

Jefred Brown Mchali v Collins J.F. Kajawa and Electoral Commission

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Dorothy nyaKaunda Kamanga.
Cause Number:	Electoral Case Number 15 of 2014
Date of Judgment:	August 29, 2018
Bar:	appellant unrepresented respondent unrepresented

The Appellant, an independent parliamentary candidate, appealed to the High Court, Civil Division, by way of a petition under section 114 of the Parliamentary and Presidential Elections Act (PPEA), challenging the declaration of the 1st Respondent as the winner of the parliamentary seat for Lilongwe Mpenu Nkhoma constituency during the 2014 tripartite general elections, which was made by the 2nd Respondent, the Electoral Commission. The Appellant, who finished second, alleged irregularities in the poll results, claiming that the tallies from the 18 centres showed he had won with 5,909 votes against the 1st Respondent's 5,896 votes. The Appellant lodged a complaint with the 2nd Respondent, alleging

counting irregularity, but the 2nd Respondent, via a letter, advised him to lodge an appeal with the High Court. Consequently, the Appellant filed the petition herein seeking an order for a re-tally, a re-count, or a re-run, and ultimately an order declaring him the winner. The 1st Respondent and the 2nd Respondent opposed the petition, primarily raising a preliminary objection that the petition was premature and irregular, because of lack of any decision that could be appealed against under section 114 of the PPEA.

The principal legal questions for the Court were: (1) Whether the petition was properly brought under section 114 of the PPEA; (2) Whether there were irregularities in the election; and (3) Whether the Appellant was entitled to the declarations sought.

The Court found that the Constitution and the PPEA establish a procedure where electoral issues are first determined by the Electoral Commission, with the High Court having only appellate jurisdiction over the Commission's decisions. The Court held that the Second Respondent's letter, which simply declined to examine the alleged irregularities and advised the Appellant to go to the High Court, did not constitute a "determination" by an electoral tribunal. The Court found that the Second Respondent had been in "blunt dereliction of their duty" by refusing to examine and correct the defect. The petition was dismissed for want of jurisdiction, as it was brought prematurely before the Electoral Commission had made a final decision on the complaint. The Court, exercising its discretion, ordered the Second Respondent to bear the costs of the petition, to be awarded to both the Appellant and the First Respondent.