



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
ELECTION PETITION NO. 25 OF 2014
IN THE MATTER OF PARLIAMENTARY AND PRESIDENTIAL
ELECTIONS ACT (SECTIONS 100 AND 114(1))

BETWEEN:

ELLIOT MANKHAMBA PHIRI.....PETITIONER

AND

THE ELECTORAL COMMISSION.....RESPONDENT

CORAM: THE HON. JUSTICE S.A. KALEMBERA

Mr M. Sauti-Phiri, of Counsel for the Petitioner

Mr Mkwamba, of Counsel for the Respondent

Miss Ngoma, Official Interpreter

RULING

Kalembera J

INTRODUCTION

By way of a petition dated 10th day of June 2014, the Petitioner commenced this action against the Respondent seeking the following reliefs:

- a) An order declaring the election of Member of Parliament for Blantyre South West constituency null and void on the basis that:



- i) *voters were corruptly influenced in their voting by campaigning outside the regulated period;*
 - ii) *there was non-compliance with the Act in the conduct of elections, including but not limited to, failure by the Electoral Commission to resolve the complaints before announcing the results; voting at places other than a designated polling station; use of result sheets containing discrepancies and unauthorized alterations.*
- b) Such other order as in the circumstances may be just and equitable.

At the hearing of the petition, counsel for the Respondent raised a preliminary objection. This is therefore a ruling on the preliminary objection.

BRIEF FACTS

Malawi has since 1994 adopted multi-party politics, with guaranteed elections every five years. On 20th May 2014, for the first time, the Electoral Commission (hereinafter referred to as 'the Commission') undertook tripartite elections which included Parliamentary elections in Blantyre South West constituency where the Petitioner, Elliot Mankhamba-Phiri contested as an Independent candidate. The Commission declared Kennedy Pemba Kachingwe, an independent candidate, as the winner of the elections in the constituency with 8,815 votes against the Petitioner's 5,112 votes. The Petitioner was dissatisfied with the declaration hence this petition.

PRELIMINARY OBJECTION

The Respondent's preliminary objection to this petition is that it was brought to this court outside the prescribed period of 7 days. Counsel for the Respondent contends that the Commission announced the Parliamentary results in the evening of 2nd June 2014, and Petitioner filed his petition on the 10th of June 2014 instead of the 9th day of June 2014. He thus contends that the petition is incompetent and ought to be dismissed.

Counsel for the Petitioner has strongly argued in response that he who comes to equity must come with clean hands. He has argued that the Respondent, having failed to comply with section 99 of the Parliamentary and Presidential Elections Act (PPE Act), by only broadcasting the results on the radio, other than in the

gazette and newspapers as well, cannot be heard to say the petitioner brought the petition late. He argues that time would start running from the last publication, that is, in the gazette.

ISSUES(S) FOR DETERMINATION

At this issue for determination is whether this petition was brought out of time or not.

THE LAW

Section 100 (1) of the PPE Act provides as follows:

"A complaint alleging an undue return or an undue election of a person as a member of the National Assembly or to the office of President by reason irregularity or any other cause whatsoever shall be presented by way of petition directly to the High Court within seven days including Saturday, Sunday and a public holiday, of the declaration of the result of the election in the name of the person:

- (a) Claiming to have had a right to be elected at that election; or*
- (b) Alleging himself to have been a candidate at such election."*

(emphasis added).

And section 114 (1) provides as follows:

"An appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity and such appeal shall be made by way of petition, supported by affidavits of evidence, which shall clearly specify the declaration the High Court is being requested to make by order."

As has been earlier observed herein, the preliminary contention or objection by the Respondent is that this petition was brought outside the seven days envisaged under the said section 100(1) of the PPE Act. Both parties agree that indeed the Commission broadcast the Parliamentary results on 2nd June 2014, in the evening. Both parties further agree that the said seven days excludes the 2nd of June 2014, the day the results were announced. How then do we compute time as provided in

any written law or rules? It is paramount to refer to the **General Interpretation Act** (Cap 1:01) of the Laws of Malawi. Section 45 of this Act provides as follows:

“ (1) In computing time for the purpose of any written law, unless a contrary intention appears –

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) if the last day of the period is a Sunday or a public holiday (which days are in this section referred to as excluded days) the period shall include the next following day which is not an excluded day;

(c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day which is not an excluded day;

(d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days excluded days shall not be reckoned in the computation of time.

(2) Where, in any written law, an act or proceeding is directed or allowed to be done or taken within a number of clear days, excluded days shall not be reckoned in the computation of such number.”(emphasis added)

In the matter at hand I find the provision under s.45(1)(a) most relevant. According to that provision, the day the results were announced, that is, the 2nd day of June 2014, is or ought to be excluded in computing the seven days period. In that regard, the seven days started running on the 3rd day of June and ended or lapsed on the 9th day of June 2014. That would indeed mean that this petition was brought outside the seven days period, and on that ground alone I would be entitled to dismiss this petition straight away.

However, I am constrained to dismiss the petition straight away without taking into consideration the other limb of the Petitioner’s argument. Counsel for the Petitioner has strongly argued and submitted that the Respondent is in breach of section 99 of the PPE Act. In essence saying that the seven days period cannot

then start running after the announcement of the results on 2nd June 2014. The said section 99 provides as follows:

“The Commission shall publish in the Gazette and by radio broadcast and in at least one issue of a newspaper in general circulation in Malawi the national result of an election within eight days from the last polling day and not later than forty-eight hours from the conclusion of the determination thereof and shall, in such publication, specify-

(a) the total number of voters registered for the election;

(b) the total number of voters who voted;

(c) the total number of null and void votes; and

(d) the total number of valid votes cast for each classification of votes as specified in section 91.”

It is counsel for the petitioner’s argument that the respondent did not comply with the said section 99 in that the respondent only broadcast the results through the radio only, when the publication ought to have been made in the gazette and newspapers as well. Counsel contends that section 99 does not envisage that publication of the results must simultaneously be done through the gazette, radio and newspapers. I am mindful that in interpreting statutory provisions, courts must try as much as possible to bring to fruition the legislative intent. Furthermore I cannot agree more with Justice Breyer in **FCC v NextWave Personal Communications Inc., 537 U.S. 293, 311 (2003)** where said :

“It is dangerous..in any case of interpretive difficulty to rely exclusively upon literal meaning of a statute’s words divorced from consideration of the statute’s words divorced from the statute’s purpose.”

Similarly in trying to decipher the intention of the legislature in a statutory provision, one must avoid relying on that particular provision in isolation of others. Words that are not terms of art and that are not statutorily defined are customarily given their ordinary meanings, often derived from the dictionary. Section 99 says the Commission shall ‘**publish**’ and according to Collins Compact English Dictionary 2009, publish means ‘**to produce and issue; to announce formally in**

public. And the respondent is expected to announce formally the results through the radio, gazette and at least one issue of a newspaper. However, this petition is based or grounded on sections 100 and 114 of PPE Act. Section 100, in particular requires that a 'petition be brought directly to the High Court within seven days of the **declaration** of the result..' According to the said Collins Compact English Dictionary 2009, declaration means '**an official announcement or statement.**' It is agreed by both parties the Parliamentary results were announced on 2nd June 2014, in the evening. That was the official announcement of the results and it was broadcast on both Zodiak Broadcasting Station (radio) and MBC Tv. And in my understanding of section 100 and the meaning of declaration as herein explained, the said seven days period refers to the period following the official announcement of the results which was done on 2nd June 2014. We can't therefore, be heard to say that the seven days period commences after the publication of the results as envisaged under section 99.

CONCLUSION

It is thus clear to my mind, that the respondent did not in any way breach section 99 of the PPE Act. It is not envisaged that the publication of the results in the gazette, through the radio and newspaper must be done simultaneously with the declaration of the results as envisaged under section 100 of the PPE Act. The official declaration or announcement of the results was made on 2nd June 2014. The petitioner was expected to file his petition with the High Court within seven days of the official announcement or declaration of the result. If we exclude the 2nd of June, 2014, the day the declaration was made, then the petition ought to have been filed by 9th day of June 2014. Having been filed on the 10th day of June 2014 it was indeed filed outside the prescribed period and it can thus not be entertained. I consequently dismiss the petitioner's petition.

Costs are for the respondent.

PRONOUNCED this 4th day of July 2014 at the Principal Registry, Blantyre.


S.A. Kalembura
JUDGE