

David P Banda v The Attorney General (Malawi Electoral Commission)

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| Court: | High Court of Malawi |
| Registry: | Civil Division |
| Bench: | Honourable Justice S.A. Kalembera |
| Cause Number: | Election Case No. 12 of 2025 |
| Date of Judgment: | September 23, 2025 |

Head Notes

Electoral Law - Election Action - Remedies - Interlocutory injunction - The High Court will not grant an interlocutory injunction when the claimant has an available statutory remedy.

Civil Procedure - Injunctions - Election matters - An application for an interim injunction in connection with an election matter must be made inter partes.

Summary

The Claimant applied to the High Court for an interlocutory injunction to prevent the Malawi Electoral Commission from announcing election results for Lilongwe Mpenu Constituency, alleging irregularities and seeking a vote recount from the Commission. The central issue for the Court was whether to grant the injunction before the Claimant exhausted statutory remedies under the Presidential, Parliamentary and Local

Government Elections Act. The Court dismissed the application, holding that the Claimant had not shown irreparable harm and still had the right to appeal to the High Court under section 100 of the Act. Additionally, the Court found that interim injunction applications in election matters must be made *inter partes*, not without notice.

Legislation Construed

Statute

Presidential, Parliamentary and Local Government Elections Act (No. 4 of 1993) (ss 99, 100)

Subsidiary Legislation

Courts (High Court) (Civil Procedure) Rules (Order 10(27), Order 19(19))

Judgment

RULING ON A WITHOUT NOTICE APPLICATION FOR AN ORDER OF INTERLOCUTORY INJUNCTION

Order 10 (27) of Courts (High Court) (Civil Procedure) Rules

The Claimant, David P. Kambalame, has filed an application for an order of interlocutory injunction restraining the defendant from announcing parliamentary election results for Lilongwe Mpeni Constituency or deeming or recognizing any

candidate as a winner of the said parliamentary election held on the 16th September, 2025 until determination of the matter by the Constituency Returning Officer, District Returning Officer or The Malawi Electoral Commission or further order of the Court.

In his sworn statement in support of the application, the applicant alleges numerous anomalies in the election process at Lilongwe Mpenu Constituency. In paragraph 8 of his sworn statement, the claimant states that he has submitted a complaint to the Constituency Returning Officer, District Returning Officer or The Malawi Electoral Commission requesting that vote recounting at the Constituency Tally Centre be done. A copy of the said letter is attached and marked Exhibit "DPK 3".

Section 99 of the Presidential, Parliamentary and local Government Elections provides as follows:

Save as otherwise provided in this Act, any complaint submitted in writing alleging any irregularity at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and decided on by the Commission, and where the irregularity is confirmed, the Commission shall take necessary action to correct the irregularity and its effects.

Section 100 of the Act provides for appeals to the High Court where a party is dissatisfied with the decision of the Commission.

The Court will not grant an interlocutory injunction because, inter alia, it is based on an unsubstantiated assumption that the Commission will not procedurally address the Claimants' complaint before making a determination on his complaint.

Further, refusal to grant the interlocutory injunction will not result in the irreparable damage to the Claimants' case, he has recourse to section 100 referred to above.

Finally, in any case, Order 19 rule 19 of Courts (High Court) (Civil Procedure) Rules provides that an application for an interim injunction in connection with an election matter shall be made inter partes.

Accordingly, I dismiss the application.

Pronounced in Chambers this 23 of day of 09 2025.