

The State (on the application of Democratic Progressive Party) v Electoral Commission and Mr Andrew Mpesi

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Mandala D. Mambulasa
Cause Number:	Judicial Review Cause No. 36 of 2022
Date of Judgment:	August 20, 2025
Bar:	F. Tambulasi and B. Chimkango, counsel for the claimant T. Nyirenda, Attorney General and D. Banda, counsel for the defendant J. Dzonzi, Counsel for the Interested Party

The Claimant, a registered political party, sought permission in the High Court, Civil Division, to apply for judicial review of the Defendant's decision to appoint the Interested Party as its Chief Elections Officer (CEO). The Defendant had advertised the post stipulating that candidates must, among other attributes, be "apolitical". The Claimant contended that the Interested Party was not apolitical,

alleging he was an active supporter of a rival political party and its leader, as evidenced by past social media posts. The Claimant argued that this appointment was illegal, ultra vires the Electoral Commission Act, and unreasonable. It asserted it had sufficient interest (*locus standi*) to challenge the decision, claiming the CEO's potential bias would affect its interests and the interests of candidates it sponsors in future elections. The Claimant sought permission for judicial review and, if granted, interlocutory reliefs including an order of certiorari to quash the appointment and an injunction to restrain the Interested Party from performing his duties.

The Defendant and the Interested Party opposed the application, primarily arguing that the Claimant lacked *locus standi*. They contended that the Claimant had failed to identify any specific, legally protected right of its own that had been breached by the appointment. They argued that the proper parties to challenge the recruitment process would have been unsuccessful candidates, and any challenge to election conduct could only be brought by candidates in that specific election. They submitted that the Claimant's fears of future bias were purely speculative and could not ground an application for judicial review. The Defendant also maintained that it had followed an open, transparent, and competitive recruitment process and had specifically assessed all candidates, including the Interested Party, on the attribute of being apolitical.

The application for permission to apply for judicial review was dismissed. The Court held that the Claimant failed to satisfy the requirements for permission for judicial review. Specifically, the Court found that the Claimant lacked the necessary *locus standi*. The Court determined that the Claimant had not

demonstrated any specific, legally protected right, freedom, or interest *of its own* that had been infringed or threatened by the appointment decision. The Claimant's asserted interest, a fear of potential bias in future elections, was held to be speculative and related to future, hypothetical decisions, not a current breach. As the application for permission was dismissed, the ancillary application for an interlocutory injunction also failed. The Court awarded costs to the Defendant and the Interested Party.