



**IN THE HIGH COURT OF MALAWI**  
**CIVIL DIVISION**  
MZUZU DISTRICT REGISTRY  
ELECTION CAUSE NO. 62 OF 2025

IN THE MATTER OF SECTION 76 (2) (c) OF THE CONSTITUTION OF THE REPUBLIC  
OF MALAWI

IN THE MATTER OF SECTION 101 OF THE PRESIDENTIAL, PARLIAMENTARY AND  
LOCAL GOVERNMENT ELECTIONS ACT

AND

IN THE MATTER OF PETITION OF HENRY MUMBA

HENRY MUMBA ..... PETITIONER

AND

MALAWI ELECTORAL COMMISSION..... 1<sup>ST</sup> RESPONDENT

MARTHA MUNTHALI ..... 2<sup>ND</sup> RESPONDENT

**CORAM: Honourable Justice T.R. Ligowe**

Dzonzi and Mosiyiwa, Counsel for the Petitioner

Kaonga and Lunguzi, Counsel for the 1<sup>st</sup> Respondent

Ghambi, Counsel for the 2<sup>nd</sup> Respondent

Mwiba, Official Interpreter

Gondwe, Court Reporter

**JUDGMENT**

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Ligowe J.

1. Here is a petition brought pursuant to section 101 of the Presidential, Parliamentary and Local Government Elections Act by the Petitioner on 6<sup>th</sup> October 2025.

2. Section 101 states that:

“(1) A complaint alleging an undue return or an undue election of a person to the office of President, member of the National Assembly, or councillor, by reason of an irregularity or any other cause whatsoever shall be presented by way of petition to the High Court within seven days, including Saturday, Sunday and a public holiday, of the declaration of the result of the election in the name of the person—

- (a) claiming to have had a right to be elected at that election; or
- (b) alleging to have been a candidate at such election.

(2) In proceedings with respect to a petition under subsection (1), the Commission shall be joined as a respondent.

(3) If, on the hearing of a petition presented under subsection (1), the High Court or any court of competent jurisdiction, makes an order declaring that—

(a) the President, the member of the National Assembly or the councillor, as the case may be, was duly elected, such election shall be and remain valid as if no petition had been presented against his or her election; or

(b) the President, the member of the National Assembly or the councillor, as the case may be, was not duly elected, the Registrar of the High Court shall forthwith give notice of that fact to the Commission and the Commission shall publish a notice in the Gazette stating the effect of the order of the Court.

(4) Pursuant to an order of the Court under subsection (3) (b) declaring that the President, the member of the National Assembly, or the councillor, as the case may be, was not duly elected, a fresh election to the office of President, or for the seat of the member of the National Assembly, or the councillor, as the case may be, shall be held in accordance with this Act.

(5) The Commission shall not register new voters for the fresh election.

(6) The Commission shall not accept nomination of new candidates in a fresh election but shall allow nomination of a new candidate for a political party only if the political party candidate in the nullified elections -

(a) becomes disqualified;

(b) dies; or

(c) is otherwise incapacitated, before the fresh elections are conducted.

(7) A declaration by the Court under subsection (3) (b) shall not invalidate anything done by the President before that declaration.

(8) A petition and any appeal arising therefrom shall be heard in accordance with Part II of Order 19 of the Courts (High Court) (Civil Procedure) Rules.

(9) Notwithstanding subsection (8), the Chief Justice may make rules for the practice and procedure for election petitions and appeals under this Act.”

3. The petition states that Henry Mumba is a Malawian of full age and he was a candidate duly sponsored by the Malawi Congress Party (MCP) in the parliamentary elections held on 16<sup>th</sup> September 2025 for Mzimba Hora Constituency in Mzimba District Council. Following the conduct of the election, the Malawi Electoral Commission (MEC) declared Hon. Martha Munthali as the duly elected Member of Parliament for Mzimba Hora Constituency.
4. The Petition further states that the accredited representatives for MCP observed serious anomalies in the management and tallying of votes which undermined the credibility, transparency, and accuracy of the final results as follows:
  - (a) The Petitioner's Shadow Councilor for Bulala, Mr. Henry Mkandawire, reported that he saw individuals distributing money at Chiseng'ezi F.P School to voters with the intent of influencing their votes in favour of Martha Munthali, who was a candidate for the Democratic Progress Party (DPP);
  - (b) At Chaboli polling station a representative of MCP by the name of Patricia Chavula reported that well-known cadres for the DPP namely, Robert Ng'ona and Albert

Nkunika were distributing cash ranging from K2 000 to K10 000 to voters so that they could vote for Martha Munthali;

- (c) At Lukwelukwe polling station, one voter by the name of Watson Mbewa bumped into three individuals namely Dye Mwanza, Thafuled Lungu and Khoya Nyangulu on his way to the polling station who admitted that they had cash and told him that he would benefit if he agreed to vote for Martha Munthali;
  - (d) At Kaso polling station a voter by the name of Auline Moyo reported that she was approached and instructed by Angella Mkandawire, a supervisor for MEC, to vote for Martha Munthali. When she refused to follow the instructions, the said MEC supervisor, Angella Mkandawire, grabbed her inked finger and attempted to place it on the photo of Martha Munthali;
  - (e) At Malangazi polling centre MCP representatives reported that 25 votes belonging to the Petitioner were placed on the stack for Martha Munthali;
  - (f) At Chasimba polling station, MCP representatives observed that a representative of the DPP was unlawfully given the mandate to discharge an additional role of Parliamentary ballot issuer and was instructing voters to vote for Martha Munthali;
  - (g) At Chanyuni, Endindeni and Kaundi polling stations MCP representatives were hoodwinked to leave the polling stations at close of polling but before counting had commenced; and
  - (h) Some logbooks were not available at some polling centres including the Constituency Tally Center at Bulala as confirmed by the Constituency Returning Officer.
5. The petition states also that following the above-mentioned incidents, the Petitioner wrote a letter to the Chairperson of MEC on 17th September 2025 raising these anomalies and requesting a recount of the votes for Mzimba Hora Constituency. However, MEC did not respond to the said letter. A copy of the said letter is attached to the petition and marked as "HM1"
6. The Petition shows that the Petitioner wrote four more letters on 19<sup>th</sup> September 2025, 21<sup>st</sup> September 2025, 25th September 2025 and 27th September 2025 regarding the electoral

malpractices, but did not receive any response. The said letters are attached to the Petition and marked as “HM2”, “HM3”, “HM4” and “HM5”.

7. The petition also states that the Petitioner wrote an email to MEC regarding his complaints, but he did not receive any response. The said email is attached to the petition and marked as “HM6.”
8. The Petition further states that instead of addressing the concerns raised by the Petitioner, MEC proceeded to announce the official results and declared Martha Munthali winner. And, on 1<sup>st</sup> October 2025 the Petitioner wrote another email to MEC regarding his complaints, and it was only after the said email that MEC responded but disregarded the concerns raised by the Petitioner on the electoral malpractice at Mzimba Hora Constituency. The copy of the email and the response are attached to the petition and marked as “HM7” and “HM8.”
9. In the Petitioner’s view, the above anomalies, taken collectively, demonstrate a pattern of procedural breaches, manipulation, and misconduct that materially affected the integrity of the election and unjustly favoured the declared winner. The failure by MEC to address the Petitioner’s complaints and failure to conduct, control and administer the election amounts to an unjustifiable dereliction of its constitutional and statutory duty to ensure free, fair, and credible elections. The Respondent proceeded to announce the results of the election despite the anomalies which have been narrated in this petition which materially affected the outcome of the election. The Petitioner therefore seeks the intervention of this Honourable Court to nullify the declaration of results and order a recount and/or fresh election for Mzimba Hora Constituency.
10. Consequently, the Petitioner prays for:
  - (a) a declaration that the anomalies in the conduct and management of the said election materially affected the results as declared by MEC;
  - (b) an order directing MEC to conduct a transparent, open and accountable recount of all ballots cast in the parliamentary election for Mzimba Hora Constituency and an audit of the election process in all polling stations.

- (c) a declaration that the failure by MEC to address the Petitioner's complaints undermines the transparency and credibility of the election for Mzimba Hora Constituency.
- (d) a declaration that there was vote rigging committed by officials who were directing voters who required assistance to vote for Hon. Martha Munthali.
- (e) an order nullifying the declaration of Hon. Martha Munthali as duly elected Member of Parliament for Mzimba Hora Constituency.
- (f) consequential orders that may appear just and proper.
- (g) an order that MEC be condemned in the costs of this action.

11. MEC replied to the petition on 17<sup>th</sup> October 2025 by admitting that Henry Mumba was indeed a candidate for MCP in the 16<sup>th</sup> September 2025 parliamentary election and that Martha Munthali was elected for Mzimba Hora Constituency. It however denies that there were anomalies in the management or tallying of the votes which would undermine the credibility, transparency and accuracy of the final results. At the same time MEC states in its reply that the alleged anomalies are matters beyond their knowledge save that the Petitioner raised complaints which it resolved.
12. MEC replies further that matters relating to distribution of money as reported at Chiseng'ezi F.P. School are electoral offences and should have been reported to relevant law enforcement agencies and the Registrar of Political Parties. Similarly, the conduct complained of at Chaboli and Lukwelukwe polling stations relating to handing out cash to voters should have been reported to relevant law enforcement agencies.
13. MEC denies allegations of Angella Mkandawire, the supervisor at Kaso polling station, instructing Auline Moyo to vote for Martha Munthali and all that happened in the process and requires strict proof of it.

14. Regarding the 25 votes of the Petitioner placed on the stack of Martha Munthali at Malangazi polling centre, MEC states that all votes were properly classified and it requires strict proof of the allegation.
15. MEC denies the allegation that a DPP representative was given the mandate to issue ballots at Chasimba polling station and states that apart from its members of staff, no individual was allowed to perform any other work apart from observing as provided by law.
16. MEC further denies the allegation that MCP representatives were hoodwinked to leave the polling stations before counting votes commenced at Chanyuni, Endindeni and Kaundi polling stations. It states that political party representatives were free to leave or remain at all material times and at no point was any one of them denied access to observe events at a polling station. MEC requires strict proof of this allegation.
17. MEC also denies the allegation that logbooks were not available at some polling centres including the Constituency Tally Centre at Bulala and requires strict proof of the same. MEC states that if it is true, any such anomaly would not affect the results of an election.
18. MEC admits receiving the complaints of the Petitioner and states that they responded to them and declared Martha Munthali as a winner upon examination of the records.
19. MEC denies that there were any irregularities or such irregularities that would affect the integrity of the election. MEC states that it exercised its mandate as required by law and therefore requires strict proof of the allegations that it failed to address the Petitioner's complaints and failed to conduct, control and administer the election as to amount to an unjustifiable dereliction of its constitutional and statutory duty to ensure free, fair, and credible elections. MEC further states that there were no anomalies that affected the outcome of the results. It therefore seeks dismissal of the petition with costs on an indemnity scale.

### **Preliminary issues**

20. There are three preliminary issues in this petition to be dealt with at the outset. The first issue concerns the argument that electoral offences should have been reported to law enforcement agencies and the Registrar of Political Parties. The second issue concerns the way the Petitioner has presented exhibits in the petition and the point at which further sworn statements in support of the petition were filed. The third one is whether this petition was properly commenced under section 101 of the Presidential, Parliamentary and Local Government Elections Act.

*Whether irregularities alleging electoral offences should have been reported to and dealt with by law enforcement agencies first*

21. It will be noted that the main argument by MEC is that the allegations in the petition relating to giving out money to voters to vote for a particular candidate are plainly criminal in nature and should have been reported to the Malawi Police Service or the Registrar of Political Parties for prosecution, and that the Petitioner may get the remedies being sought by this petition after that process has been fully exhausted.
22. MEC observes in its closing submissions paragraphs 70 to 79 that it is a criminal offence contrary to section 115 (b) and (c) of the Presidential, Parliamentary and Local Government Act to campaign outside the prescribed campaign period or to fraudulently influence a voter to vote in a particular way and that it is also a criminal offence contrary to section 41 of the Political Parties Act to issue handouts. MEC submits that one can bring a petition under section 101 of the Presidential, Parliamentary and Local Government Act alleging irregularity or any matter whatsoever. And that under section 2 of the Act, “irregularity” in relation to the conduct of an election, means non-compliance with the requirements of the Act, the Constitution and any other applicable law. In view of this MEC submits that, clearly all matters that have been raised in this petition are irregularities, but not full irregularities yet until they have been proven in a proper court of law, being crimes.
23. MEC further submits that by designating them as crimes, the Legislature took them away from determination by a civil court determining petitions on a balance of probabilities or indeed on *prima facie* evidence which is the standard of proof required of a petitioner in an election

petition under section 101 of the Presidential, Parliamentary and Local Government Act. MEC cites section 119 of the Presidential, Parliamentary and Local Government Elections Act which provides for the penalty of K10 000 000 and imprisonment for five years for a person convicted of an offence under the Act and additional penalties in the form of barring the convicted person from performing the duties of his office in connection with the election where applicable, suspending the right of the convicted person to vote in the election or annulling the vote cast by such person and such directions as the court considers to be warranted in the circumstances, having regard to the nature of the activity constituting the offence. MEC then submits that it is the convicting court that has power to make such orders including orders relating to the voting process or the consequence of the voting process. MEC emphasizes in the submissions that this court cannot prove the crimes in the absence of the alleged offenders and using wrong tools. MEC finally submits that it is ill equipped to deal with such matters, and so, it properly guided the Petitioner to a proper forum under exhibit "HM8" to the petition.

24. The submissions of the second Respondent on this point are similar in terms to those of MEC outlined above.
25. There is no direct response to this argument in the Petitioner's written submissions. However, I notice that the Petitioner submits at the end of paragraph 5.2.1 that buying votes effectively constitutes both a criminal breach and a substantive electoral irregularity. He submits similarly about Polling Officers forcing voters to vote for a particular candidate in paragraph 5.2.2. At the end of the paragraph, he submits that "upon receipt of observer and candidate complaints regarding this misconduct, the 1<sup>st</sup> Respondent was obliged under section 99 to investigate and take necessary action to correct the irregularity and its effects. Its failure to act compounded the violation, confirming institutional complicity in the erosion of electoral integrity."
26. Further to this, Counsel for the Petitioner submitted orally during the hearing that some of the alleged criminal irregularities were reported to Police by the concerned Political Party Representatives at the polling stations. He submitted that the lack of criminal prosecution cannot be blamed on the Petitioner. And that, everybody is aware that the power to prosecute does not vest in the Petitioner but the Director of Public Prosecutions.

27. The issue is whether MEC should not decide on complaints under section 99 of the Presidential, Parliamentary and Local Government Elections Act alleging irregularities bordering on criminal conduct before conviction of the offences. And likewise, whether the High Court should not determine a petition under section 100 or 101 of the Act, when the petition alleges irregularities bordering on criminal conduct, before conviction of the offences.
28. The starting point is to observe that an appeal to the High Court under section 100 of the Presidential, Parliamentary and Local Government Elections Act comes from MEC. Among the grounds upon which the High Court can declare an election or the election of any candidate void when proved to the satisfaction of the court under subsection (3) is the ground that the voters were corruptly influenced in their voting contrary to any provision of this Act, or had their ballot papers improperly rejected, or voted more than once. This ground may be said to cover offences under section 115 of the Act like -
- (a) voting more than once under subsection (c) (v);
  - (b) fraudulently and faithlessly expressing a vote not according to the wish of a blind or a disabled person while accompanying that person to vote under subsection (c) (vi);
  - (c) using or threatening violence or using false information or other fraudulent means to coerce or induce another person to vote for or against a particular candidate or a candidate of a particular political party or to abstain from voting under subsection (c) (viii); and
  - (d) a public officer, using his or her office to coerce or induce another person to vote for or against a particular political party or candidate or abstain from voting.
29. If this is the case, it means MEC would have decided on complaints alleging such irregularities under section 99. As such, the High Court can before conviction determine an appeal under section 100 alleging irregularities that are also criminal offences under the Act or any law in relation to the conduct of elections. This is not for purposes of dealing with the alleged offenders as a criminal court would do, but to correct the irregularities and their effects in relation to the election. For the same reason, the High Court can determine a petition under section 101 alleging an irregularity that may also be a criminal offence before conviction. The

aim is not to convict or acquit the offender(s) but to determine if the person returned as winner or elected was duly returned or elected to the office in issue.

30. In *Mhone v Electoral Commission and Another (2)* [2013-2021] MELR 492, the Supreme Court of Appeal faulted the High Court for holding that the issue of beating of the appellant's monitors should have been left to the police to conclude. The appellant in that case complained of tampering with result sheets and keeping result sheets at homes of political party representatives or individuals. It was when the monitors of the Appellant went looking for their copies of result sheets from the other political party representatives that they were beaten, and this had not been refuted. The issue of beating the appellant's monitors was significant in that it confirmed the irregularity that the results could have been tampered with.
31. In view of the foregoing, I find it in order to determine the present petition even though there has not been any conviction on the alleged irregularities which are also criminal offences under the Presidential, Parliamentary and Local Government Act or the Political Parties Act.

*Presentation of exhibits and filing of further sworn statements*

32. MEC raised a procedural issue in its final written submissions regarding the form of an election petition and the filing of sworn statements in support of an election petition. The Respondents did not reply to the issues.
33. It is observed on paragraph 44 of the 1<sup>st</sup> Respondent's Closing Submissions that exhibits have been attached to the petition itself when they should have been attached to the sworn statement of Henry Mumba in accordance with Order 18, rule 7 of the Courts (High Court) (Civil Procedure) Rules. So, MEC argues that there is no evidence to be relied upon in support of the petition apart from his own words that he verifies the petition.
34. My view on this issue is that it exposes a lacuna in the procedural rules for election petitions as to the form of the petition. Section 101 (1) of the Presidential, Parliamentary and Local Government Elections Act only states that the petition shall be presented by way of petition to the High Court. Subsection (8) then provides that a petition and any appeal arising therefrom

shall be heard in accordance with Part II of Order 19 of the Courts (High Court) (Civil Procedure) Rules. Under the said part II, Order 19, rule 13 only 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, without providing for the form of the petition or the application.

35. Rule 14 requires that within 7 days of the date of service of an application (which I suppose should include a petition) on the respondent, or on the Attorney General, as the case may be, the respondent or the Attorney General should file with the Court and serve on the applicant a sworn statement in reply with skeleton arguments. Rule 15 requires that within 3 days of being served with the sworn statement in response, the applicant may file with the Court and serve on the respondent, or on the Attorney General, as the case may be, a sworn statement in reply with skeleton arguments. And then under rule 16, the Court should hear the application (which I suppose also includes the petition) within 3 days after the service of the sworn statement in reply. And then under rule 17, deliver its decision within 14 days of the conclusion of the hearing of the petition or application.
36. Reading between the lines of Part II of Order 19 of the Courts (High Court) (Civil Procedure) Rules shows that an election petition or application should ordinarily be determined on sworn statements. Yet there are other petitions that are ordinarily decided on evidence given orally, like petitions for divorce, whose form may be different.
37. Order 18 of the Courts (High Court) (Civil Procedure) Rules is about sworn statements and not petitions. Rule 7 of this Order provides among other things how exhibits should be identified in a sworn statement.
38. I will in view of this lacuna not take issues with the exhibits to this petition suffice to submit that it is necessary to fill it up to ensure efficient management of election matters.
39. Paragraph 45 of the 1<sup>st</sup> Respondent's Closing Submissions also observes that the Petitioner filed other sworn statements in support of his petition under Order 18 and Order 19, rule 13 of

the Courts (High Court) (Civil Procedure) Rules on 16<sup>th</sup> October 2025. The argument is that the petition must be presented within 7 days of the declaration of results and it must be supported with evidence. The only evidence a petitioner can present later is a sworn statement in reply under Order 19, rule 15. None of the sworn statements filed on 16<sup>th</sup> October 2025 are in reply to the sworn statement of David Matumika Banda and so they should be stricken out for breaching the timelines in Part II of Order 19.

40. It is the issue of the same lacuna here. It should be noted that the petition under section 100 of the Presidential, Parliamentary and Local Government Elections Act is required expressly to be supported by sworn statements, but no time limit is provided. The petition under section 101 has a time limit of seven days from the declaration of the result of the election but does not expressly require it to be supported by any sworn statement at the time of presentation to the High Court. There is even no provision for sworn statements in support of a petition in Part II of Order 19 of the Courts (High Court) (Civil Procedure) Rules.

41. I will also not take issues with the said sworn statements in view of the lacuna, suffice to urge immediate revision of the rules of procedure in election matters.

42. The same can be said about how MEC responded to this petition. They filed a reply and a sworn statement in response to the petition sworn by David Matumika Banda their Director of Legal Services, when Order 19 rule 14 requires the respondent or the Attorney General to only file a sworn statement in reply. This is also due to the lack of clarity as to the form of an election petition and how it should be responded. Like earlier said, these are technical matters which should not prevent the court from considering the substance of the present petition.

*Whether this petition was properly commenced under section 101*

43. The Petitioner submits in his submissions that the Constitution and the Presidential, Parliamentary and Local Government Elections Act are permissive on what electoral case a litigant can commence. Where the main bone of contention is how MEC has exercised its mandate, a litigant is free to take out judicial review proceedings under section 76 (5) of the Constitution or an appeal under section 100 of the Presidential, Parliamentary and Local

Government Elections Act. And, where the bone of contention goes beyond MEC's exercise of its powers, a litigant is free to bring a petition under section 101.

44. The Petitioner further relies on the dictum of Hon. Justice Mambulasa in *Centre for Environmental Policy and Others v Southern Region Water Board*, Misc. Civil Casuse No. 9 of 2022 (unreported) where he said on paragraph 42 that –

“... Under section 113 of the Parliamentary and Presidential Elections Act, a person can submit a written complaint alleging an irregularity to the Electoral Commission as a tribunal. Under section 114 of the same Act, an appeal shall lie to the High Court against a decision of the Electoral Commission, as such tribunal, confirming or rejecting the existence of an irregularity. Under section 100 of the same Act, the same person can approach the High Court directly on the same complaint. Aggrieved parties who approach the High Court are never turned away on the basis that they did not first file their complaint with the Electoral Commission. Such parties have a choice whether to proceed by way of lodging their complaint with the Electoral Commission or directly with the High Court. There is absolutely no legal sanction for the choice that the parties make.”

45. As the law was then, what is presently in section 100 of the Presidential, Parliamentary and Local Government Elections Act was in section 114 of the Parliamentary and Presidential Elections Act and what is presently in section 101 was in section 100.

46. The argument MEC makes in its submissions is that because they dealt with the complaint in this petition under section 99, the Petitioner should have appealed to the High Court under section 100. By complaining in writing and kickstarting section 99, the Petitioner entered a tunnel unto section 100, and he cannot change and then go to section 101. The view of MEC is that the dictum in *Centre for Environmental Policy and Others v Southern Region Water Board* misconstrued the law. MEC cites the case of *Limbikani Kalirani and Others v Alfred Jiva and Others*, Election Case No. ... of 2019 which decided on the point.

47. The distinction however is that the petition in *Limbikani Kalirani and Others v Alfred Jiva and Others* was under section 114 of the Parliamentary and Presidential Elections Act. The court held that under that provision the complaint was enjoined to lie first to the Commission under section 113 of the Act and only go to the High Court by way of appeal. There was no decision by the Commission confirming or rejecting the existence of the irregularity complained of in that case. So, it dismissed the petition for being misconceived.
48. There is insight to this question in *Namasasu v Msungama and Another* [2013-2021] MELR 231 when the Supreme Court of Appeal said page 242 that –
- “When the national results have been determined the right to complain is reserved to the person who had a right to be elected or who was a candidate. It is no longer open for representatives of a candidate or political party or voters, generally, to file complaints. This right is exercisable under section 100 of the PPEA and the decision of the High Court in such a petition is appealable to the High Court.”
49. No other person but the person claiming to have had a right to be elected at the election or alleging to have been a candidate at such election can bring a petition to the High Court under section 101 of the Presidential Parliamentary and Local Government Elections Act. It does not matter whether he or any other person ever complained about the same issues before MEC. The present petition has been properly brought under section 101 because the Petitioner was a candidate at the election in issue.
50. We should now consider the substantive matters of the petition starting with the law.
51. In as far as the burden and standard of proof are concerned, it was settled by the Supreme Court of Appeal in *Mutharika and Another v Chilima and Another* [2020] MELR 406 that –
- “Whereas other jurisdictions might advocate different levels of standard of proof, in our considered view, having particular regard to how our Constitution views and guards the human rights of the people (see: section 44 of the Constitution), and further bearing in mind the heavy duties both the Constitution and electoral statutes place on the Commission, we do not believe that it could have been the scheme of the law to

saddle a petitioner with an onerous burden of proof in the discharge of the initial burden of proof. In our view, to the extent that the three Supreme Court of Appeal cases, namely, *Gondwe and Another v Gotani Nyahara* (supra) and *Electoral Commission and Another v Mkandawire* (supra) and *Bently Namasasu v Ulemu Msungama and The Electoral Commission* (supra) did not come out clear on the issue of the burden and standard of proof, our position is that the petitioner should discharge this initial burden of proof with a *prima facie* standard of proof, before the burden shifts to the Commission as a duty bearer. Once the burden so shifts, owing to the powers, functions and duties the Constitution and the electoral statutes have conferred on the Commission, the Commission must discharge the burden of proof in rebuttal of the petitioner's allegations on a balance of probabilities."

52. The petitioner under section 101 of the Presidential, Parliamentary and Local Government Elections Act should allege undue return or undue election of the other person to the office. The High Court in *Chilima and Another v Mutharika and Another* [2020] MELR 1 defined undue return as an improper declaration of a person as a winner of an election and undue election as one that does not comply with the set processes for the election. It was clear that undue return concerns the quantity of votes while undue election concerns the quality of the election. It is therefore not surprising that on appeal in *Mutharika and Another v Chilima and Another* [2020] MELR 406 when discussing qualitative and quantitative approaches to dealing with electoral disputes, the Supreme Court of Appeal while holding that section 100 of the Parliamentary and Presidential Elections Act was largely about quality, held that there would be considerations of quantity under the part of the section talking about "any other cause." The Supreme Court of Appeal then said at page 486-487 that –

“Therefore, the section leaves it open to the court to employ either the qualitative or quantitative approach depending on the manner in which the petition has been presented.”

53. The parties to this petition agree in their submissions that the Supreme Court of Appeal settled the law relating to a petition such as this when it said in *Mutharika and Another v Chilima and Another* [2020] MELR 406 at page 485 that –

“This Court has thoroughly considered the process of conducting an election in Malawi. If what we have laid down as a process of conducting or managing an election has been largely compromised, as is suggested above, it will be hard for a court in Malawi to uphold such an election. This is more so when one considers that the resulting vote numbers might come about as a result of irregularities or the flouting of electoral law. However, it is well to note that this court does not advocate the idea that a court should completely ignore the result, but that where the result is from a largely flawed process it cannot be upheld.”

54. These are the principles to guide this court in determining this petition. We now move on to consider the evidence.
55. It will be noted that there is no sworn statement in response to the petition from the 2<sup>nd</sup> Respondent. She joined the proceedings on the date of hearing upon her application under Order 6 rule 7 of the Courts (High Court) (Civil Procedure) Rules.
56. The petition is supported by 14 sworn statements that were made by the Petitioner himself, Thampson Mithi, Angelo Tembo, Lovemore Chavula, Henry Mkandawire, Fanny Kasonga, Agness Nyirenda, Hope Mapira, Eliza Nkosi, Auline Moyo, Davison Moyo, Waliyekha Isaac Luhanga, Alice Nkunika and Patricia Chavula.
57. Because the petition alleges irregularities at Chiseng’ezi, Chaboli, Lukwelukwe, Kaso, Malangazi, Chasimba, Chanyuni, Endindeneni, and Kaundi and the lack of logbooks, it is proper to consider the evidence in that order.
58. The petition is opposed by the sworn statement of David Matumika Banda, the Director of Legal Services at MEC. He depones that he also sits as secretary to the Commission and as such participates in its decision-making process. He states that he depones to matters that are personally known to him or have come to his knowledge by virtue of his position and he believes them to be true to the best of his knowledge, information and belief. His sworn statement only responds to the petition and the sworn statement of Henry Mumba.

59. Mr Henry Mumba's sworn statement is in general terms. It states that he was dissatisfied with the conduct and results of the election and he wrote letters to the Chairperson of MEC highlighting anomalies and requesting a recount. He also wrote an email on 29<sup>th</sup> September 2025 but instead of addressing his concerns MEC proceeded to declare Martha Munthali as the winner. He wrote another email on 1<sup>st</sup> October 2025, and it was after this email that MEC responded but disregarded his concerns on the alleged electoral malpractices. He verily believes that the anomalies cited in the petition demonstrate serious manipulation of results in favour of Martha Munthali. He further verily believes that the anomalies affected the credibility, transparency and outcome of the election in the constituency.
60. David Matumika Banda's sworn statement is that he verily believes that the petition does not have any merit to warrant granting the reliefs sought. He attended the meeting which was convened by the Commission for purposes of determination of the results for all elections held during the 2025 General Election including the parliamentary election held in Mzimba Hora Constituency.
61. David Matumik Banda depones that in its determination of results of parliamentary election, the Commission received records of results from Constituency Tally Centres established in the constituencies. For each constituency, the Commission considered the following –
- (a) Record of Polling Process - Form 17,
  - (b) Polling Station Record of Results - Form 18B,
  - (c) Constituency Record of Result by Polling Station - Form 19B,
  - (d) Constituency Summary of Results for Parliamentary Election - Form 20B.
62. He also depones 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. He verifies that, contrary to the assertions made in the Petition the Parliamentary Election in Mzimba Hora Constituency was conducted in compliance with the statutory obligations that the Commission has and that the results for the election as announced and published by the Commission reflect the will of the voters in Mzimba Hora. He also verily

believes that it is not correct that the allegations stated by the Petitioner caused undue election or undue return in the parliamentary election in the Constituency.

63. David Matumika Banda verily believes that matters relating to procuring votes through fraudulent means as alleged in the Petition are electoral offences. He states that under the Presidential, Parliamentary and Local Government Elections Act, 2023 (the Act) and under the Code of Conduct for Election Campaign, 2025 (the “Code”) as promulgated under the Act, the law envisages that criminal offences must be dealt with by following due process of the law. Paragraph 11 of the Code states that the Commission shall have the power to regulate its own procedure for enforcement and handling of complaints relating to breach of the Code and that the Commission may, upon receiving a complaint, refer the complaint to an appropriate law enforcement authority.
64. David Matumika Banda believes that the allegations in the Petition relating to coercion of voters to vote for a particular candidate are plainly criminal conducts that should have been reported to the Malawi Police services for prosecution. Therefore, he verily believes that the reference of the complaints to the Police or to the Registrar of Political Parties is not an irregularity as alleged by the Petition. The Petitioner has the right to pursue these allegations with prosecutorial authorities and may get the remedies being sought after the due process has been fully exhausted.
65. On complaints, David Matumika Banda depones that these were duly considered by the Commission and responded to accordingly before determination of the results - “HM 8”. The issues surrounding criminal conduct should have been reported to relevant security organs or bodies mandated to deal with them. He depones that he is not aware of any such cases having been reported anywhere and the Commission has not received any determination by the Registrar of Political Parties or indeed a conviction from Court.
66. In responding to the Petitioner’s claim that there was misclassification of votes, he depones that at Malangazi F.P School, Polling Station Code 0220121/01, MCP sent one Hope Mapira as its representative. Political Party and candidate representatives were recorded to have

arrived at the polling station at 5:00 am and they signed the Polling Station Record and Results, Form 17/Part J. To him this showed full participation of the party representatives, and they are unlikely to have signed the results if the allegation was correct. He exhibits a copy of Polling Station Record of Results for the said polling station marked “MEC 1”.

67. He depones further that similarly, at Malangazi E.P School, Polling Station Code 0220121/02, MCP sent one Glory Kamanga as its representative. The political party and candidate representatives were recorded to have arrived at the polling station at 5:00 am and they signed the Polling Station Record and Results, Form 17/Part J. To him this also shows full participation of the party representatives, and they are unlikely to have signed the results if the allegation was correct. He exhibits a copy of Polling Station Record of Results for the said polling station marked “MEC 2”.

68. David Matumika Banda depones that as for Chasimba polling station, Polling Station Code 0220106/01 MCP sent one Angel Tembo as its representative. The political party and candidate representatives were recorded to have arrived at the polling station at 5:00 am and they signed the Polling Station Record and Results, Form 17/Part J. To him this shows full participation of the party representatives, and they are unlikely to have signed the results if the allegation was correct. He depones further that in fact the presiding officer’s notes show that there was no complaint that was raised. He exhibits a copy of Polling Station Record of Results for the said polling station marked “MEC 3”.

69. David Matumika Banda goes on deponing that at Chanyuni J.P School, Polling Station Code 0220110/01, MCP sent Alice Mapala and Nonda Mapala as its representatives. Political party and candidate representatives were recorded to have arrived at the polling station from 4:00 am and Alice Mapala signed the Polling Station Record of Results, Form 17/Part J. To him this shows full participation of the party representatives, and they are unlikely to have signed the results if the allegation was correct. He exhibits a copy of Polling Station Record of Results for the said polling station marked “MEC 4”.

70. He then depones that at Endindeni F.P School, Polling Station Codes 0220127/01 and 0220127/02 MCP sent Luka Nkosi and Lesten Chinkhota; and Chancy Lowole and Ishmael Mphepo respectively as its representatives. They were recorded to have arrived at the polling stations from 5:00 am. Luka Nkosi signed the Polling Station Record of Results, Form 17/Part J for polling station code 0220127/01 while Chancy Lowole and Ishamael Mphepo signed the Polling Station Record of Results, Form 17/Part J for polling station code 0220127/02. To him this shows full participation of the party representatives, and they are unlikely to have signed the results if the allegation was correct. He exhibits a copy of Polling Station Record of Results for the said polling stations marked "MEC 5" and "MEC 6" respectively.

71. David Matumika Banda depones that, it is also not true that there were no logbooks for logging of complaints. Exhibit "MEC 5" shows that the logbooks were available. This is probably because the Presiding Officer's notes on Form 17/Part M show that among the items placed in an envelope serial number C-0925034103 was a complaints logbook.

72. David Matumika Banda depones that at Kaundi F.P. School, Polling Station Codes 0220122/01 and 0220122/02 MCP sent Fadwell Nkhata and Isaac Mzembe; and Steford Moyo and Suzen Mkandawire respectively as its representatives. They were recorded to have arrived at the polling stations from 5:00 am and 6:00 am respectively. Fadwell Nkhata and Isaac Mzembe signed the Polling Station Record of Results, Form 17/Part J for polling station code 0220122/01 while Suzen Mikandawire signed the Polling Station Record of Results, Form 17/Part J for polling station code 0220122/02. To him this shows full participation of the party representatives, and they are unlikely to have signed the results if the allegation was correct. A copy of Polling Station Record of Results for the said polling station is exhibited as bundles marked "MEC 7" and "MEC 8" respectively.

73. In conclusion, David. Matumika Banda verily believes that the Parliamentary Election for Mzimba Hora Constituency was conducted in compliance with the applicable electoral laws and procedures, and that the results as announced and published by the Malawi Electoral Commission represent the true will of the voters in the Constituency. And he verily believes

that the Petition lacks merit both in law and in fact and that the reliefs sought therein ought not to be granted.

74. Now the evidence in respect of the alleged irregularities at the polling stations concerned is in the sworn statements of the other witnesses.

*Chiseng'ezi*

75. Thompson Mithi states in his sworn statement that he is of majority age and sound mind. He attended Chiseng'ezi Primary School polling centre to cast his vote, and he was received by two individuals who handed him voting forms. He proceeded to vote properly in the presidential section without interference. When he approached the parliamentary voting stream, he was received by Mr. Steven Nkhonde, a teacher who was serving in an official capacity at the polling station and he was shown the parliamentary ballot paper. He depones that he clearly stated to Mr. Nkhonde that he intended to vote for the MCP parliamentary candidate. Despite his expressed intention, Mr. Nkhonde forcibly took hold of his arm and directed it toward the box for the DPP candidate, and when he objected and told Mr. Nkhonde that he did not wish to vote for the DPP candidate, Mr. Nkhonde forced him and physically manipulated (his hand) to cast his vote contrary to his will. He further deposes that this experience caused him significant emotional distress and upon returning home, he informed members of his community about the incident and promptly sought avenues to lodge a formal complaint.

76. The other witness at Chiseng'ezi is Waliyekha Isaac Luhanga. He depones that he is a Malawian citizen of majority age and sound mind. He went to Chiseng'ezi Full Primary School polling station to cast his vote in the elections and was accompanied by his wife. He did not encounter any issues with the presidential ballot. He depones that problems began when he approached the parliamentary voting section where he was received by Mr. Steven Nkhonde, who instructed him to 'vote properly,' and when he expressed his intention to vote for the candidate representing MCP, Mr. Nkhonde told him to vote for the DPP candidate. He depones that Mr. Nkhonde showed him the symbols associated with the parliamentary candidates and specifically pointed out the symbol representing the DPP candidate. While he was still

preparing to vote for Hon. Mumba, Mr. Nkhonde physically guided him toward the DPP symbol and placed his (Luhanga's) hand on the ballot paper to vote for the DPP candidate.

77. When he returned home, he discussed the incident with his wife and during their conversation, she explained that the symbols on the ballot paper represented different political parties, and it was then that he realized he had been misled and manipulated into voting for a candidate he did not support. He subsequently lodged a complaint with a party representative regarding the incident.
78. My observation so far is that Thampson Mithi and Waliyekha Isaac Luhanga have given evidence on matters that have not been raised by the petition. The petition has 22 paragraphs and none of them complains about Mr. Nkhonde instructing or forcing anyone to vote for Martha Munthali at Chiseng'e zi polling station in the manner stated by the two witnesses. There is even no response to the issue in the 1<sup>st</sup> Respondent's reply to the petition or David Matumika Banda's sworn statement in response to the petition.
79. There is mention of Mr. Nkhonde ordering Mama NyaLuhanga to vote for Martha Munthali in "HM2" but "HM2" is not the petition before this court. It is an additional complaint Henry Mumba made to the Chairperson of MEC on 19<sup>th</sup> September 2025. In view of this I find that the sworn statements of Thampson Mithi and Waliyekha Isaac Luhanga are irrelevant to the present petition.
80. That is not all that has been alleged to have taken place at Chiseng'ezi. Lovemore Chavula depones that he is a registered voter, and he voted at Mnthonje F.P. School. He further depones that during the voting period, he received credible information that Mr. Steven Junior Phiri was involved in distributing money to voters around and close to Chiseng'ezi Full Primary School Centre as an inducement to vote for the DPP candidate. He further depones that he personally witnessed Mr. Phiri distributing money and instructed him to take his money and vacate the area where he was conducting these activities.

81. Henry Mkandawire depones that he voted at Mutu F.P. School. After voting he met Jatira Luhanga who told him that he (Jatira Luhanga) saw Steven Junior Phiri, a member of DPP at Rwanjazi Bridge, near Chiseng'ezi School, giving out cash amounting to K2 000 to voters so as to influence them to vote for Martha Munthali and that Steven Junior Phiri was holding ballot papers for Member of Parliament and was instructing voters to put their inked finger on the photo for Martha Munthali. He further depones that he went to Rwanjazi bridge to verify what he was told and found Steven Junior Phiri carrying K2 000 notes and ballot papers. Upon confronting him with his conduct, Steven Junior Phiri fled to a nearby graveyard called Mtonga. He returned to Chiseng'ezi Trading Centre and reported the incident to security personnel at the polling station, but they advised him that they could not act on the incident as it happened outside a radius of 100 metres from the polling station. They advised him to find two strong men to go and look for Steven Junior Phiri, but he felt it was not his task, and he simply returned to his home.

82. It can clearly be seen that part of the evidence given by Lovemore Chavula and Henry Mkandawire is hearsay. For the part where they give their own testimony, I find that *prima facie*, Lovemore Chavula saw Steven Junior Phiri giving K2 000 notes to voters to influence them to vote for Martha Munthali. Henry Mkandawire does not testify to seeing Steven Junior Phiri giving out the money but fleeing to the nearby graveyard when he confronted him.

#### *Chaboli*

83. Alice Nkunika depones that she was a representative of MCP at Chaboli Polling Station. She noted that there were four representatives of DPP while MCP only had two. When she inquired from one of the DPP representatives as to why there were four of them against the MEC recommendation of two per polling station, she was told that two monitors would be stationed inside the station and the other two outside the station so that they should influence voters to vote for Martha Munthali as per instructions from their boss. She further depones that she saw one DPP representative, Felista Mazoba, moving around outside the polling station and when she inquired about her conduct, Felista Mazoba told her that she was supervising two other DPP representatives who were seated outside the station.

84. Alice Nkunika continues to depone that she went outside to verify what she had been told. She saw two well-known cadres of DPP, namely, Robert Ng'ona and Albert Nkunika, giving K2 000 notes to voters so that they could vote for Martha Munthali. She advised Robert Ng'ona and Albert Nkunika that it was against the conduct of elections to woo voters during the polling day, but they did not take her advice well such that an argument erupted.
85. Alice Nkunika further depones that Patricia Chavula, another MCP representative, then reported the incident to the Police Officer who was in charge at the station. The Police Officer advised the MCP representatives to let it go, but they insisted because the DPP representatives were giving voters money.
86. Alice Nkunika lastly depones that the Police Officer was then asked to check another DPP representative at the centre by the name of Felista Mahlopa who confirmed that the two DPP representatives who were stationed outside were specifically assigned by their boss.
87. Patricia Chavula does not indicate that she was a representative of MCP at the polling station. She depones that after voting at Chaboli Full Primary School Centre she proceeded to Chaboli Trading Centre, and while there, she personally saw two individuals namely, Lobat Ng'ona and Alibati Nkunika, whom she knows by name and face, distributing cash in the amount of K10,000 to individuals as an inducement to vote for the DPP candidate. After witnessing this she returned to Chaboli Primary School where she had earlier cast her vote, and she was informed by another individual that the same boys were still actively distributing money to voters. She immediately went to report the matter at Chaboli Police Station and requested to speak to the officers on duty and informed them of the vote buying taking place near the polling station. The police officers asked her if she had physical evidence and she depones that while she did not have photographic or recorded proof, she reiterated that she had personally witnessed the incident and knew the individuals involved. She further depones that while at the police station, Ms. Alice Nkunika arrived and told the police officers that Ms. Felester Mazgopa, whom she also knows, was assisting Lobat Ng'ona and Alibati Nkunika by giving them takeaway food whilst the two individuals were bribing voters. Shortly thereafter, she depones that Ms. Felester Mazgopa arrived at the police station and made statements

suggesting that they should be cautious or silent about the matter. She depones that despite lodging formal complaints, the police officers at the police station did not take any meaningful action or initiate an investigation into the allegations.

88. These two witnesses are so emphatic about their testimony, I find that *prima facie*, they saw Lobat Ng'oma and Alibati Nkunika giving out money to voters outside Chaboli Polling Station.

*Lukwelukwe,*

89. I have read through all the sworn statements of the witnesses for the Petitioner and found none of them testifying anything about the allegations at Lukwelukwe.

*Kaso*

90. Auline Moyo depones that she voted at Kaso Polling Station in Mzimba Hora Constituency. During voting the following incidents happened. She received a ballot paper for Presidential Candidate and voted for the candidate of her choice. Thereafter, she received another ballot paper for Member of Parliament and proceeded to the voting booth to cast her vote. While in the voting booth, Angella Mkandawire, the Headteacher at Kaso Primary School, approached her with another ballot paper and told her to vote for Martha Munthali, a candidate for DPP. She refused to follow her instructions and told her that she would vote for the candidate of her choice, which was Hon. Henry Mumba. Despite her resistance to vote for Martha Munthali, Angella Mkandawire grabbed her inked finger and placed it on the photo of Martha Munthali, and she vehemently protested, which resulted in the ballot paper being spoiled. She was given another ballot paper by another teacher, and she voted for the candidate of her choice. She left the premises and explained what had happened to Mary Moyo whom she had met on the way, and Mary Moyo took the initiative to call the Ward Councilor and informed him of what had happened.

91. It is clear from this evidence that the irregularity was corrected.

*Malangazi*

92. Hope Mapira depones that he was a representative of MCP at Malangazi F.P. School. During the official counting of votes at the polling station he observed and recorded a material irregularity in handling and classification of votes. He further depones that he noted that during vote classification the Presiding Officer was deliberately classifying Hon. Mumba's votes as for Hon. Munthali Ngwira which led to several votes being erroneously or deliberately recorded under the DPP candidate. Upon this discovery he objected to the allocation and asked to check the votes again and confirm if the same had been correctly classified. When they verified, it was discovered that 9 votes belonging to Hon. Mumba had been misclassified as for the DPP candidate. He further depones that this discrepancy was also identified during the reconciliation of ballot papers and tally sheets, where the physical count of MCP votes did not correspond with the figures entered on the official tally sheets. He depones at the end that he believes that the misclassification of the votes materially affected the final results declared for the constituency thereby undermining the credibility of the electoral process.
93. As earlier noted above, the response of MEC to this issue is that since Hope Mapira and Glory Kamanga who were MCP representatives at the polling station signed the Polling Station Record and Results, Form 17/Part J, it shows that they fully participated in the process, and they are unlikely to have signed the results if the allegation was correct.
94. It however should be noted that the Supreme Court of Appeal in *Namasasu v Msungama and Another* [2013 – 2021] MELR 231 held that it was mere conjecture for the MEC in an election to suggest that since the representatives for a political party or a candidate signed the result sheets, a court should conclude that they must have been in agreement with the results. See also *Chilima and Another v Mutharika and Another* [2020] MELR 1 paragraph 1356.
95. Further to this, the Supreme Court of Appeal said in *Mutharika and Another v Chilima and Another* [2020] MELR 406 at pages 463 – 464 that –
- “The fact that there are party representatives around does not therefore absolve the Commission of its duties *vis-a-vis* the elections. The fact that a party representative says an election was fair, free, credible does not necessarily mean that it was. Neither, in our judgment, is an election not free, fair or credible merely because a party

representative has said so. Their signatures at the very most only signify their presence when the document was signed and not the correctness of the arithmetic therein.”

96. It is clear in view of this that the response by MEC to the allegations at Malangazi does not meet the required standard. However, the allegation in the petition concerning Malangazi Polling Centre is that 25 votes for the MCP candidate were placed on the stack for Martha Munthali. The witness has testified that there were 9 votes and that the anomaly was corrected. If anything, what remains unresolved is that the physical count of MCP votes did not correspond with the figures entered on the official tally sheets, but this is not alleged in the petition and therefore not open for the decision of this court.

*Chasimba*

97. Angelo Tembo depones that she was a representative of MCP at Chasimba F.P. School. She testifies that she noted in the course of discharging her duties that Charity Londwa, a representative of DPP was also unlawfully given the mandate to discharge an additional role of Presiding Officer. In the process Charity Londwa was instructing voters to vote for Martha Munthali, the candidate for DPP. She protested against this conduct and Charity Londwa was relieved of the additional role.

98. It will be recalled that the allegation in the petition says that the DPP representative was given the role of ballot issuer. The witness says that it was the role of Presiding Officer. That is a pretty high office at a polling station. Presiding Officer is the overall in charge of a polling station. Section 63 of the Presidential, Parliamentary and Local Government Elections Act requires MEC to appoint at least five polling station officers to administer proceedings at a polling station. One of them is designated as a Presiding Officer for the polling station and is under section 66 responsible for creating and guaranteeing necessary and indispensable conditions for the custody, conservation, security and inviolability of voting materials and equipment.

99. To such an allegation David Matumika Banda’s testimony in response is that since Angelo Tembo signed the Polling Station Record and Results, Form 17/Part J, it shows that she fully

participated in the process, and she is unlikely to have signed the results if the allegation was correct. There should have been more said. MEC did not even find it necessary to cross-examine the witness. As held above, Angelo Tembo's signature to the result form only signifies her presence at the time. I find this allegation established.

100. The role of a representative of a party or a candidate is to monitor the voting process at the polling station on behalf of the party or the candidate. It undermines the integrity of the election to give the role of a polling station officer to a representative of a political party or a candidate or any other person.

*Chanyuni, Endindeni, and Kaundi*

101. I have read through all the sworn statements of the witnesses for the Petitioner, and I have found none of them testifying anything about the allegations at Chanyuni. I also have found no sworn statement testifying anything about the allegations at Endindeni and Kaundi.

*Lack of logbooks*

102. I have read through all the sworn statements of the witnesses for the Petitioner, and I have found none of them testifying about the lack of logbooks anywhere.

*More witness statements*

103. There are, however, more witness statements. They testify to allegations that are not in the petition. Davis Moyo testifies to issues at Manjawira. Eliza Nkosi testifies to issues at Thale. Agness Nyirenda and Lovemore Chavula testify to issues at Mnthonje. And finally, Fanny Kasonga testifies to issues at Kawiruwiru.

**Conclusion**

104. I have found it proved that Steven Junior Phiri was giving out K2 000 notes to voters to influence them to vote for Martha Munthali at Chiseng'ezi Polling Station on the polling day. I have also found that Lobat Ng'oma and Alibati Nkunika were doing the same at Chaboli Polling station. And I have found that a representative of DPP was given the role of a Polling Station Officer for some time at Chasimba Polling Station.

105. These irregularities affect the quality of the election in the constituency. The guide from the Supreme Court of Appeal is that it will be hard to uphold an election where the process has largely been compromised. The resulting vote numbers might have come about as a result of the irregularities. MEC submits in its submissions that the Supreme Court of Appeal admitted that there might be some irregularities, but the election can only be set aside if the process is largely compromised or flawed. MEC submits further that it is for the petitioner to show that the process was largely flawed or compromised. It submits that the online Oxford Dictionary defines largely as “to a great extent; on the whole; mostly.” It then argues that the Petitioner should have told the court the percentage of polling stations that were affected and how many voters were affected.
106. Well, it should be recalled that in view of the duty of MEC to conduct and manage the election and that it has the custody and control of all the official material generated in the course of conducting the election, it has the burden to rebut the prima facie proof of the allegations in a petition.
107. All the Petitioner has managed to do is prove prima facie the giving out of money to voters at Chiseng’ezi and Chaboli to influence voters to vote for the DPP candidate and that a representative of DPP was given the role of a Polling Station Officer for some time at Chasimba Polling Station. This is the extent of the irregularities the Petitioner has managed to prove and he has discharged his burden. The rest is for MEC to tell whether this does not largely compromise the election in the Constituency. In the absence of the rebuttal, b way of evidence or cross examination, I am inclined to find that these irregularities largely compromised the integrity of the parliamentary election in Mzimba Hora Constituency. For this reason, I declare that the member of the National Assembly for Mzimba Hora Constituency was not duly elected.

#### **Costs**

108. Not much has been submitted in the submissions concerning costs. The Petitioner submits that the Respondent be condemned in costs. Both Respondents submit that the petition

be dismissed with costs on an indemnity scale. In view of this, I order that costs should follow the event and be born equally by the Respondents.

109. Pronounced in open court this 24<sup>th</sup> day of November 2025.



T.R. Ligowe  
JUDGE