Section 97 of the Act, as the final activities in the determination of the national result, the 1st Respondent must *"summarise its determination of the national result in a written record indicating (a) the national result of the election as determined; and the complaints and responses thereto and the decisions taken on them,"*

140. The Chairperson of the 1st Respondent is required to seal the national result of the election by signing a copy of the summary, after which every political party and independent candidate is entitled to receive a copy. Form 26B which is titled Final Results For Parliamentary Election, is the relevant prescribed form under Regulations for this purpose in respect of Parliamentary elections.

141. It is after this process that the publication of the national result in the Gazzette and newspapers, and the broadcasting on radio and television, must take place. It is therefore on the basis of this signed and sealed Form 26B that the publication and broadcasting of the results are made.

142. Any written speech to be used in the publication and broadcasting of the results must therefore be based on the contents of this Form 26B as its source of information.

143. In this respect, the prescribed time for publishing and broadcasting the parliamentary results, as per the provisions of Section 98(1)(b) of the Act, is fourteen days from the last polling day. This Court observes that the wording of Section 98(1)(b) of the Act is very clear and unambiguous, and has been couched in mandatory terms. The intention of the Legislature comes out clearly from the literal meaning of the wording of this provision.

144. This Court is of the view that even reading the provision in the context of the Act as a whole and taking into account the entire election scheme as provided for in the applicable electoral laws, the intention of the legislature comes out clearly. It is clear that the legislature intended that the publication and broadcasting of the national result should be done no later than fourteen days from the last polling day. There is no power for enlargement or extension granted to any person in this regard.

145. This Court does not, therefore, find any legal basis to depart from the position taken by the Court in the case of Ex Parte Friday Jumbe [supra].

146. However, Section 8 (1)(n) Malawi Electoral Commission Act confers general powers and authority on the 1st Respondent to take measures and do such other things as are necessary for conducting free and fair elections. This court observes that the wording of this provision is indeed very broad in scope.

147. In this respect the question that must be addressed is whether the legislature intended to confer such very wide powers on the 1st Respondent as argued by the Respondents in this petition when it enacted Section 8(1)(n) of the Electoral Commission Act.

148. Specific to the issue before this Court, the question is whether Section 8(1)(n) of the Act gives the 1st Respondent the power or authority to correct the national results of an election through a Corrigendum after the declaration and publication of the results; and if so whether such a correction can be done after the expiry of fourteen days prescribed in Section 98 of the Act.

149. The court in Ex parte Friday Jumbe [supra] had an opportunity to consider the extent of the powers conferred on the 1st Respondent under Section 8(1)(m) of the Electoral Commission Act applicable the, which provision is now found in Section 8(1)(n) of the current Electoral Commission Act, when it had to determine whether the 1st Respondent was entitled under the law to conduct a physical audit of election results before announcing them.

150. Its view was that the only limitation to the powers granted to the 1st Respondent under this provision is that whatever the 1st Respondent does under this provision, it must "ensure compliance with the provisions of the Constitution and any Act of Parliament; and that as long as the measures and things done are necessary.

151. The court in Chilima and Another v Mutharika and Another [supra] made the following observations at paragraph 1116 of its judgement in respect of the wide delegation powers granted to the Commission under Section 9 in the repealed Electoral Commission Act which provided that *"The Commission may delegate to any of its committees, the Chief Elections Officer, or other employees of the Commission all or any of its powers and functions":*

> *"When taken to its extreme, Section 9 of the ECA provides that the Commission may delegate to the Chief Elections Officer all or any of its powers and functions of the Commissioners. It could also delegate all or any of its powers and functions to any other employee of the commission. In such an extreme scenario, the overly wide discretion as envisaged in Section 9 of the ECA would have the effect of allowing the Chief Elections Officer or any other employee of the Commission, when so delegated, to render the role of the Commissioners under the ECA ineffectual. Worse still, such delegation would amount to a blatant abdication and abrogation of functions and powers that are specifically vested in Commissioners under the Constitution. Delegation as envisaged in Section 9 is therefore unreasonable, absurd, and unconstitutional to that extent."*

152. It is the view of this Court this observation also holds true to the wide powers granted to the 1st Respondent under Section 8(1) (n) of the Act. This Court observes that when taken to the extreme, Section 8(1) (n) of the Malawi Electoral Commission Act could lead to absurdity as it could have the effect of conferring powers and authority on the 1st Respondent which powers and authority were never intended by the legislature. It would mean that the 1st Respondent can take any measure or action which in its opinion it deems necessary for conducting free and fair elections in disregard of other provisions within the electoral laws. This could not have been the intention of the legislature when it enacted this provision.

153. This Court, therefore, agrees with the observation made by the court in Ex Parte Friday Jumbe [supra] when it considered the latitude given to the 1st Respondent in Section 8 (1) (n) of the Malawi Electoral Commission Act.

154. It is the view of this Court that when taking any measure or action that, in the opinion of the 1st Respondent, deems necessary for conducting free and fair elections, it is incumbent upon the 1st Respondent to cross-check and assess whatever measure or action that it intends to take against the provisions of the Constitution and indeed any Act of Parliament on the subject matter issue that it intends to deal with.

155. It is incumbent upon the 1st Respondent exercising these general powers to review all relevant provisions in the applicable electoral laws to ensure that the measure or action intended to be taken under Section 8(1)(n) of the Electoral Commission Act does not run afoul of any provision of the Constitution or Act of Parliament.

156. This is the test that the intended measure or action must undergo when the 1st Respondent is relying on the general powers under Section 8(1)(n) of the Electoral Commission Act as the basis for taking a particular measure or action in the pursuit of free and fair elections.

157. The questions of whether there are provisions on the subject matter to be dealt with by the intended measure or action, and whether the reading of those provisions makes prescriptions that ought to be taken into account when taking the intended measure or action, must always be considered by the 1st Appellant.

158. Applying this test to the question that is before this Court in this matter, this Court observes that the issue of publication of parliamentary results is specifically provided for in the Act under Section 98. It specifically provides for "when" and "how" the publication of the results of general elections ought to be done.

159. Looking at the wording of this provision, it leaves no doubt that the same has been deliberately couched in mandatory terms so as to bring to finality the processes that fall within the mandate of the 1st Respondent in the life cycle of management of a general election.

160. The publication of results after the final activities in the process of determining national results as stipulated in Section 97 of the Act, however, is not the determination of national results itself.

161. Applying the same test to whether the 1st Respondent has the power to correct irregularities that arise in a general election as it did in the current matter, this Court observes that the Act expressly provides a complaints resolution scheme and

designates who shall determine or resolve complaints, correct irregularities, and address their effects on the election and at what point the complaints will have to be resolved.

162. The scheme's structure is such that the resolution of complaints, the correction of irregularities, and their relative effects are carried out at different levels of the scheme and at different times within the life cycle of an election.

163. This structure runs through the entire life cycle of an election, as well as after the conclusion of the election life cycle. The structure, among other things, runs through the polling stations, the tally centres established under Section 88 of the Act and the Commission. Post the declaration and publication of the national result, the High Court and the Supreme Court are involved, where necessary.

164. On its part, the 1st Respondent is specifically mandated under Sections 96 and 99 of the Act to resolve complaints and correct the irregularities and their effects.

165. Section 96(1) of the Act provides that:

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

166. In contrast, Section 99 of the Act provides that:

> *"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 the necessary action to correct the irregularity and its effects.*

167. Section 96 of the Act is specific regarding the time for resolution of the complaints and correction of any irregularity that is confirmed and its effects. Any resolution of complaints, confirmed irregularity and its effects, as well as the examination and correction of votes classified as void by the 1st Respondent must under this provision be done at the beginning of the determination of the national result and not after declaration and publication of the results.

168. However, the authority or power granted to the 1st Respondent in Section 99 of the Act is in respect of any complaint that has not been resolved satisfactorily at a lower level authority. It is the power to resolve any complaint alleging an irregularity that may have occurred at any stage of the election which complaint having been handled at the lower level authority has not been resolved satisfactorily at that level.

169. Sections 96 and 99 of the Act do not give power and authority to the 1st Respondent to correct an irregularity and the effects of any confirmed irregularity after declaration and publication of the national result.

170. There is in fact no specific provision in the Constitution, the Act or the Electoral Commission Act that gives the 1st Respondent power to make corrections to the declaration or publication of the results after the national result has been published.

171. It is the view of this Court that after the determination and publication of the national result, the 1st Respondent does not have the legal authority or competency to make any corrections to the published results. Any material error that surfaces after the declaration and publication of the national result must be escalated to the next level of the election complaints resolution mechanisms, which is the High Court.

172. While this Court agrees with the Respondents that the will of the people in a general election as demonstrated through the ballot paper must be upheld, and that any error or irregularity that stifles this must be corrected, this Court is of the view that the same must be done within the prescriptions of the applicable laws so as to preserve the integrity of the electoral process.

173. In this respect the 1st Respondent, as a public body, can only do that which it is mandated to do by the law and not what it thinks is reasonable to do in the circumstances.

174. As observed earlier in this judgement, there is no statutory provision under the electoral laws that gives the 1st Respondent the mandate to make any correction of a declaration or publication of national results, be it before or after the expiry of the fourteen days prescribed under Section 98(1)(b) of the Act. If there is any gap

in the law on this aspect, it does not lie in the hands of the 1st Respondent to fill that gap.

175. It is not unusual for corrections to be made to published official documents through the issuance of corrigenda as argued by the 1st Respondent. However, such corrections are made in accordance with specific statutory provisions; or to correct obvious typographic, clerical or administrative errors which do not affect the substance of the matter being corrected. They are usually not used to correct substantive issues that have legal or other serious ramifications on the subject matter.

176. This Court notes that the cases cited by Counsel for the 1st Respondent where corrigenda were used to effect corrections were either cases where there was an existing provision permitting correction of an earlier document or indeed where the corrections sought to be made were purely clerical or typographic errors that had no effect (be it actual or apparent) on the substance of the thing the corrigenda sought to correct.

177. The Respondents in the present petition by their arguments are in effect asking this Court to treat the error that is alleged to have occurred in the announcement of the results by the 1st Respondent on 30th September 2025 as one of a mere clerical or administrative error where one name is substituted for another and capable of being corrected through the issuance and publication of a corrigendum.

178. This Court is of the view that the error that the 1st Respondent alleges to have occurred in the publication of the results of the election, though on the face of it may seem as a mere clerical or administrative error capable of being rectified

through the publication of a corrigendum, the same actually goes to the very substance of an election.

179. It is the view of this Court that the alleged error and the action taken by the 1st Respondent with a view to correcting the said error have serious ramifications and cast serious doubts on the integrity of the election process for this Court to treat it as a mere clerical error that can be corrected by a corrigendum.

180. It is on this basis and the observations made earlier in this judgement that this Court makes a finding that the 1st Respondent had no legal authority or competence to issue the corrigendum as it did on 2nd October 2025 with the view to correcting what it alleges to have been an error in the declaration/ announcement and publication of the national result that was made on 30th September 2025.

181. Accordingly, the corrigendum as issued by the 1st Respondent on 2nd October 2025 to the extent that it sought to declare and publish the winner for the Parliamentary election in Nsanje South Constituency, and/ or to the extent that it sought to correct the error that is alleged to have been made in the results as declared and published on 30th September 2025 is therefore null and void.

182. Notwithstanding this finding, this Court agrees with both the 1st and 2nd Respondent that an election is never won on a technicality. The results of an election must reflect the will of the electorate as demonstrated through the votes cast at the poll. An election is therefore only won based on the number of votes cast by the electorate and the determination made by the 1st Respondent in accordance with the law.

183. Specifically, Section 95(6) (b) of the Act provides that the winner of a parliamentary election is the candidate who obtains the greatest number of valid votes cast at the poll. As such, any return that seeks to declare a candidate contrary to this formula is irregular and qualifies to be declared as an undue return.

184. The 1st Respondent has submitted that the results of the parliamentary election published on 30th September 2025 in which the Petitioner was declared as the one who won the election in Nsanje South were irregular due to an error in the speech from which the results were read indicating the name of the Petitioner instead of that of the 2nd Respondent as the winner.

185. In these circumstances, this Court must therefore look at the process of determination of the parliamentary election for Nsanje South Constituency by the 1st Respondent in order to ascertain who among the contestants obtained the greatest number of valid votes in the poll.

186. It must be observed that the scheme of general elections under our laws is such that it leaves a paper trail which provides an audit trail of events as they unfolded during the election. It is this paper trail that makes it easy for errors or irregularities to be tracked and followed through at the different levels of dispute resolution, including where the matter is before the High Court.

187. Section 88 (1) of the Act provides for the structure for determining results in a general election. It states that:

> *"For purposes of counting and determination of results in a general election, the Commission shall have polling tally*

centres, constituency tally centres, district tally centres, and a national tally centre."

It is through these tally centres that the process of determining the results of an election is carried out.

188. A reading of the various provisions on the subject matter of determining the results of elections under Part VII of the Act shows that the determination of the results of a general election commences at the polling tally centres as the lowest level in the structure.

189. The determination at the polling tally centre feeds into the determination of the results at the constituency tally centre, which in turn feeds into the determination at the district tally centres, which finally feeds into the determination of the national result at the national tally centre.

190. At each level of determination, there are prescribed forms under the Presidential, Parliamentary, and Local Government Election (Forms) Regulations Act 2025 ("the Regulations") that the various tally centres are mandated to use in documenting the determination and publication of the results at the respective tally centres.

191. It is these forms that constitute the paper trail of all the activities, including the determination of the results at each level of the structure for determining results.

192. At the polling tally centre, the presiding officer is, in accordance with Section 92 (1) (a) of the Act, obligated to cause to be prepared by the polling station

officers a record of the entire polling process at their respective polling stations, containing-

(i) the full particulars of the polling station officers, representatives of political parties, and representatives of independent candidates;

(ii) the total number of voters;

(iii) the total number of votes for or under each classification of votes;

(iv) the number of unused ballot papers;

(v) the number of unused ballot papers that have been the subject of complaints, if any;

(vi) the discrepancies, if any, between votes counted and the number of voters;

(vii) complaints registered and responses thereto, and the decision taken thereon by the polling station officers; and any other occurrence that the polling station officers consider to be important to record.

193. In addition to this record of the entire polling process, the polling station officers must also prepare a brief summary of the final result. In this respect, Form 17 – Record of Polling Process and Form 18B – Polling Station Record of Results for Parliamentary Election are used, respectively.

194. These forms must be duly signed by the relevant officials as provided for in Section 92 of the Act. Form 18B must be signed by the returning officer and each of the other polling station officers, and if any is present, by at least one representative of each political party or independent candidate; and a representative

is entitled to a copy of this duly signed summary of the final result of the poll at the polling station.

195. It is based on this duly signed summary of the final result that the presiding officer at the polling station must announce and declare the final result of the election at that particular polling station. The returning officer must then post a copy of this duly signed summary of the final result of the poll at the polling station [Section 92(5) of the Act].

196. In terms of Section 93 of the Act, it is on the basis of the documents prepared under Section 92 of the Act that the returning officer at the constituency tally centre is mandated to compile the result of the elections in the constituency and prepare the appropriate sheets in the prescribed form provided for the purpose by the Commission.

197. In this respect, the appropriate prescribed forms for use by the returning officers at the constituency tally centres are Form 19B - titled Constituency Record Results for Parliamentary Election by Polling Station, and Form 20B which is titled Constituency Summary of Results for Parliamentary Election. Forms 19B and 20B must be completed and signed in accordance with the provisions of Section 93 of the Act.

198. It is on the basis of Forms 19B and 20B that the returning officer at the constituency tally centre is mandated to publicly announce and declare the result in the constituency; and also post a copy of the duly signed summary of the result.

199. At the District tally centre, a similar exercise as the one at the constituency tally centre is done for the district, city, municipality, or town, as the case may be in accordance with Section 94 of the Act.

200. The compilation of the results at this level is done on the basis of Forms 19B and 20B which are prepared at the Constituency tally centre and dispatched to the District tally centre. These must be prepared on the appropriate sheets in the prescribed form provided for that purpose by the Commission and signed by the returning officer or an officer of the Commission duly authorised in that behalf.

201. The returning officer or an officer of the Commission duly authorised in that behalf is also mandated to publicly announce the results of the election in each constituency and in the entire district, city, municipality, or town in accordance with the record prepared under this section.

202. He must thereafter dispatch and deliver the record prepared at the District tally centre and all items received from all polling stations in the district, city, municipality or town concerned to the Chief Elections Officer. At this point the documents have reached the national tally centre.

203. It is after the receipt of these documents from all districts that the determination of the national result of a general election by the Commission begins under Section 95 of the Act and continues through to Section 97 of the Act.

204. In accordance with Section 95(1) of the Act, the determination of the national result by the 1st Respondent at the national tally centre must be based on the records delivered to it from the district tally centres and polling stations.

205. Therefore at this stage of the election process, it is evident that the outcome of the election is largely known as the results of the election have already been announced and published at the various polling station tally centres, constituency tally centres and the district tally centres. At this stage, these results can only change based on the outcome of the examination of votes classified as void by the Commission.

206. The Commission is mandated under Section 96 of the Act to examine votes classified as void and either affirm or correct the determination. This examination of void votes must take place at the beginning of the determination of the national election result. This examination of the void votes only takes place when such votes may have the effect of changing the outcome of the election.

207. Once the national result has been determined by the 1st Respondent in accordance with Section 95 as read with Section 96 of the Act, the Commission is obligated to summarise its determination in accordance with Section 97 of the Act.

208. Section 97 of the Act provides that:

The Commission shall summarise its determination of the national result of a general election in a written record indicating

(a)the national result of the election as determined;

(b)the complaints and responses thereto and the decisions taken on them, and the Chairperson of the Commission shall legibly seal the national result of the election by signing the summary, and every political party and independent candidate shall be entitled to receive a signed copy of the summary.

209. The Regulations provide Form 26B - Final Election Results for use for this purpose in respect of parliamentary elections.

210. The 1st Respondent filed a Sworn Statement of Facts and a Supplementary Sworn Statement of Facts in response to the Petition, both of which were sworn by the Honourable Justice Annabel Ntalimanja, Chairperson of the 1st Respondent. The Chairperson deponed on how the Commission proceeded with the determination of the national result for Nsanje South Constituency and the various documentation that was used in the determination.

211. Before this Court delves into the facts as deponed in the statements sworn by the 1st Respondent's Chairperson, it is important that the issues raised by Counsel for the Petitioner in respect of the Sworn Statement in reply to the petition be dealt with at this point in this judgement.

212. It is Counsel's submission that the Statement sworn by the Honourable Chairperson of the 1st Respondent contains materials that offend the rules of drafting for Sworn Statements. He avers that parts 7, 8 and 23 are the offending parts as they contain legal arguments or her opinion on matters of law.

213. He argues that since the Honourable Chairperson is appearing in this petition as a witness of fact, she cannot in her sworn statements include legal arguments or opinions as legal arguments are therefore reserved for Counsel appearing for the 1st Respondent.

214. In this respect, Counsel has cited Order 18 rule 6 of the Courts (High Court) (Civil Procedure) Rules and a number of decided cases on the subject matter, including Lilongwe Water Board et al. Ex Parte Malawi Law Society, Judicial Review Case No. 16 of 2017; Malawi College of Health Sciences Board of Governors v. Blantyre City Council, Revenue Case No. 59 of 2021; and Jeffrey and Others v. Prof. Mutharika and Others, MSCA Miscellaneous Civil Application No. 65 of 2023.

215. This Court, having gone through the contents of paragraphs 7, 8 and 23 of the Honourable Chairperson Sworn Statement of Facts, agrees with the submission by Counsel for the Petitioner. This Court, therefore, observes that the Honourable Chairperson Sworn Statement of Facts is irregular, as the contents of said paragraphs 7, 8 and 23 do not comply with the rules of practice and procedure, as they are not statements of factual issues but legal arguments and opinions of law.

216. Order 18 rule 6 of the Courts (High Court) (Civil Procedure) Rules is very clear on what should be contained in a sworn statement of fact. It provides that a sworn statement must only contain facts that the deponent is able to prove with their own knowledge. It is on this basis that the offending paragraphs in the Honourable Chairpenson's Sworn Statement of Facts, namely paragraphs 7, 8 and 23 are accordingly struck out.

217. I will now proceed to analyse the relevant parts of the Honourable Chairperson of the 1st Respondent's Sworn Statement of Facts in Response to the Petition having struck out the offending parts of the statement.

218. In paragraphs 9 to 22 of the Sworn Statement of Facts in Response to the Petition sworn by the 1st Respondent's Chairperson, she states as follows:

"Determination of Results

(9) I state that as Chairperson of the Commission, I presided over the determination of the results for all elections held during the 2025 General Election, including the parliamentary election held in Nsanje South Constituency.

(10) In its determination of the results of the said parliamentary election, the Commission received records of results from Constituency Tally Centres established in the constituencies. For each constituency, the Commission considered the following –

(1) Record of Polling Process - Form 17

(2) Polling Station Record of Results – Form 18B

(3) Constituency Record of Result by Polling Station – Form 19B

(4) Constituency Summary of Results for Parliamentary Election – Form 20B

11. I state that at the beginning of the determination of the results of an election the Commission has a duty to consider and make decisions on all matters that have been subject of complaints and examine votes classified as void to affirm or correct the said classification. The examination of void votes is only necessary in cases where votes classified as void may have the effect of changing the outcome of the election.

Examination of Void Votes

12. In accordance with section 96(1) and (2) of the Presidential, Parliamentary and Local Government Elections Act, the Commission determined that the number of void votes in the Constituency exceeded the margin between the candidate with the highest number of votes and the runner up. Consequently, the void votes had the potential to affect the outcome of the election in the Constituency. Therefore the Commission proceeded to examine the void votes as retrieved from the polling stations.

13. The examination of the void votes is an exclusive responsibility of the Commission, just as is the determination of matters that have been the subject of complaints or appeals from lower levels of authority.

14. The Commission recorded that at the time of the determination, the Commission retrieved 461 void votes and proceeded to examine the void votes as provided by the law.

15. The Commission reviewed void votes and the findings were as follows:

Number of void Votes received	*Numbers of Votes affirmed*	*Number of Void Votes corrected*
461	*317*	*144*

16. The Commission then allocated the corrected votes as follows:

Name of Candidate	*Affiliation*	*Votes recorded before*	*Corrected votes allocated*	*Final number of votes per candidate after*

		examination of void	*to candidate*	*correction of void votes*
McGregory Samuel ALUFANDIKA	*AFORD*	*972*	*7*	*979*
Vincent CHUNGA	*INDEPENDENT*	*5769*	*26*	*5795*
Bester Hassan CHUNGANO	*UTM*	*166*	*3*	*169*
Thomson KAMANGIRA	*DPP*	*7482*	*76*	*7558*
Ramuzani Juma MAHOMMED	*INDEPENDENT*	*7497*	*28*	*7525*
Annastasia MAKANANDULA	*PP*	*67*	*0*	*67*
Osman Hajat NYAKULEHA	*INDEPENDENT*	*99*	*1*	*100*
Edwin Thomu ORAH	*MCP*	*455*	*3*	*458*

17. A copy of the Results of Examination of Void Votes in Form 25 B is now produced, shown to me and exhibited as "AM 1".

18. Based on the results of the examination, the Commission resolved to declare Mr Thomson Kamangira, a candidate for the Democratic Progressive Party, who

attained the greatest number of votes as the winner in the parliamentary election in Nsanje South Constituency.

19. A copy of Final Result for Parliamentary Election for Nsanje South as signed and sealed is now produced, shown to me and exhibited as "AM2" and "AM3"

Announcement of Results

20. On 30th September 2025, the Commission announced the final results for the Parliamentary Elections held during the General Election.

21. I state that, in its announcement, the Commission inadvertently declared the Petitioner as the winner in Nsanje South Constituency. The error arose during preparation of the declaration speech. It is evident from page 3 of the said speech that Nsanje South Constituency was expressly listed among the constituencies where the Commission had undertaken an examination of void votes, and it was further indicated that the effect of this examination would be reflected in the final tally. It was, therefore, an error that the effect of the examination was not announced in the declaration speech.

22. This error was noted by the Commission and a public notice dated 2nd October 2025 was issued to communicate the corrected results. A copy of the Corrigendum to Parliamentary Election Results Announcement - Nsanje South Constituency is now produced, shown to me and exhibited as "AM 4"

219. In paragraphs 5 and 6 of the supplementary Sworn Statement the Charperson of the 1st Respondent deponed as follows:

5. I have observed that it is the drafting of the Corrigendum ("AM 4") that is creating the impression that the examination of void votes was done outside the statutory period or after the announcement was made. This is not the correct

impression, and the Corrigendum should have been drafted in a much better manner.

6. I state that the examination of void votes was not done after the announcement. It was done within the statutory period. I requested the Director of ICT to generate earliest result immediately after the Election Management System was updated with the final result following finalisation of the determination of the results. The Director has shared, me a copy of the Constituency Summary Results as generated at 1:08:56 AM. This would not have been possible if the examination of void votes was still pending. A copy of this computer-generated result is now produced, shown to me and exhibited as "JMA1".

These are the parts of sworn statements of facts for the 1st Respondent's Chairperson which are relevant to what I am about to say from this point in this judgement.

220. This Court observes that despite making reference to Form 17, Form 18B, Form 19B and Form 20B in the sworn statement as the basis on which the 1st Respondent made the determination of the national result for parliamentary election, none of these forms in respect of Nsanje South Constituency were attached to the sworn statement as exhibits except for copies of Form 18B in respect of the polling stations in which the Petitioner is alleging to have been given copies, which were either illegible or not signed by the presiding officers, and were marked as Exhibits "AM5" to "AM26".

221. The Form 20B - Constituency Summary Results for Paliamentary Election for Nsanje Constituency which is before this Court is "JMA1" a computer-generated Form 20B not the one that came from the constituency tally centre.

222. It is very surprising that the 1st Respondent, being faced with a legal challenge of the nature as it is in this Petition, decided not to bring to this Court Form 17, Form 19B, Form 20B and Form 20D – Notification of Effect of Number of Void Votes for Parliamentary Elections; which, together with Form 25B - Results of Examination of Void Votes for Parliamentary Elections which form the basis on which it made its determination of the final national result for Nsanje South Constituency; and from which it was able to summarise the final results for Nsanje South Constituency in accordance with Section 97 of the Act. It is the view of this Court that Forms 17, 19B, 20B and 20D together with Forms 25B and 26B are critical to the determination of the petition herein.

223. The copy of Form 20B - Constituency Summary of Results for Nsanje South which was generated from the Election Management System on 1st October 2025 at 1:08:56 AM and exhibited to the Supplementary Sworn Statement of the Honourable Chairperson of the Commission (marked "JMA1") is not of much help to this Court in this Petition.

224. This is for the reason that in accordance with Section 93 of the Act, Form 20B is supposed to be compiled at the Constituency tally centre by the returning officer at that centre and signed by the relevant officers as provided for under Section 93 (5) of the Act at the Constituency tally centre. Form 20B therefore provides the status of the poll before the examination of the void votes by the Commission which is done under Section 96.

225. The computer-generated Form 20B which is before this Court and exhibited as JMA1 is not signed, and the figures for valid votes contained in this document

have already included the figures for the examined void votes, which had been corrected by the Commission in exercise of its powers under Section 96 of the Act.

226. In addition to this, the document was generated from the computer on 1st October 2025 at 01:08:56 (this is after the time the 1st Respondent had already announced the results on the radio and television). It therefore does not support the assertion made in paragraph 6 of the Supplementary Sworn Statement of Facts which states that the determination of the national result for Nsanje South Constituency was done on 30th September 2025 prior to the declaration and announcement of the winner.

227. This Court therefore finds "JMA" to be of no evidential value to the issue of who amongst the contestants for Nsanje South Constituency obtained the greatest number of valid votes cast at the poll so as to be the rightful winner of the election. It is for these reasons that no weight can be placed on this document by this Court in the determination of this issue.

228. It must also be observed that in the scheme of the election as provided in the applicable electoral laws, the determination of results is not based on what is entered or generated in the Electoral Management System of the 1st Respondent. The determination of results is done based on the manual documents compiled and completed at the various levels of the structure set for determining the results which are the official documents for a general election.

229. It is the paper trail created in these levels of the structure for determining the results that forms the basis for the determination of the national result by the 1st Respondent and not the computer-generated documents.

230. It is through these Forms that the 1st Respondent would have been able to demonstrate and prove to this Court that the alleged error in the speech which was used to declare and publish the results was not due to any irregularity in these primary documents, but rather from the written speech itself after the determination of the national result.

231. This Court further observes that it is also the paper trail created throughout the election life cycle that is used to resolve complaints, address irregularities, and correct their effects on the election. The 1st Respondent as a duty bearer has the obligation to ensure that in any petition before a court it presents all the relevant documents dealing with the issue at hand. This is the main reason the 1st Respondent is, as a matter of statute, a party to every election petition.

232. In particular, to the issues before this Court in this petition, the paper trail created through the structure set for determining results, as provided for in Part VII of the Act, more particularly Forms 17, 19B, 20B and 20D in addition to Form 26B are pertinent in view of the nature of the issues raised in the petition.

233. This Court observes that the Form 26B which the 1st Respondent has tendered in these proceedings is not in itself the source of the information for the determination of the election for Nsanje South Constituency. It is a summary of the Final Result for the Parliamentary Election as compiled by the 1st Respondent based on Forms 17, 19B, 20B, 20D and 25B.

Anomalies in "AM1" - Form 25B - Results of the Examination of Void Votes

234. Furthermore, this Court observes that there are some anomalies in respect of Form 25B which has been exhibited as "AM1" in the Sworn Statement of the Honourable Chairperson of the 1st Respondent. This document contains the Results of the Examination of Void Votes for the Nsanje South Constituency which the 1st Respondent is said to have carried out in accordance with its powers under Section 96 of the Act.

235. The first anomaly observed by this Court is that this document, which was signed by the Chief Elections Officer, bears the date 4th October 2025, which is four days after the 1st Respondent broadcasted the parliamentary results on the radio and television, and 2 days after the publication of the Corrigendum, which sought to correct the error alleged to have been made by the 1st Respondent.

236. This date is also after the expiration of the fourteen-day period set for the publication of the parliamentary election results. No explanation has been provided to this Court for this.

237. One would have thought that this being a document that sought to record the results of the exercise that the 1st Respondent carried out in compliance with Section 96 (1) of the Act, which exercise is carried out at the beginning of the determination of the national result but before the publication of the results under Section 98 of the Act, the same would have been prepared soon after the examination of the void votes was completed, but before Form 26B which is signed and sealed by the Chairperson of the 1st Respondent as it summarises the final election results for the parliamentary election for a constituency. The same should have indeed been compiled before the publication and broadcasting of the national results.

238. Even if one were not to read too much into the date of 4th October 2025 appearing on the document, a comparison of Form 25B which is before this Court as "AM1", and the prescribed Form 25B as it appears in the Regulations reveals some material differences between the two.

239. The table that appears in the lower part of Form 25B below the statement *"The Commission having examined and having corrected the decision on the following number of void votes has allocated them as follows:"* as contained in "AM1" has two additional columns that are not in the prescribed Form 25B as it appears in the Regulations.

240. One of the additional columns has the heading *"votes recorded before analysis of void votes"* and below it are the words *"In Figures."* The second additional column has the heading *"Final Number of Votes per Candidate After Correction of Void Votes."* This column is divided into two further columns. One of these further columns has the heading *"In Figures,"* and the other column has the heading *"In Words"*

Lower Part of "AM1" exhibited in the Sworn Statement of the 1st Respondent's Chairperson appears as per this figure

Name of Candidate & Affiliate	Votes Registered Before Analysis of Void Votes	Corrected Votes Allocated to Candidate	Final Number of Votes per Candidate After Correction of Void Votes	
	In Figures	In Figures	In Figures	In Words

Total Number of Voters				

Signature of Chief Elections Officer …….. Date…….....

The lower part of the prescribed Form 25B as it appears in the Regulations.

Name of Candidate & Affiliate	*Number of Corrected Votes Allocated*	
	In Figures	*In Words*
Total Number of Void Votes Corrected		

Signature of Chief Elections Officer …… Date…….....

241. It must be noted that when a statute prescribes specific forms or documents for use, these documents are part of the statute. As such they cannot be altered by any person unless the same is done under a specific delegated authority of the legislature.

242. The use of an altered Form 25B ("AM1") by the 1st Respondent for purposes of capturing the results of the examination of void votes in respect of the election herein is an irregularity, and this Court cannot put any weight on the information contained in the said document for the determination of the issues in the present proceedings.

243. Also just to note that the two copies of Form 26B as signed and sealed by the 1st Respondent's Chairperson, also bear a wrong heading. They bear the heading "Final Constituency Summary of Results" a heading designated for Form 20B in the Regulations, instead of the heading "Final Election Results for Parliamentary Election."

244. All these anomalies, when taken together with the other observations made earlier in this judgement, compromise the 1st Respondent's case in proving the alleged error.

245. The Supreme Court of Appeal in Mutharika and Another V Chilima and Another [Supra] made the following observations regarding the role the 1st Respondent plays in court proceedings related to an electoral challenge:

> *"The scheme of the law is that the second appellant takes the position of a referee in an election and continues to play that role even in proceedings in court relating to an electoral challenge. In Section 100 of the Parliamentary and Presidential Elections Act, the second appellant is joined to the court proceedings to assist the court with material that will be used to establish whether there were irregularities or not, but not to take sides in the matter. In Section 114 of the Act, the second appellant only features as a quasi-judicial tribunal whose decision is appealed against. In that regard, it cannot be on the side of any party in a contested election".*

246. This Court observes that the 1st Respondent, in the present proceedings, by not bringing to this Court all the relevant materials, has not satisfactorily performed its role as required. There is no evidence before this Court to prove the alleged error

nor the fact that the error was made after the determination of the winner for Nsanje South Constituency had been made by the 1st Respondent.

247. Given the lack of evidence in these proceedings confirming that the alleged error, i.e. that the name of the winner as determined by the 1st Respondent was substituted with the name of someone who did not receive the most valid votes, this Court finds that the 1st Respondent has not substantiated and proved its assertions of the error which it alleges only appeared in the speech that was used by its Chairperson in the declaration of the winner for Nsanje South Constituency and the announcement of the results of the general election.

248. In the absence of the primary documents that form the basis for the determination of the national result in accordance with Section 95(1) of the Act, this Court makes a finding that there is no evidence before this Court which can be used by the Court to ascertain who amongst the contestants for parliamentary election for Nsanje South obtained the greatest number of valid votes cast at the poll. Accordingly, this Court cannot uphold the declaration made by the 1st Respondent on 30th September 2025 declaring the Petitioner as the winner of the election.

Alleged Irregularities in respect of Forms 18B

249. Having made the various determinations and findings contained in this judgement this far, it is the view of this Court that the issue of illegible or unsigned Forms 18B that are alleged to have been given to the Petitioner's representatives becomes academic and moot. Therefore, this Court will not address this issue.

250. This also negates the need for this Court to deal with the issue which Counsel for the Respondents raised in respect of the same on whether copies of the Form

18B which were exhibited in the Petitioner's Sworn Statement of Fact amount to hearsay evidence, the documents not having been tendered in these proceedings by the representatives who are alleged to have given these forms at the polling station tally centres.

Conclusion

251. This Court:

a. Having made the finding that the 1st Respondent had no legal authority or competency to correct the alleged error in the declaration and publication of the national result for the Parliamentary Election for Nsanje South Constituency made on 30th September 2025;

b. Also having declared the publication of the Corrigendum that the 1st Respondent published on 2nd October 2025 for purposes of correcting the said results a nullity; and that therefore there was an undue return of the 2nd Respondent to the office of Member of the National Assembly for Nsanje South Constituency; and

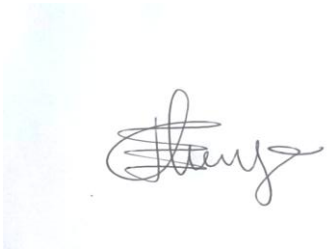
c. Having made a further finding that there is no evidence before this Court on which it can base its determination ascertaining who amongst the contestants for parliamentary election for Nsanje South Constituency obtained the greatest number of valid votes cast at the poll and therefore not upholding the 1st Respondent's declaration made on 30th September 2025 declaring the Petitioner as the winner of the election;

In accordance with Section 101 (3) (b) of the Act this Court hereby declares that the 2nd Respondent, Thomson Kamngira was not duly elected to the office of Member of the National Assembly for Nsanje South Constituency.

252. Accordingly, this Court directs the 1st Respondent to hold a fresh election for the parliamentary seat for Nsanje South Constituency in accordance with this Act.

253. ***Costs*** - On the issue of costs I order that costs should follow the event and be borne by the 1st Respondent.

Pronounced in open court this 22nd day of December 2025



Lady Justice Etness Chanza

Judge