



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
LILONGWE DISTRICT REGISTRY
ELECTION PETITION NO. 85 OF 2025

**IN THE MATTER OF THE PRESIDENTIAL, PARLIAMENTARY AND LOCAL
GOVERNMENT ACT**

-AND-

**IN THE MATTER OF THE 16TH SEPTEMBER 2025 PARLIAMENTARY ELECTIONS
FOR LILONGWE CITY KAMPHUNO CONSTITUENCY IN LILONGWE CITY**

-BETWEEN-

DR. CLEMENT MWALE PETITIONER

-AND-

KHADIJA LEAH CHUNGA 1ST RESPONDENT

MALAWI ELECTORAL COMMISSION 2ND RESPONDENT

*(Sections 100 of the Presidential, Parliamentary and Local Government Elections Act
and Order 19 rule 13 of the Courts (High Court) (Civil Procedure) Rules, 2017))*

CORAM : THE HONOURABLE JUSTICE F.A. MWALE

- : Kaduya, for the Petitioner
- : Ayuba James, Counsel for the 1st Respondent
- : Chapo, Counsel for the 2nd Respondent

: Tambose, Court Reporter
: Sikelo, Official Court Interpreter/Clerk

Mwale, J.

JUDGMENT

A Introduction

1. The electoral dispute leading to the Petition before me arises from the Presidential and Parliamentary Elections (“the Elections”) held on 16th September, 2025. The Petitioner was a candidate for election as Member of Parliament (National Assembly) for Lilongwe City Kamphuno Constituency (“the Constituency”) in the Parliamentary Elections was a candidate for the Democratic Progressive Party. The 1st Respondent, Khadija Lea Chunga, was also a parliamentary candidate for the same Constituency and was declared the winner by the 2nd Respondent, the Malawi Electoral Commission, a body duly mandated at law to conduct the said elections.
2. The Petitioner, unhappy with the election result, by this Petition seeks nullification of the election result and an order for fresh elections on the grounds of various irregularities surrounding alleged improper conduct by the 1st Respondent, Khadija Lea Chunga, and failure by the 2nd Respondent to resolve his complaint of the alleged improper conduct and the inappropriate handling of null and void votes.
3. The Petition is brought under section 100 of the Presidential, Parliamentary, and Local Government Elections Act, 2023, and the alleged irregularities complained about are particularized as follows:
 - 3.1 On the eve of the Election, on 15th September 2025, the 1st Respondent and another contestant for the Malawi Congress Party, Rubyna De Silva were distributing money to potential voters around the following areas/polling centres: -
 - (a) Kakule Polling Centre
 - (b) Chiwenga Polling Centre

- (c) Mchedwa Polling Centre
- (d) Ngowe Polling Centre
- (e) Kachere CBO Polling Centre

This, according to the Petitioner, undermined the integrity and fairness of the elections.

3.2 The 1st Respondent, personally and through her campaign team, continued campaigning after the closure of the campaign period on 15th September 2025.

3.3 The number of null and void votes was so substantial as to affect the outcome of the result, which required that the 2nd Respondent examine them to determine whether they were, in fact, null and void.

4. The Petitioner consequently contends that although he complained about the alleged irregularities before, during, and after polling day, the 2nd Respondent unlawfully proceeded to declare the 1st Respondent as the duly elected Member of Parliament for the Constituency.

5. The Petitioner therefore seeks the following reliefs:

5.1 Nullification of the declaration of the 1st Respondent, **Khadija Leah Chunga**, as the winner of the Parliamentary Election for the Constituency made by the 2nd Respondent, the **Malawi Electoral Commission**, on 30th September, 2025, for undue return and undue election.

5.2 An order that the 2nd Respondent, the **Malawi Electoral Commission**, conduct fresh Parliamentary Elections in Lilongwe City, Kamphuno Constituency.

5.3 Costs of this action.

6. The matter was tried based on the sworn statements of the parties on 4th November 2025, and the parties were directed to submit final submissions within 7 days. Unfortunately, most of these submissions were filed late, with the latest being submitted the day before this judgment was delivered.

7. The Petition is opposed by both the 1st and 2nd Respondents, whose respective positions are summarised below.

B The 1st Respondents Response and Evidence

8. The 1st Respondent denies the allegations of irregularity cited by the Petitioner and puts him to strict proof. Her in Response to the Petition denial is supported by her own and three other sworn statements of Hardwick Samalani, Jasten Flackson and Harold Kaipa. In particular, the evidence of Hardwick Samalani and Jasten Flackson, registered voters at Kakule polling centre, where they voted, and Harold Kaipa the chairperson of the 1st Respondent's campaign team, was that they were never approached by anyone with a cash incentive or otherwise to vote for the 1st Respondent, nor did they see the Sienta (the vehicle the 1st Respondent was allegedly seen it), nor did they hear from anyone in the area that any person was giving out money to influence voting.
9. Harold Kaipa's evidence was that, as the 1st Respondent's campaign manager, he was aware that she had no resources to finance any cash payments whatsoever. He was also with her on the polling day and escorted her to her house after voting and none of the alleged improper activities actually took place.
10. In her own sworn statement, the 1st Respondent denies having stood for election under any party as alleged by the Petitioner, since she was an independent candidate. She also denies the allegation that she was the woman sitting in the alleged vehicle and giving money to voters. She rationalises her denial with the statement that she is not the only woman who wears Muslim headgear and who has ever sat in the type of vehicle in question. The 1st Respondent claims she never went to or near any polling centre by car on the relevant day. On the contrary, she contends that she went by foot to vote at Chinsapo School with a select few people (including Harold Kaipa) and they all returned home together and stayed there with a firm resolve not to move around until after votes had been counted. The 1st Respondent further denies voting outside the campaign period as alleged.

11. With regard to the issue of the null and void votes, the 1st Respondent states that she is not responsible for null and void votes and is not aware of any law or rule that stipulates the maximum number of null and void votes that are acceptable in an election.
12. The 1st Respondent further contends that the Petition herein was filed out of time in violation of section 101(1) of the Presidential, Parliamentary and Local Government Elections Act as read with section 47 of the General Interpretation Act. To that extent, it is her claim that the Petition is irregular, inadmissible, and legally unsustainable and should therefore be dismissed.

C The 2nd Respondent's Response and Evidence

13. The 2nd Respondent also denies the claims in the Petition. The 2nd Respondent's evidence was presented through the sworn statement of its Director of Legal Services, Mr. David Matumika Banda. The main thrust of the 2nd Respondent's response is that, although it received the letter of complaint alleging irregularities related to handouts and campaigning outside the designated period and responded adequately by stating that these issues are criminal offences under the Presidential, Parliamentary, and Local Government Elections Act, 2023, and the Political Parties Act, 2018, which require specific legal procedures for resolution. The Applicant was referred to the appropriate law enforcement agency for investigation and further action. The letter detailing this response was exhibited as "DMB1". The 2nd Respondent consequently contends that its determination of the complaint was lawful and should be sustained by this Court on this appeal.
14. Although the Petitioner's letter of complaint only addressed the issue of irregularities cited above and nothing about the null and void votes, the 2nd Respondent has deponed nonetheless that it examined the null and void votes pursuant to Section 96(1) and (2) of the Presidential, Parliamentary and Local Government Elections Act, 2023 and found 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 2nd Respondent proceeded to examine the void votes as retrieved from polling stations in

compliance with Section 96(2) of the Presidential, Parliamentary and Local Government Elections Act, 2023.

15. The 2nd respondent in this respect, received 503 null and void votes. 346 were affirmed and 157 were corrected. The corrected votes were then distributed to all the candidates as follows:

Name of Candidate	Affiliation	Votes recorded before examination of void	Corrected votes allocated to candidate	Final number of votes per candidate after correction of void votes
		In figures	In figures	In figures
BANDAWE Clara Mwayiwawo	FP	262	3	265
CHAPONDA Bridget	ODYA ZAKE	264	3	267
CHIKAFA Chrissy	UTM	3211	18	3229
CHUNGA Khadija Leah	INDEPENDENT	6020	22	6042
DESILVA Rubyna	MCP	5809	62	5871
FADUWECK Abdus-salaam Adam	INDEPENDENT	1105	9	1114
HARAWA Monica Singini	PCP	125	5	130
MWALE Clement Chancy	DPP	5838	33	5871
TAMBALA Monica Noza	PDP	277	2	279

16. The said sworn statement also exhibited as “DBM2” the Results of Examination of Void Votes, and “DBM3” the Final Result for the Parliamentary Election for Lilongwe City Kamphuno.

D The Issues

17. Having analysed all the claims, responses, submissions, and evidence in the matter, the following issues arise for determination:
 - 17.1 Since this Court is seized with matters under the said section 100 of the Presidential, Parliamentary, and Local Government Elections Act, 2023, on appeal, did the 2nd Respondent fail to resolve the complaint as required by section 96 of the Presidential, Parliamentary and Local Government Elections Act?
 - 17.2 Can new matters that were not raised with the 2nd Respondent, the Malawi Electoral Commission at the initial complaint be entertained by the High Court on appeal under the said section 100 of the Act?
 - 17.3 Has the Petitioner, as the party alleging, provided sufficient evidence of the allegations made to the required standard to discharge the burden of proof?
 - 17.4 Is the video electronic evidence of the Petitioner admissible?
 - 17.5 Has the Petitioner properly tendered any evidence in this matter?

E Court’s Reasoned Determination

18. In dealing with the issues arising, I shall start with the last of the issues listed above, namely, has the Petitioner properly tendered any evidence to support his claim? Although not raised as a preliminary issue, counsel for the 2nd Respondent raised it during their submissions both at the hearing and in the final written submissions. This issue has all the characteristics of a preliminary matter, as it has the potential to resolve the dispute fully and must therefore be addressed at the outset to frame this determination.
19. Counsel for the 2nd Respondent has argued that the evidence of the Petitioner should be inadmissible as it was improperly filed against the rules of procedure. I have also noted several irregularities in the evidence of the Petitioner’s other witnesses that necessitate

deliberation as to whether under the circumstances, the Petitioner can be said to have filed any evidence to support his claim. The only evidence of the Petitioner himself, the evidence that supports the Petition, was not presented in a sworn statement as required by the Courts (High Court), (Civil Procedure Rules), 2017, but was attached to the Petition itself. Indeed, Paragraphs 3.3 and 3.4 of the Petition purport to tender the documents marked “CM1”, “CM2”, and “CM3” as exhibits. These are videos of alleged improper conduct, the Constituency Summary of Results Sheet, and the letter of complaint he sent to the 2nd Respondent, respectively.

20. Electoral petitions of the kind the Petitioner has filed are regulated by Order 19 rule 13 of the Courts (High Court) (Civil Procedure) Rules, 2017 which provides that:

An election matter shall commence in the manner specified under the Parliamentary and Presidential Elections Act, the Local Government Elections Act or, in any other event, by an application.

21. The relevant legislation, now styled as the Presidential, Parliamentary and Local Government Elections Act, 2023, provides that:

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

This provision proceeds on the premise that a petition is a pleading, not an ordinarily sworn document. Thus, the evidence relied on to prove the petition must be placed before the court by sworn statement(s). The Petitioner in the matter before me duly filed a Petition, and the only sworn statement accompanying it was a Sworn Statement Verifying the Petition and stating the reliefs sought as required by the provision. He did not file any sworn statement in support. In fact, both of his two witnesses also only filed Sworn Statements Verifying the Petition.

22. Further, Order 18 Rule 14 of the Courts (High Court), Civil Procedure Rules, 2017, clearly requires that all documents intended to be submitted as evidence be attached to the sworn statement when the evidence is presented through a sworn statement. It provides as follows:

“14.—(1) A copy of a document to be used in conjunction with a sworn statement shall be exhibited to the sworn statement.

(2) Copies of all documents exhibited to a sworn statement shall be served with the sworn statement.”

It is in view of this provision that counsel for the 2nd Respondent has argued that because the Petitioner’s exhibits have not been attached to any sworn statement, then they are not properly before the Court and therefore, no recourse should be had to them. An exhibit must be tendered by a witness. Where the witness has not executed a witness statement which will be adopted at trial, then in a trial such as this that proceeds on sworn statement evidence, the same must be tendered through his or her sworn statement and not a sworn statement verifying the petition. The purpose of a sworn statement verifying a Petition is to verify the Petition, it should not ordinarily contain evidence.

23. I have further noted other procedural irregularities with the Petitioner’s real evidence. Neither the documents exhibited to the Petition nor the electronic evidence (the video) have been ascertained as the exhibits referred to in the Petition by a commissioner for oaths, they have only been certified as ‘true copies of the original’. The requirement in the ordinary course of proper practice being that such exhibits must be ascertained as being the documents referred to in the sworn statement in addition to being certified true copies, both by a commissioner for oaths, to be properly tendered as evidence in any matter. This is trite law.

24. I must therefore concur with counsel for the 2nd Respondent that because all Petitioner’s evidence has been presented in the Petition, this raises a grave irregularity, the effect of which is that no evidence has been brought before the Court in these proceedings. I rule accordingly and shall have no recourse to the evidence of the Petitioner exhibited to the

Petition. As the claim is based largely on this evidence, then the claim would fail unless there is other evidence of sufficient weight for the reliefs sought and in compliance with the rules of evidence.

25. This leaves the two Sworn Statements Verifying the Petition sworn by the Petitioner's witnesses. The fact that they verify the Petition already means they are not the proper vehicles to adduce evidence. To compound matters, there are grave procedural irregularities in these sworn statements as well. To underscore the gravity of the irregularities, the starting point is an understanding of the difference between a sworn statement verifying a petition and a sworn statement in support of a petition. The Petition being a pleading, must be verified by its maker, the petitioner. The witnesses, who support the petition, must therefore in addition execute sworn statements in support. As alluded to earlier, it is these sworn statements in support that exhibit any documents they rely on. Clearly, this has not been done.

26. In addition, both the statements of the two witnesses in the matter herein, in addition to not being sworn statements in support of the Petition, contravene the general requirement for sworn statements in Order 18 rule 2 (7) of the Courts (High Court), Civil Procedure Rules, 2017, which requires that:

(4) The full name of the deponent and the date on which the sworn statement was sworn shall appear on the first visible page of the sworn statement.

All that appears on the first visible pages of both statements are the names; the date was omitted.

27. Further, in the statement of Malita Nkhoma, she states in paragraph 1 that she has exhibited a copy of her voter certificate marked "MN1" when in actual fact the document produced is a national ID card. The copy is of inferior quality and has not been certified as a true copy of the original.

28. Similar flaws appear in the sworn statement of Catherine Chimomo; she too, states in paragraph 1 that she has exhibited a copy of her voter certificate marked "CC1A" and her

Monitor ID marked “CC1B”. While “CC1A” is indeed what it purports to be, “CC1B” is her National ID and not an election monitoring ID. Again, neither of these documents are certified true copies of their originals. The sworn statements of the two witnesses, therefore contain inconsistencies and untruthfulness that contravene the statement of truth in addition to not being properly certified and exhibited.

29. I find that cumulatively these flaws or irregularities render the sworn statements fundamentally defective, and I rule that no recourse shall be had to them in my determination. I have considered the possibility of admitting the Order 2 rules 1 and 2 of the Courts (High Court), Civil Procedure Rules, 2017 which provide that:

- 1. The failure to comply with these Rules or a direction of the Court shall be an irregularity.*
- 2. Notwithstanding rule 1, an irregularity in a proceeding, or a document, or a step taken, or order made in a proceeding, shall not render a proceeding, document, step taken or order a nullity.*

However, a more specific rule exists in relation to sworn statements, namely Order 18 rule 19 provide that:

- 19. A sworn statement shall not be used in a proceeding without the permission of the Court if it has not been filed or it has been filed in a defective form.*

This means that the Court's discretion to admit defective sworn statements depends on permission first being sought from the Court to use them, and this was not done.

30. Considering how critical this issue of the Petitioner's evidence being brought properly before the Court is to the entire case, I am disappointed that Counsel for the Petitioner did not see fit to defend their position with regard to sworn statements either at the hearing when the issues were raised by counsels for the Respondents or in their final submissions. Having been made aware of the defects in the evidence, the Petitioner should have taken measures to remedy the same during the hearing, especially as the primary defect in this matter which offends the rule that evidence cannot be exhibited to pleadings, is so fundamental to proper practice that it cannot be cured by Order 1.

31. Therefore, I reiterate that a petition is a pleading which is a concise statement of the material facts and legal basis of a claim, verified by a statement of truth. Pleadings are not evidence in themselves, but they set out the parameters of the case and the issues to be decided at trial. The primary way factual evidence is presented is through witness statements or sworn statements. Documents and other items that a witness refers to in that statement are formally identified and marked as exhibits to that witness statement or sworn statement, and they remain separate from the statement itself. Effectively, therefore, none of the evidence submitted by other witnesses is admissible.
32. For all I have reasoned above, I find no evidence to support the Petition, warranting its dismissal, and I order accordingly.

F Alternative Ruling

33. In view of the importance of electoral disputes and the need for the parties to have substantive issues resolved, it is my considered opinion that even if the Petition had not been dismissed based on the finding that no evidence has been proffered, it still fails for several other reasons, which are discussed below.

i. Would the Petitioner have been entitled to the remedy sought?

34. The remedy that the Petitioner seeks, namely nullification of the elections is not tenable at law for this type of petition. Nullification is a remedy for petitions brought under Section 101 of the Presidential, Parliamentary, and Local Government Elections Act, 2023, and not petitions brought under section 100, as is the case in this matter. The remedy for a petition under section 100 is the voiding of the election. The Petitioner is therefore not entitled to the relief sought.

ii. Was there any irregularity in view of the conduct of the 1st Respondent?

35. Of all the Petitioner's evidence, only exhibit CM1 (the video), which allegedly contains images of the 1st Respondent engaged in improper conduct would have been inadmissible following the rules of evidence even if it had been brought properly before the Court in a

sworn statement. Electronic evidence, such as video evidence, is admissible only if its authenticity and provenance are proved as discussed below.

36. Electronic evidence of this nature is regulated by section 16 of the Electronic Transactions and Cyber Security Act (ETCSA) which provides as follows:

(1) An electronic message shall be admissible as evidence in court proceedings as provided for in this Act.

(2) In assessing the evidential weight of an electronic message, the court shall have regard to the following—

- (a) the reliability of the manner in which the electronic record was generated, displayed, stored or communicated;*
- (b) the reliability of the manner in which the integrity of the information was maintained;*
- (c) the manner in which the originator of the electronic message was identified; and*
- (d) any other facts that the court may consider relevant.*

37. Further section 2 of the ETCSA defines an ‘electronic record’ as”

means a record created, generated, sent, communicated, received and maintained by electronic means; and

‘electronic message’ as

any communication created, sent, received or stored by electronic communication means, such as computerized data exchange system, electronic mail system and instant messaging;

38. The video the Petitioner sought to tender was not necessarily described as an electronic message, it was an electronic video. There was no explanation as to how the Petitioner received this record so as to properly classify it. In the event that it was an electronic message, for evidence of this nature to be admissible under the ETCSA, the source and history of recordings must be clearly proved which in the present case, was not been done.

39. Even if the video was not an electronic message as defined under the Act, the common-law requirement of proof of provenance/history remains the same. A witness must have therefore explained the recording's source, identified its source and the person who recorded it, stated when/where it was made, and stated whether it is the original or a copy. These requirements were set out in the case of *R v Robson and Harris* (1972) 2 All ER 699 which was affirmed in the local case of *Hon Brown Mpinganjira v. Hon. Rev. Dr Dumbo Lemani and Another* [2000-2001] MLR 295). The same requirements were reaffirmed in the later decisions of *Dr Thomson Mpinganjira v. Republic MSCA Criminal Case No. 9 of 2021*, and *R v Dzimadzi (Criminal Review Case 4 of 2022) [2024] MWHC 33*). No witness was called to give any of the provenance evidence required, nor was the video tendered in court by a witness. Therefore, even if the video evidence was based on a properly attested sworn statement, it would not have been held inadmissible for the failure to comply with the evidential rules for electronic evidence.
40. Counsel for the Petitioner in his final written submissions, having cited section 16 of the ETCSA above, argued that the video contains people supporting the claim that the 1st Respondent was distributing money and since the purpose of the video was simply to show that this conduct happened and nothing else, it ought to be admissible. He also argued that clearly the images in the video were not AI generated. This is clearly a misunderstanding of the said section 16 and the case law surrounding electronic evidence cited above. It is also a complete misunderstanding of the nature in which the provenance of electronic evidence is verified. Counsel cannot give evidence from the bar to the effect that the images are not AI generated. This is in the province of technicalities that require an expert witness to verify.
41. Further, not only is the video evidence inadmissible for the reasons cited, it is also plainly hearsay evidence as none of the people in the video were called to give evidence, nor did they take oath, by executing sworn statements to have their evidence brought properly before the Court. It is trite law as confirmed by the Court in **Raphael Joseph Mhone v The Electoral Commission and Symon Vuwa Kaunda, Election Petition Number 11 of 2019**, that an election cannot be decided on hearsay sworn-statement evidence. The

evidence of the Petitioner is doomed at every front and cannot sustain any claim, being totally inadmissible.

iii. *Would the evidence have otherwise satisfied the burden of proof required to overturn election petitions?*

42. Even if the evidence of the Petitioner had been admissible, it does not satisfy the burden of proof required to sustain the reliefs sought. It is a settled position of law that the rules of evidence on the burden and standard of proof in civil cases apply in election cases. As was held by the Constitutional Court in the case of **Saulosi Chilima and another v Electoral Commission and His Excellency Prof. Peter Mutharika, Constitutional Reference No. 1 of 2020:-**

The common law concept of burden of proof (onus probandi) is a question of law which can be described as the duty which lies on one or the other party to establish a case upon a particular issue. The burden and standard of proof are formulated by the state of pleadings at the beginning of the trial and remain unchanged throughout the case. Electoral petitioners are special breed of claims which are governed by the CPR. Unfortunately, the entire CPR and the electoral law does not dispute who bears the legal burden of proof and the standard of proof thereof in a petition. The legal burden of proof rests upon the claimant or petitioner as the case might be, and ordinarily it does not shift throughout the trial, remaining exactly where the pleadings placed it, and never shift in any circumstances whatsoever. When all the evidence is in, and the party who bears the burden fails to discharge it, his or her claim thereby fails.”

43. Thus, the Petitioner bears the burden to prove every allegation of irregularity presented in the Petition. The Petitioner has failed to properly adduce any evidence, and as reasoned above, whatever evidence that was purportedly brought is flimsy and not sufficient to ground the reliefs sought. Leading evidence in a court of law, particularly in an election matter, is not a matter of simply alleging (**Rashid Gaffar and Alex Chimwala v Veronica Pempho Ndalama and MEC, Election Petition No.61 of 2025**). Evidence must be

proffered to prove the existence of what is alleged. This is particularly because elections are an expression of the right of the people to elect a leader of their choice, it is for this reason that courts have countless times warned against lightly overturning an election, only where strong undisputed evidence is led to prove irregularities and that the same affected the results (**Peter Mutharika v Saulos Chilima and Lazarus McCarthy Chakwera MSCA Constitutional Appeal No. 1 of 2020**). Even if the evidence of the Petitioner had been properly tendered, it would not have satisfied the burden of proof for the reasons given.

44. Having determined that the electronic evidence of the Petitioner would have been found to have been inadmissible for contravening the rules for electronic evidence and the rule against hearsay, there would have been no other evidence from the Petitioner that adds no probative value to his claims. Thus the other two purported exhibits, namely the Constituency Summary of Results Sheet and the letter of complaint he wrote to the 2nd Respondent do not substantiate any of his allegations.
45. Equally insignificant are the sworn statements of the Petitioner's two other witnesses. Even if they had been free of inconsistency and irregularity, they would still be speculative at best. The witnesses merely claim that they were bribed or an attempt was made to bribe them. No evidence was proffered to substantiate these claims. The witnesses also claim this happened to many other voters, none of whom were on the lineup of witnesses, making such claims inadmissible as hearsay. This is the nature of evidence that the Petitioner relies on to seek nullification of the election. Yet, in addition to the procedural irregularities and lack of substantiation, this evidence contains hearsay, which, as explained above, is generally inadmissible and especially unreliable in a case seeking to nullify an election. It would be scandalous for a court to overturn an election based on hearsay from two people who only claim unproven, fanciful facts. As such, even if the evidence of the Petitioner and his witnesses had been properly tendered, it does not meet the required standard of proof to support their claims.

iv Did the 2nd Respondent fail to address the Petitioner's complaint?

46. The claimant alleged in the Petition that the 2nd Respondent proceeded to declare the 1st Respondent duly elected despite the fact that he had complained about her conduct which meant that the election was marred with irregularities. The 2nd Respondent responded to the Petitioner's letter through another letter in which the 2nd Respondent clearly explained that such a complaint was out of its jurisdiction and must be made to the appropriate authority.
47. Thus, counsel for the 2nd Respondent presented a well-reasoned argument which started with defining "irregularity" under the Presidential, Parliamentary, and Local Government Elections Act, 2023 as non-compliance with the Act, the Constitution or other law; an alleged irregularity must therefore identify the specific law breached. By starting with the definition, which refers to particular statutes, counsel for the 2nd Respondent paved the way to explain that the particular statutes referred to are the ones that outline how complaints about irregularities must be processed.
48. The first conduct that the Petitioner complains about, handouts, is expressly prohibited by section 41 of the Political Parties Act, 2018. This is a criminal offence under section 41 with heavy fines of up to MK10,000,0000 and imprisonment for a term of up to 5 years. The second conduct complained about is campaigning during the prohibited period is likewise an offence under Section 115(b)(iii) of the Presidential, Parliamentary and Local Government Elections Act, 2023 Act.
49. Under the respective statutes, administration, investigation and enforcement of the Political Parties Act (including complaints about handouts) fall to the Registrar of Political Parties, not the 2nd Respondent. Because the prohibitions are criminal offences, any allegation of handouts or unlawful campaigning must be established in a criminal trial to the criminal standard (beyond reasonable doubt). A civil court cannot try or convict for offences; nor does the 2nd Respondent have jurisdiction to try electoral offences under the cited constitutional and statutory provisions. No person may be punished or have electoral consequences imposed before conviction. Only upon conviction can courts make remedial orders under Section 41(4) of the Political Parties Act and Section 119 of the Parliamentary, and Local Government Elections Act (e.g., fines, imprisonment, barring from office, annulling votes). This position is consistent with the Constitution in section 51(2)(g) as read with section 63(1)(c) which

provide that a member of parliament shall have his seat declared vacant upon a conviction, by a competent court, of the offence relating to elections. Similarly, therefore, an election can only be nullified for the irregularities alleged after the perpetrator has been found guilty by a competent court.

50. The Petitioner was therefore informed of the appropriate course of action, and the 2nd Respondent duly performed its mandate in responding to the complaint. This position was confirmed by the High Court in the cases of *Francis Renso v MEC and Walter Nyamilandu Manda, Election Petition No.54 of 2025*, and *Rashid Gaffar and v MEC and Veronica Ndalama, Election Petition No.61 of 2025*, with which I concur.
51. Finally, regarding the complaint about null and void votes, the initial complaint did not detail any such issue. Considering that the Petition is an appeal filed under section 100 of the Presidential, Parliamentary and Local Government Elections Act, 2023, as was decided in the case of *Abida Sidik Mia v Lloyd Laxton Enos Malola and The Malawi Electoral Commission Election Petition Number 58 of 2025* (Civil Division, Principal Registry unreported), upon appeal, the High Court must “only deal with those issues that were subject to the complaint that has been decided by the 2nd Respondent.” Again, this is trite law; appeals do not consider new issues, except for exceptional reasons, none of which have been given in this case.
52. Although the 2nd Respondent has correctly outlined the steps it took in the investigation of null and void votes, (through the sworn statement of Mr. David Matumika Banda demonstrated that it had actually examined the void votes in compliance with Section 96(2) of the Presidential, Parliamentary and Local Government Elections Act, 2023. The outcome of that exercise was duly recorded in Form 25B, which is Results of Examination of Void Votes, which has been tendered as exhibit “DMB 2”. The fact that these issues were not raised in the original complaint means that this Court would not have considered them if the evidence was properly tendered.

G Order

53. Having found that:

53.1 The Petitioner has failed to adduce any evidence in support of his claims in the Petition, the purported evidence having been excluded as inadmissible for fundamental irregularity rendering the Petition incompetent.

Even if the evidence had not been excluded:

53.2 The evidence the Petitioner purportedly tendered is merely speculative and does not arise beyond merely alleging, thus it would not have discharged the burden of proof required to overturn an election.

53.3 The remedy of election nullification is not open to election petitions under section 100 of the Presidential and Parliamentary and Local Government Elections Act, 2023.

53.4 As the Petition is brought as an appeal of the decision of the 2nd Respondent, the determination would have been restricted to the issues raised in the initial complaint.

On the basis of the finding in paragraph 53.1 above and as reasoned above, I hereby dismiss the Petition with costs to the Respondents.

I so order

MADE in open court in **Lilongwe** in the Republic of Malawi, this **3rd** day of **December 2025**.



Honorable (Mrs.) Fiona Atupele Mwale

JUDGE