



REPUBLIC OF MALAWI
IN THE MALAWI SUPREME COURT OF APPEAL
MSCA CIVIL APPLICATION No. 9 of 2026

(being High Court of Malawi, Lilongwe District Registry, Electoral Matter No. 2 of 2025)

BETWEEN:

BLESSINGS STEVEN CHAGUZA

APPLICANT

AND

BRIAN KHUMBENI
MALAWI ELECTORAL COMMISSION

1ST RESPONDENT
2ND RESPONDENT

RULING

Introduction

1. Blessings Steven Chaguza, the intended appellant in this matter, filed this *ex parte* application seeking an order for the enlargement of time within which to lodge an appeal against the High Court judgment in *Brian Khumbeni v Malawi Electoral Commission*, Electoral Matter No. 2 of 2025. The application was prepared on his behalf by Messrs Jivason and Company and made under section 23(2) of the Supreme Court of Appeal Act as read together with section 7 (b) of the Supreme Court of Appeal Act, and the intended appellant filed an affidavit outlining the facts and skeleton arguments in support of the application. The application's origins can be traced back to the 16 September 2025 Local Government Elections, in which the applicant contested in the Linthembwe Ward council seat in the Ngala Constituency in Dowa District as an independent candidate.

2. On 3 October 2025, the Malawi Electoral Commission, the 2nd Respondent, declared the applicant as the winner of the elections. However, the applicant was barred from taking the oath of office when he attempted to attend his swearing-in ceremony on 11 November 2025. It subsequently emerged that the elections in his ward had been deferred by a High Court judgment dated 14th September 2025 in Electoral Matter No. 2 of 2025, *Brian Khumbeni v Malawi Electoral Commission*, proceedings to which the applicant was not a party. The applicant claims that neither the Malawi Electoral Commission nor the High Court received any complaints, petitions, or appeals challenging his election victory after he was announced a winner. He further maintains that he was never served with any determination or notice indicating that his election was either challenged or had been nullified. The situation was further compounded when the Malawi Electoral Commission announced, on or around 15 January 2026, that Linthembwe Ward would hold a by-election, effectively treating the seat as vacant. The applicant contends that this decision was made without any lawful declaration nullifying his election, and without providing him with any notice or justification.
3. The applicant commenced judicial review proceedings in the High Court of Malawi registered as Judicial Review No. 2 of 2026, *The State (on application of Blessings Steven Chaguza) and Dowa District Council and the Malawi Electoral Commission*, because he was aggrieved by the Dowa District Council's and the Malawi Electoral Commission's conduct. However, in a judicial review ruling delivered on 2 March 2026, the High Court held that an appeal against the earlier decision in *Brian Khumbeni v Malawi Electoral Commission* Electoral Matter No. 2 of 2025, rather than judicial review, was the appropriate course of action for the applicant. The applicant indeed decided that an appeal against the High Court judgment was the proper recourse after an unsuccessful attempt to seek judicial review. Hence, the filing of the present Miscellaneous Civil Application no. 9 of 2026, *Blessings Steven Chaguza v Brian Khumbeni and The Malawi Electoral Commission*.
4. The applicant's statutory period for filing an appeal had already lapsed at the time of the High Court's judgment. Therefore, the applicant contends that the delay in filing the appeal was not deliberate but rather arose from circumstances beyond his control, including his lack of knowledge of the earlier proceedings and the

High Court's subsequent procedural directive. In these circumstances, the applicant filed an *ex parte* application with the Supreme Court of Appeal to enlarge the time frame for appealing against the High Court's judgment in Electoral Matter No. 2 of 2025. The present application was filed some six months after the judgment was delivered and four months after he was barred from taking the oath of office as ward councillor.

Legal Issues for Determination

5. The Supreme Court of Appeal must address the following key legal issues to determine this application:
 - a. Whether the applicant has the standing to seek enlargement of time to appeal against that decision as a non-party to the initial High Court proceedings in Electoral Matter No. 2 of 2025.
 - b. Where third-party rights have since crystallised, is it appropriate to grant such relief through an *ex parte* application?
 - c. Whether the intended grounds of appeal disclose a *prima facie* case and whether the applicant has demonstrated good and substantial reasons for the delay.
 - d. Whether, considering the principles for the management of electoral cases, the Court should exercise its discretion in favour of the applicant.

Analysis of the Applicable Law

6. Section 23 of the Supreme Court of Appeal Act governs the Court's authority to enlarge time. Specifically, section 23(1) establishes the appeal timeframe, which is 14 days for interlocutory orders and six weeks for other cases. This Court has the discretion to extend these times even after they have expired, in accordance with section 23(2) of the Supreme Court of Appeal Act.
7. The Court observes that the legislature's use of the phrase "a person" in section 23(1) does not imply that appellate jurisdiction extends beyond the parties to the initial suit. According to *MA Holdings Ltd. v George Wimpey UK Ltd, R (of the Application of) & Anor* [2008] 3 All ER 859, [2008] EWCA Civ 12 (24 January 2008), a person who is not a party to civil proceedings in the High Court generally has no automatic right of appeal to the Court of Appeal under the general

principles of English common law. The general principle is that only those who are directly bound by the judgment may file an appeal. The Supreme Court of Appeal has emphasised that “strangers” to proceedings cannot appeal unless leave is granted: *M'dinde Estate Limited v C.B.M Farm Services Limited & Commercial Bank of Malawi Ltd* (MSCA Civil Appeal 6 of 1985), [1988] MWSC 12 (8 September 1988). Case law demonstrates that courts are cautious of extending appeal rights to non-parties, to avoid undermining the finality of litigation and to protect judicial economy. However, an aggrieved person may apply for joinder or intervention at the High Court stage whenever feasible, which is the proper route to secure standing before appealing, or seek leave to appeal from the Court of Appeal: *Malawi Electoral Commission v Banda and another* [2005] MLR 185 (SCA).

8. To be granted an enlargement of time under section 23(2) of the Supreme Court of Appeal Act and Order III rule 4 of the Supreme Court of Appeal Rules, the Rule requires that the applicant must satisfy two requirements in tandem: (a) provide good and substantial reasons for the failure to file an appeal within the prescribed period, and (b) demonstrate that the intended grounds of appeal disclose a *prima facie* case that warrants a hearing. The case of *Mzuzu City Assembly v Lembuka Building Contractors* [2013] MLR 265 (SCA) emphasises its conjunctive nature by establishing that both limbs must be satisfied for the application to succeed. If the applicant fails to provide good and substantial reasons for failure to appeal within the prescribed period and/or if the grounds of appeal do not demonstrate a *prima facie* case, the application will be dismissed: *Proprietary Engineering Co Ltd v Dwangwa Cane Growers Trust and another* [2008] MLR 249 (SCA); *Mwaungulu v Malawi News and others* [1995] 2 MLR 549 (SCA) and *National Bank of Malawi v Khoswe* [2005] MLR 320 (SCA).

Determination of the Issues

a. Competency and the Right of a Non-Party to Appeal

9. The applicant, who was not a party to the High Court proceedings, argues that because the High Court decision nullified his election and barred him from being sworn in, it "directly and adversely affected" him. He contends that the Court should accept him as a "person aggrieved" within the meaning of the Act even

though he was not a party in the court below. The Court finds that the applicant lacks the requisite *locus standi* to move this Court for an enlargement of time to appeal and is not competent to bring this application. Undisputably, the applicant was not a party in the initial High Court proceedings in *Brian Khumbeni v Malawi Electoral Commission*, Electoral Matter No. 2 of 2025, and he never sought leave to be added as a party. Neither before nor after the judgment has the High Court issued an order joining the applicant as a party in the proceedings. The applicant is a non-party attempting to appeal in his own name because the judgment in *Brian Khumbeni v Malawi Electoral Commission*, Electoral Matter No. 2 of 2025, intended to be appealed against, refers only to the two respondents to the present Miscellaneous Civil Application no. 9 of 2026, *Blessings Steven Chaguzo v Brian Khumbeni and The Malawi Electoral Commission*. The case of *M'dinde Estate Limited v C.B.M Farm Services Limited & Commercial Bank of Malawi Ltd* (MSCA Civil Appeal 6 of 1985), [1988] MWSC 12 (8 September 1988) confirms the well-established common law principle that a person who was not a party to civil proceedings in the High Court generally does not automatically have the right of appeal to the Court of Appeal. Only parties who formally participated in the litigation at the court of first instance or who were directly bound by the judgment are eligible to appeal.

10. Despite the applicant's claims to be affected by the judgment, he was never a subject of the court's primary jurisdiction in that specific case because he was never a party at the hearing stage. Until joinder occurs, the applicant remains a stranger to the record and lacks standing on appeal. Allowing a stranger to the record to intervene through an appeal after judgment has been rendered would compromise the integrity of the record and cause procedural confusion. The applicant's motion is therefore incompetent *ab initio* because he was not a party to the High Court case and hence lacks the legal standing to invoke this Court's appellate jurisdiction.

11. Since the applicant initiated this *ex parte* process, the factual matrix has evolved. This application should really have been made *inter partes* due to its nature and context. This is a reason why the respondents have also been called to attend the delivery of the ruling. The application shows that Malawi Electoral Commission

conducted a by-election, and a new councillor was declared for Linthembwe Ward. This raises another critical issue of procedural propriety. The rights of the newly elected candidate and other third parties whose status would be affected by this appeal would be disregarded if a non-party were granted an enlargement of time after an *ex parte* application. Consequently, in addition to the application's incompetence, its *ex parte* nature heavily weighs against the Court's exercise of its discretion.

b. Are there Good and Substantial Reasons for Delay

12. The applicant contends that his lack of knowledge of the High Court proceedings and his subsequent, incorrect pursuit of judicial review were the reasons behind his delay, which was not deliberate. This explanation, according to the Court, is retrospective and reactive. The applicant's grievance is not with the judgment's legal merits at the time it was delivered, but rather with the practical consequences, specifically the loss of his ward councillor seat. Probably, the applicant would never have challenged the initial judgment if he had been allowed to remain in office. Even if he had *locus standi*, which he did have, such a conditional interest in the law does not constitute a "good and substantial reason" for missing statutory deadlines. Furthermore, given that the Judiciary widely disseminated electoral judgments through various media and social media platforms, it is inordinately long to delay filing the present application after six months. In *Mbewe v Agricultural Development and Marketing Corporation* [1993] 16(1) MLR 301 (SCA), the Court found that a three-month delay before filing the application was inordinate, even though there were substantial and good reasons. In *Lamson Chitawo and another v Malawi Property Investment Company Limited* [2010] MLR 197 (SCA), the court determined that a delay of more than one year was inordinate and that no other good and substantial cause for the delay had been advanced.

c. Whether there is a Prima Facie Case and the Nature of Appeals

13. An arguable appeal is required for the test's second limb. In the present case, the applicant faces an insurmountable legal obstacle: an appeal is a rehearing based on the High Court's record. The applicant seeks to introduce fresh evidence and new factual circumstances which were not placed before the High Court in the initial matter, such as his subsequent election and victory.
14. A party is generally not permitted to raise new legal arguments on appeal that involve fresh evidence or require new factual investigations, as discussed in the cases of *National Bank of Malawi v Cane Products* [2012] MLR 301 (SCA); *Registered Trustees of The Small Enterprise Development Organisation of Malawi (SEDOM) v Waka* [2004] MLR 278 (SCA); *Ontario Energy Savings L.P. v 767269 Ontario Ltd.*, 2008 ONCA 350. However, the cases of *National Bank of Malawi v Cane Products* [2012] MLR 301 (SCA) and *Pittalis v Grant* [1989] QB 605 also hold that, under certain conditions, an appellate court has discretion to allow a pure point of law that was not raised in the court below. This Court is of the view that it would be procedurally unfair to find the High Court erred based on evidence from a non-party, which was never given a chance to consider. Furthermore, the intended appeal may be impracticable and potentially disruptive to the electoral process by the intervention of third-party rights through the subsequent by-election.

Conclusion

15. In the context of electoral cases, the principles of competency, standing, finality, certainty, timeliness and procedural fairness must be prioritised by the Court. When it comes to handling election disputes, the public interest in political stability and the orderly transition of power are paramount, necessitating the timely filing of legal challenges. The applicant was not a party to the High Court proceedings in *Brian Khumbeni v Malawi Electoral Commission*, Electoral Matter No. 2 of 2025; he did not apply to be joined as a party. He has also failed to provide contemporaneous, substantial reasons for his inordinate delay of almost six months, and his intended grounds of appeal aim to construct a case that was never presented to the High Court.

16. The fundamental legal principle established by the decision in this case is that only those “persons” who were parties to the petition or application have the right to appeal in electoral cases. A "stranger" to the record cannot invoke appellate jurisdiction unless they have sought leave or joinder, and the Supreme Court of Appeal cannot grant an extension of time to lodge an appeal that would be inherently incompetent and irregular due to the applicant's lack of standing.

17. Further, the existence of a legitimate and competent intended appellant is a prerequisite for the exercise of the Court's power to extend time for filing a notice of appeal. The applicant for extension of time must be someone who would have been able to file an appeal had the time not lapsed. In situations where the potential applicant lacks the right to appeal altogether, the Court cannot indirectly establish competency by granting an extension to lodge an appeal that would be incompetent and irregular. Additionally, it has been demonstrated that the applicant has failed to satisfy both requirements of the conjunctive test for an enlargement of time, assuming he was competent. Consequently, this Court cannot exercise its discretion in the applicant’s favour. The application is dismissed.

DATED and DELIVERED this 4th day of June 2026.



Dorothy nyaKaunda Kamanga
JUSTICE OF APPEAL

Case information on delivery of ruling:

Mr. Wanangwa Munkhondia	:	Legal practitioner for the Applicant/Intended Appellant.
Mr. Andy Kaonga	:	Legal practitioner for the Second Respondent.
1st Respondent	:	Absent
H/H Mr. Hussein Ibrahim	:	Assistant Registrar
Mrs. Mthunzi	:	Law Clerk.
Mr. Maluwa	:	ICT Technician.