

Mchali v 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:	March 06, 2015
Bar:	appellant unrepresented respondent unrepresented

The Appellant lodged an appeal by way of petition to the High Court, Civil Division, challenging the results of the May 2014 tripartite general elections for the Lilongwe Mpenu Nkhoma constituency. The Appellant, who came second in the parliamentary race, filed the petition on 6 June 2014 against the 1st Respondent, the declared winner, and the 2nd Respondent, the electoral body, alleging irregularities in the poll results. The background to the dispute involved the 2nd Respondent declaring the 1st Respondent the winner, prompting the Appellant to seek various declaratory reliefs. After the Court granted leave to amend a party's name in August 2014, the 1st Respondent subsequently raised a preliminary objection on 12 February 2015 concerning the proper mode of commencing the proceedings. The Court, aiming for a just and fair determination

on the merits, decided to deliver a ruling on all outstanding preliminary issues and give directions on the way forward.

The principal legal questions for the Court were whether the proceedings were properly commenced under the relevant statute, whether a bundle of documents obtained through a notice of inspection was admissible as evidence, and the effect of a Practice Direction.

The Court held that the proceedings were properly commenced under section 114 of the Presidential and Parliamentary Elections Act (PPEA), as the Appellant had followed the correct procedure by first lodging a complaint with the 2nd Respondent, who then declined to rectify the problem and advised an appeal to the High Court, a procedure. However, while the Appellant was permitted to proceed with the inspection of documents specifically referred to in the Petition and supporting affidavit under Order 24 rule 10 of the Rules of the Supreme Court, the Court found the manner in which those documents were introduced onto the record to be irregular. Consequently, they were declared inadmissible as evidence, and the 2nd Respondent was similarly precluded from relying on them in their submissions. The decisive rationale was that section 114(1) of the PPEA clearly stipulates that appeals of this nature must be supported by affidavit evidence. Furthermore, the Court affirmed the proposition that a Practice Direction cannot override or supersede applicable statutory provisions or established rules of practice and procedure. The Court did not allow or dismiss the appeal, but rather ordered the matter to proceed to a hearing on the merits, which was adjourned to 27 March 2015. The Court directed the exchange of outstanding affidavits and skeleton arguments to be completed by 25 March

2015 and awarded the costs occasioned by the adjournment to the 1st Respondent, to be suffered equally by the Appellant and the 2nd Respondent.