

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

Judgment

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

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 Mpenyu 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.