



REPUBLIC OF MALAWI
IN THE SUPREME COURT OF APPEAL
MSCA CIVIL APPEAL NO. 10 OF 2026
(Being High Court, Civil Division, Principal Registry, Election Petitions
No. 52 & 60 of 2025)

BETWEEN:

JACKSON ALLIE DAUD MATAKA

1ST APPELLANT

ABUBAKAR ALI M'BAYA

2ND APPELLANT

AND

MALAWI ELECTORAL COMMISSION

1ST RESPONDENT

FRANCISCA THEULA MASAMBA

2ND RESPONDENT

ORDER

(with Skeleton Reasons)

CORAM:

Mzikamanda, SC, CJ; Kapanda SC, JA; Potani, SC, JA; I.C Kamanga, SC, JA; Mkandawire, SC, JA; Kalembera, SC, JA; Madise, SC, JA; Mbvundula, SC, JA; and nyaKaunda Kamanga SC, JA.

DECISION

Having carefully considered the record of appeal, the judgment of the High Court, the submissions of counsel and the applicable law, we are satisfied that this appeal must succeed.

Skeletal Reasons

1. The main issue before this Court is whether the 2nd Respondent was duly elected within the meaning of section 101 of the Presidential, Parliamentary and Local Government Elections Act.
2. The learned Judge correctly identified and, in several instances, expressly found the existence of several statutory irregularities affecting the conduct of the election. These included, among others, the failure to determine statutory electoral complaints prior to the declaration of results, including non-compliance with the statutory requirements relating to the preparation and publication of Form 20B, the use of unsigned statutory electoral documents, and other irregularities concerning the preparation and use of electoral records. The Court below nevertheless concluded that those irregularities did not warrant interference with the election because they had not been shown to have affected the numerical outcome of the election.
3. In our view, that approach proceeded with an unduly narrow construction of section 101 of the Act. Whilst the quantitative effect of electoral irregularities remains an important consideration, it is not the sole enquiry. The Court is equally required to consider whether the established irregularities, viewed qualitatively and cumulatively, undermined the legality, transparency, integrity and credibility of the electoral process so that the returned candidate can no longer properly be regarded as having been duly elected.

4. In the present case, the cumulative effect of the irregularities established by the evidence and acknowledged by the court below demonstrates material departures from the statutory electoral framework enacted by Parliament. Those irregularities were not isolated administrative lapses but affected fundamental aspects of the recording, authentication, compilation and declaration of the electoral results. The Commission also failed to discharge its statutory obligations in relation to the determination of electoral complaints before declaring the election results. Moreover, the process adopted in relation to the preparation and use of replacement polling stations' result sheets at Mpwakata raises serious questions concerning compliance with the statutory scheme governing the generation and compilation of official electoral records.
5. Taken collectively, the irregularities were material to undermine confidence that the election was conducted substantially in accordance with the Constitution and the Presidential, Parliamentary and Local Government Elections Act. In those circumstances, this Court cannot conclude that the 2nd Respondent was duly elected as required by section 101 of the Act.

Operative Orders

Consequently, it is hereby ordered as follows:

1. The appeal is hereby allowed.
2. The judgment of the High Court dismissing Electoral Petitions No. 52 of 2025 and No. 60 of 2025 is hereby set aside in its entirety.
3. It is hereby declared, pursuant to section 101(3)(b) of the Presidential, Parliamentary and Local Government Elections Act, 2023, that the 2nd Respondent, Francesca Theula Masamba, was not

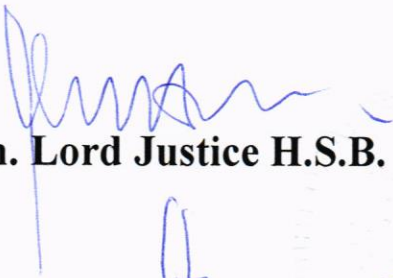
duly elected as Member of Parliament for Mangochi East Constituency.

4. The election of the 2nd Respondent as Member of Parliament for Mangochi East Constituency is hereby nullified.
5. The Malawi Electoral Commission shall conduct a fresh parliamentary election for Mangochi East Constituency in accordance with the Constitution and the Presidential, Parliamentary and Local Government Elections Act, 2023, within the period prescribed by law.
6. The Appellants shall have the costs of this appeal and of the proceedings in the Court below, to be shared in the ratio of 70% from the First Respondent and 30% from the Second Respondent. Such costs to be taxed if not agreed.
7. The Court shall circulate its full reasons for this judgment within ninety (90) days from the date hereof.

DATED and DELIVERED at BLANTYRE this 14th day of July, 2026.

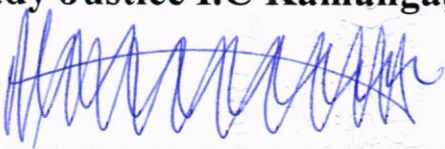
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Hon. Lord Chief Justice R.R. Mzikamanda, SC

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Hon. Lord Justice F.E. Kapanda SC, JA



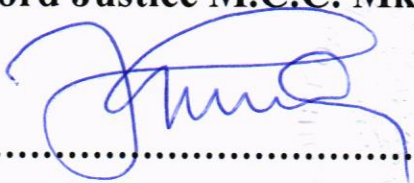
Hon. Lord Justice H.S.B. Potani, SC, JA

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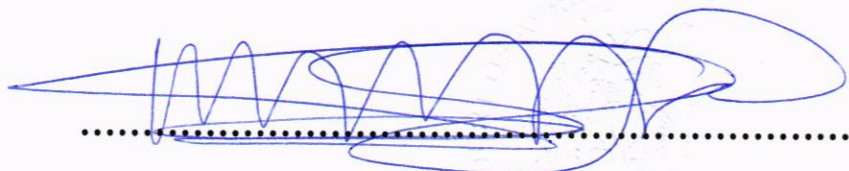
Hon. Lady Justice I.C Kamanga, SC, JA

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Hon. Lord Justice M.C.C. Mkandawire, SC, JA

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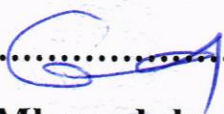


Hon. Lord Justice S. Kalembera, SC, JA

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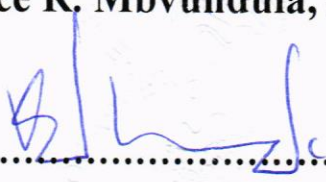
Hon Lord Justice D. Madise, SC, JA

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Hon Lord Justice R. Mbvundula, SC, JA

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Hon Lady Justice D. nyaKaunda Kamanga SC, JA