



REPUBLIC OF MALAWI

IN THE MALAWI SUPREME COURT OF APPEAL

SITTING AT LILONGWE

MSCA CIVIL APPEAL NO.20 OF 2025

(From High Court, Civil Division Lilongwe District Registry, Election Case No. 04 of 2025)

BETWEEN:

MALAWI ELECTORAL COMMISSION**APPELLANT**

-AND-

DANIEL BINDA**RESPONDENT**

CORAM: HON. DEPUTY CHIEF JUSTICE L.P. CHIKOPA SC
HON. JUSTICE F.E. KAPANDA SC, JA
HON. JUSTICE H.S.B. POTANI SC, JA
HON. JUSTICE J. KATSALA SC, JA
HON. JUSTICE I.C. KAMANGA SC, JA
HON. JUSTICE M.C.C. MKANDAWIRE SC, JA
HON. JUSTICE S.A. KALEMBERA SC, JA
HON. JUSTICE D. MADISE SC, JA
HON. JUSTICE R. MBVUNDULA SC, JA

E. Chapo, Counsel for the Appellant
K. Mchizi, Counsel for the Respondent
W. Shaibu, J Tchukambiri, Judicial Research Officers
M. Mnthunzi, C. Fundani, Recording Officers
B. Pendame, E. Banda, Court Reporters

JUDGMENT

Mbvundula, JA, SC: (All the other Justices of Appeal concurring)

1. The respondent was an aspiring parliamentary candidate in the Presidential, Parliamentary and Local Government Elections which were

held on 16th September, 2025. He sought to contest in the Nkhotakota Liwaladzi constituency as a parliamentary candidate.

2. The respondent is a body established under section 75(1) of the Constitution whose mandate, under section 76(1) of the same Constitution, is to exercise such functions in relation to elections as are conferred by the Constitution or by an Act of Parliament. Amongst such functions are:
 - 2.1 under section 76(2)(c), "to determine electoral petitions and complaints relating to the conduct of any elections
 - 2.2 under 76(2) (d), "to ensure compliance with the provisions of the Constitution and an Act of Parliament"
 - 2.3 under 76(2) (e) "to perform such other functions as may be prescribed by the Constitution or any other law".
3. Section 76(3) provides that any person who has petitioned or complained to the Commission shall have the right to appeal to the High Court against the determinations under 2(c) or 2(d).
4. The respondent being a person desirous of contesting in the parliamentary elections, obtained from the Commission, according to the procedure set out, the requisite electoral nomination forms.
5. As part of the electoral process the Commission published a notice of fees payable by candidates, to the Commission, as follows:
 - 5.1 male candidates K2 500 000.00
 - 5.2 female candidates K 1 250 000.00
 - 5.3 persons with disability K1 250 000.00
 - 5.4 youth (less than 35 years) K1 250 000.00
6. The respondent deposed that he submitted his nomination form to the Commission (appellant herein) accompanied by a payment of the amount of K1 250 000.00 "having believed that [he] qualified as a prospective youth candidate under 35 years". This statement is

contained in paragraph 8 of his sworn statement in support of his petition in the court below.

7. The respondent was born on 1st July 1990, which means he attained the age of 35 on 1st July 2025.
8. In paragraph 9 of the sworn statement the respondent averred that the procedure before submission of nomination papers was for a prospective candidate to pay nomination fees, and once satisfied that the requisite fee had been paid "the Defendant would proceed to issue out the nomination form".
9. In paragraph 10 he stated that after paying the nomination fees he presented his national identity card at Nkhotakota District Council for verification "if [he] was qualified as a youth candidate, then proceeded to collect his nomination form at the appellant's Nkhotakota offices. He further stated that after all pre inspection processes he was told that everything was in order. He did not identify the person who allegedly so assured him.
10. According to a statutory notice issued by the appellant, dated 17th June 2025, collection of nomination papers had started on 10th June 2025 and was to continue until the last day of receipt of nominations. Receipt of nomination papers would take place from 24th July 2025 to 30th July 2025. The respondent, according to his sworn statement, paid his nomination fee on 17th June 2025 and presented his nomination papers on 26th July 2025. The respondent, by the 26th of July 2025, had since attained the age of 35 years, and thus ceased to qualify as a youth candidate, since he was born on 1st July 1990.
11. The respondent further deposed that by the 30th of July 2025, the last day of receipt of nominations, he had not received any communication regarding any defect in his nomination papers, and it was therefore his expectation that his name, as a candidate, would be

published in the Government gazette and local newspapers, in accordance with the electoral laws, but when such publication appeared on 8th August 2025, his name was missing from the list of candidates for the constituency, and on 15th August 2025 he received from the appellant a "notice and statement of rejection" of his nomination as a parliamentary candidate for the reason that he had paid less than the required nomination fees by paying K1 250 000.00 instead of K2 500 000.00.

12. Following receipt of the notice of rejection, so he stated, he immediately engaged Messrs Clarkes and Associates, lawyers, to demand that the appellant should review its decision to exclude his name from the list of qualifying candidates for the parliamentary contest, and by a letter dated 18th August 2025, Messrs Clarkes and Associates made the respondent's submission to the appellant, requesting for the said review.
13. In that letter the respondent's lawyers conceded that the respondent had paid K1 250 000.00 "honestly believing that he qualified to benefit as a youth of 35 years and less *at the time of getting the nomination form*". (Emphasis supplied). It is the considered view of this Court that the time of collecting the nomination form is not the time of nomination. The time of nomination is when the prospective candidate presents his nomination papers. In this case, according to the respondent's evidence, he presented his nomination papers on 26th July 2025. Accordingly, the 26th of July 2025 was his time of nomination.
14. The respondent stated that he resorted to the application in the High Court because he had not received any response from the appellant addressing his concerns.
15. The respondent's application in the High Court was made under Order 19 Part II, rule 13 of the Courts (High Court) (Civil Procedure)

Rules as read with section 42 of the Presidential, Parliamentary and Local Government Elections Act (Act No 10 of 2023) (hereinafter referred to as "the Act") for the High Court to review the appellant's decision to exclude him from the list of parliamentary candidates in the constituency, and to declare it unlawful in terms of the Act on the basis of the returning officer's failure to immediately, and in any event prior to the appellant publishing a final list of parliamentary candidates, to notify the respondent or his election representative that he did not qualify to be classified as a youth under 35 years and therefore that he had paid less than the required amount of fees.

16. The respondent also sought an injunction compelling the appellant through its returning officer to accept the respondent's nomination or, in the alternative, allow the appellant to pay the balance of the appropriate nomination fees. He additionally prayed for an order for costs and any other order the court would deem fit and just in the circumstances.
17. The court below arrived at its findings with reference to, and on an analysis of, the provisions of section 39(2) and (3) as well as section 42 of the Act.
18. Section 39 (2) and 3 provide as follows:

(2). A returning officer shall, upon request from a candidate or an election representative of a candidate, examine the nomination form and supporting documents of a candidate before the nomination papers are formally presented to the returning officer and advise the candidate or the election representative whether, in the opinion of the returning officer, the nomination papers are in order.

(3) The returning officer shall, at the earliest opportunity and in any case, before the close of the period allowed for nominations,

advise the candidate or the election representative of the candidate of any defect in the nomination papers, and the candidate may rectify the defect before close of the nomination period.

And the relevant provisions of section 42 read as follows:

"(1) If, after the close of the period allowed for nomination of candidates but before the polling day, the returning officer is of the opinion that –

(a) a candidate

(i) has not been duly nominated in accordance with this Act; or

(ii) is not qualified for election or has obtained nomination by fraud or false pretence;

...

(e) the deposit referred to in section 41 was not lodged with the nomination paper of the candidate

the returning officer shall forthwith notify the candidate or his election representative that the nomination has been rejected and giving reasons for such decision, and, if so requested by the candidate or his or her election representative, the returning officer shall draw up and sign a statement of the facts and his or her opinion based on those facts.

19. The court below faulted the appellant by holding that the appellant had failed in its duty to inform the respondent of the defects in his nomination forms either upon receiving the same, under both sections 39 (2) and 39(3) of the Act, so that the respondent could rectify the defects in his nomination papers.
20. With regard to the provisions of section 39(2), however, the court below seemed to contradict itself, as under paragraph 41 of its judgement it initially held that *there was no evidence that a request was made by the respondent* as provided for under that subsection, then immediately thereafter found fault with appellant *for failing to give feedback to the respondent*. The court reasoned as follows:

20.1 *"In the present case, the defendants denied that they did not receive a request from the claimant, therefore the first scenario which required a request from the candidate was not triggered. Well, the claimant did not specify how the request was made and there was no evidence adduced to support that assertion. The law is silent on how the request ought to be made, but in my view it could be made orally, by phone call or writing. Whichever way it was done, the returning officer was obliged to give feedback and advise whether the nomination papers were in order or not. Section 39(2) of PPLGE Act."*
21. Having found as a fact that no evidence had been adduced to the effect that a request had not been made, the court certainly proceeded in error in its subsequent contradictory finding that the returning officer should have given some feedback as there was nothing to give back for. We confirm, therefore, that the requirements of section 39(2) were not breached by the appellant.

22. Coming to section 39(3) which requires the returning officer, at the earliest opportunity and in any case before the close of the period allowed for nominations, to advise a candidate or his or her election representative of any defect in their nomination papers, so that the candidate may rectify the defect, we take the view that section 39(3) should not be read in isolation, but should be considered in the light of the provisions of section 42, in particular section 42(1)(a)(ii), and 1(e), which appear under paragraph 18 of this judgment. Nonetheless, at the peril of undue repetition, we again reproduce the same hereunder, with necessary emphasis.

"(1) If, after the close of the period allowed for nomination of candidates but before the polling day, the returning officer is of the opinion that –

(a) a candidate

*(i) has not been duly nominated in accordance with this Act;
or*

(ii) is not qualified for election or has obtained nomination by fraud or false pretence;

...

e) the deposit referred to in section 41 was not lodged with the nomination paper of the candidate

the returning officer shall forthwith notify the candidate or his election representative that the nomination has been rejected and giving reasons for such decision, and, if so requested by the candidate or his or her election representative, the returning officer shall draw up and sign a statement of the facts and his or

her opinion based on those facts. (Emphasis by underlining supplied)

23. A proper reading of the provisions of section 39(2) and those of section 42 (isolated above) leads to the conclusion that it is not the provisions of section 39(2) but, rather, those of section 42, that apply to the facts and circumstances obtaining in this case. This is principally because the ground upon which the rejection was made, namely, failure to lodge the nomination fees stipulated pursuant section 41 is contained in section 42 (1)(e).
24. It is also to be observed that section 42, unlike section 39, does not require the returning officer to notify the candidate of a rejection before the close of the nomination period, as contended by the respondent. Section 42 provides for notification *after the close of the period allowed for nomination of candidates but before the polling day*. Therefore the notification of the rejection within that period did not offend the provisions of section 42(1). Happily, both parties agree that the notification was made and communicated after the close of the nomination period and do not dispute that it was before the polling day as it is clear on the face of the notification form that the notification was issued on 5th August 2025, and received by the respondent on 15th August 2025, both dates being prior to the polling day, the 16th of September 2025, again in compliance with section 42. Thirdly, what was communicated was a rejection, as required under section 42, and not a defect in the nomination papers as provided for under section 39. Section 42 is not about defects. It is about substantive legal compliance. Fourthly, the ground for rejection is specifically provided for under section 42, namely, failure to lodge the requisite nomination fee. By paying K1 250 000.00 instead of K2 500 000.00 applicable for male, non-youth candidates, the respondent breached this requirement.

26. It may be equally apt to state that by lodging the amount of fees payable only by youth candidates, when the respondent was already over the prescribed youth category, may well amount to obtaining a nomination by false pretence which is a ground for rejection under section 42(1)(a)(ii), the false pretence being respondent's holding himself out as falling into the category of youth candidates, when he was not, having already attained the age of 35. The respondent thus approached the court below seeking the equitable remedy of a mandatory injunction with unclean hands. On that score alone that remedy ought not to have been granted, on the basis that he who comes to equity must come with clean hands.
27. The respondent seemed to contend that the appellant was under a duty to advise him that he was not eligible to contest as a youth candidate on account his age at the time of his nomination. We dismiss that contention summarily on the ground that the law does not impose a duty on the appellant to give such advice to candidates. One's age is ordinarily a matter within one's own knowledge.
28. We acknowledge that the court below did consider the provisions of section 42 of the Act, but observe that whilst the court took cognizance of the fact that under section 42 the notification must be made after the close of the nomination period but before polling day, the court fell into error when it went on to hold that there was room for resubmission and reconsideration of the nomination after the rejection was communicated to the candidate, what the court referred to as "corrective steps of the defects" before polling day. The correct position, on a proper reading of section 42, is that any rejection upon any of the grounds under that section is outright and final, subject, of course to any subsequent judicial decision to the contrary.

29. The provisions of section 42 relating to rejection must be construed in the light of the legal principle expressed in the Latin maxim *expressio unius est exclusio alterius*, which means, in English, to express one thing is impliedly to exclude another. The learned author, Francis Bennion, at page 873 of the 2nd Edition of his book, *Statutory Interpretation*, comments on the principle as follows:
- (1) The maxim *expressio unius est exclusio alterius* ... is applied where a statutory proposition might have covered a number of matters but in fact mentions only some of them. Unless these are mentioned merely as examples, or *ex abundante cautela*, or for some other sufficient reason, the rest are taken to be excluded from the proposition.
30. Since section 42 does not include a requirement, on the part of the appellant, to go beyond notifying the candidate of a rejection, and if so requested by the candidate or his or her election representative, to draw up and sign a statement of the facts and his opinion based on those facts, in view of the maxim *expressio unius est exclusio alterius*, it was an error of law on the part of the court below, to fault the appellant for not making accommodation for "corrective steps of the defects"..
31. The position arrived at in the immediately preceding paragraph equally applies to the respondent's lamentation, contained in paragraph 17 of his sworn statement, that the appellant did not attend to his request for a review of its decision. Again the above maxim comes into play here. A review of the decision is not provided for in the statute. Thus, once the decision rejecting a candidate's nomination is communicated as required under the Act, the candidate's remedies, if any, lie in the High Court. No duty on the part of the appellant to review subsists. The

legislature must be taken to have deliberately excluded a grievance or appeal procedure before the appellant.

32. The court below having found the appellant at fault made the following orders:

32.1 that the returning officer allow him to pay the difference of the nomination fees within 72 hours so that he could contest as a male [non youth] candidate

32.2 that the returning officer should include the claimant's name on the list of validly nominated candidates for Nkhotakota Liwaladzi constituency.

33. This Court's findings, in the final analysis, are that

33.1 The respondent did not qualify as a candidate in the Nkhotakota Liwaladzi constituency parliamentary elections as he did not pay the prescribed nomination fees commensurate with his age category.

33.2 As such the respondent's nomination papers did not qualify for examination by the appellant to notify the appellant of any defects in the nomination papers.

33.3 The judgment of the court below was not supported by the evidence and
the applicable law.

34. We consequently make the following orders:

34.1 The judgment of the court below is reversed, and the orders made therein are set aside.

34.2 The appellant should proceed with the parliamentary elections in the Nkhotakota Liwaladzi constituency.

34.3 The voters roll shall be as it was on 16th September 2025.

34.4 The candidates to contest shall be those who had been duly nominated as at 16th September 2025.

34.4 Therefore, the respondent remains excluded from contesting in the Nkhotakota Liwaladzi constituency parliamentary election that had been scheduled for 16th September 2025.

35. **CONSEQUENTLY**, appeal herein is allowed with costs here and below to the appellant.

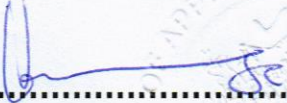
Dated and Delivered at Lilongwe the 21st day of January 2026.

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HON. DEPUTY CHIEF JUSTICE L.P. CHIKOPA SC

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HON. JUSTICE F.E. KAPANDA SC, JA

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HON. JUSTICE H.S.B. POTANI SC, JA

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HON. JUSTICE J. KATSALA SC, JA



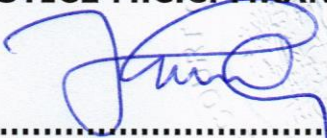
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HON. JUSTICE I.C. KAMANGA SC, JA



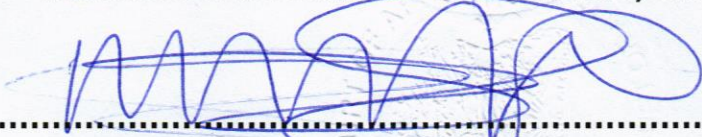
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HON. JUSTICE M.C.C. MKANDAWIRE SC, JA



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HON JUSTICE S.A. KALEMBERA SC, JA



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HON. JUSTICE D. MADISE SC, JA



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HON. JUSTICE R. MBVUNDULA S.C.