

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
ELECTION PETITION NUMBER 12 OF 2014

BETWEEN:

PATRICK KAMKWATIRA

PETITIONER

AND

ELECTORAL COMMISSION

1st RESPONDENT

MARY MAULIDI KHEMBO

2nd RESPONDENT

Coram: Justice M.A. Tembo,

Gondwe, Counsel for the Petitioner

Chalamanda, Counsel for the 1st Respondent

Chitatu, Official Court Interpreter

JUDGMENT

This is this court's judgment on the petition of Patrick Kamkwatira one of the contestants in the 2014 Parliamentary election for Neno South Constituency. The petition was brought pursuant to sections 100 and 114 of the Parliamentary and Presidential Elections Act. The petitioner seeks a declaration that all records of the parliamentary elections in the Neno south constituency be scrutinized within five



days from conclusion of this petition, that all the ballot papers for the said constituency are recounted and for costs of this petition.

The petitioner filed affidavits in support of the petition and skeleton arguments on the relevant law and evidence. The 1st respondent also filed its own affidavit in opposition to the petition as well skeleton arguments on the relevant law and evidence. The 2nd respondent though duly served with all the court processes herein did not appear at the hearing or make any appearance in this matter at all. This Court therefore decided to proceed in the absence of the 2nd respondent.

The question for the decision of this Court is whether it is desirable on the present petition to order a scrutiny and recount of the votes cast in the 2014 Parliamentary poll for Neno South constituency.

The petitioner's case is that he was one of the contestants in the 2014 Parliamentary election for Neno South constituency that was conducted by the 1st respondent on 20th May 2014. He contested as a candidate for the Democratic Progressive Party. The 2nd respondent also contested as an independent candidate in the same election. The whole process of the election was free and fair except for the part involving compiling of tally sheets at Neno district tally centre which the petitioner asserts left a lot to be desired.

The petitioner asserts that he had election monitors at all the 32 polling centres for Neno South constituency. He further asserts that his election monitors compiled results of the election and these results show that the petitioner should have been returned and declared winner in the Neno south parliamentary election. However, the petitioner alleges that the 1st respondent unduly returned the 2nd respondent as winner in the said election. The petitioner stated that his monitors signed for the tally sheets of results at every polling centre in Neno south constituency but were not furnished with copies of those tally sheets. The petitioner further stated that from the various reports of his monitors the Neno district tally centre could not have proceeded to return the 2nd respondent as winner unless the tally sheets from the various polling centres were tampered with or adulterated.

The petitioner states further that his election monitors did take note of the results at every polling centre. The said results were compiled by the petitioner in

conjunction with his monitors. The petitioner produced a document depicting a compilation of the results which he exhibited in court and marked as PK1.

The results as depicted in exhibit PK1 are as below

Polling centre	Kamkwatira votes	Khembo votes
Matope	134	368
Tsanjalamwimba	197	251
Sawedza	362	248
Kasupe	180	191
Thima	40	32
Mapanga	84	125
Kasenjere	187	225
Mkhombe	21	865
Kholombidzo	27	62
Kandoje	168	166
Dzundu	359	313
Namonjale	257	139
Nkula	142	73
Malimba	16	21
Midzemba	197	231
Nkavu	30	73
Mwetangombe	33	36
Ntchena	86	97
Lisungwi	466	562
Luwani	36	184
Mpunga	31	52
Chifunga	183	57
Chimbamila	85	6
Makali	7	21
Mtayanyemba	77	34
Chipinda	48	26
Godeni	181	21
Mulindi	31	38
Chididi	283	57
Chuluchamankhwala	261	21
Mkomaliwiro	278	31
Ligowe	292	14
Total	4779	4640

According to the petitioner, Exhibit PK1 shows that at the end of the tallying of the results for Neno South constituency he had obtained 4779 votes against the 2nd respondent's 4640 votes. These results are said to have been borne out of raw data obtained by the petitioner's monitors at the polling centres after counting of ballots at the polling centres. The petitioner contends that there is therefore no way that the results published by the 1st respondent could be different from those obtained from the raw data unless something sinister and electorally irregular occurred or intervened. Further, that the results that are eventually compiled for the declaration of the results must be the same as those obtained from the raw data. The petitioner further states that where the results are different the only way to discover the truth about the will of the people is by scrutinizing the records that the 1st respondent used to declare the winner and check for adulterations and other mischief.

The petitioner had lodged a complaint to the 1st respondent pertaining to matters on this petition and the 1st respondent affirmed the results that it had declared, namely, that the 2nd respondent was duly elected as parliamentarian from Neno south constituency.

The tally sheets for the 32 polling centres in Neno South constituency were produced to the petitioner by the 1st respondent after this Court made an order to produce the same on the petitioner's application before the hearing of this petition.

The petitioner's monitors filed affidavits which are 27 in number commenting on the tally sheets for the polling centres for Neno south constituency.

The petitioner also remarked and made various observations on the effect of alterations on the tally sheets produced by the 1st respondent. The petitioner asserted at length how he lost votes by comparing his votes as depicted in his exhibit PK1 to the votes attributed to him on the altered tally sheets that were produced by the 1st respondent. Further, from the petitioner's observations there were tally sheets for 20 out of the 32 polling centres that are clean and have no alterations. Additionally, the petitioner observed that some tally sheets show that there have alterations but the results depicted on such altered tally sheets are the same as in exhibit PK1. An example is the tally sheet for Kasupe polling centre.

In view of the foregoing, the petitioner seeks a recount of all the ballots cast in Neno South constituency with a view to ascertaining the truth about the will of the people.

The 1st respondent's case is that indeed the petitioner had monitors at every polling centre during the 2014 Parliamentary election for Neno South constituency. The 1st respondent asserted that the tally sheets for all polling centres were duly signed for by the petitioner's monitors signifying the monitors' agreement to the results depicted on the said tally sheets. The 1st respondent observed that the petitioner's monitors provided the petitioner with correct results in all the polling centres for the Parliamentary election for Neno South constituency except for 12 polling centres, namely, Chimbamila, Ligowe, Nkhomaliwiro, Chididi, Golden, Mtayanyemba, Makali, Chifunga, Nkula, Nsawedza, Midzemba and Chuluchamankhwala.

The 1st respondent further asserted that it is noteworthy that there are no such recordings of errors or complaints that can be the basis of an irregularity of such significance as to affect the results. Additionally, that a summary of the results returned by the 1st respondent shows that the petitioner had a total of 4, 295 votes whereas the 2nd respondent had a total of 5, 055 votes. The 1st respondent insisted that there was nothing electorally irregular that occurred as alleged by the petitioner. Further, that the results that were published by the 1st respondent are those that were collected from the polling centres as can be seen from the tally sheets. Then the 1st respondent charges that the petitioner was presented with false results by his monitors and not those results that the monitors signed for.

The 1st respondent contended that it is only right to base the results on the official documents that were used on the day of the counting and tallying of the results than anything else.

The official results are as per the following table

Polling centre	Kamkwatira votes	Khembo votes
Matope	134	368
Tsanjalamwimba	197	251
Nsawedza	312	248
Kasupe	180	191

Thima	40	32
Mapanga	84	125
Kasenjere	187	225
Nkhombe	21	865
Kholombidzo	27	62
Kandoje	168	166
Dzundu	359	313
Naminjale	257	139
Nkula	142	76
Malimba	16	21
Midzemba	63	312
Nkavu	30	73
Mwetan'gombe	33	36
Nchena	86	97
Lisungwi	466	562
Luwani	36	184
Mpunga	31	52
Chifunga	163	67
Chimbamila	85	61
Makali	77	21
Mtayanyemba	77	54
Chipindu	48	26
Golden	81	21
Mindi	31	38
Chididi	253	57
Chuluchamankhwala	161	101
Mkomaliwiro	58	31
Ligowe	292	180
Total	4, 295	5,055

In view of the foregoing, the 1st respondent denies that there were irregularities justifying the granting of the reliefs sought by the petitioner.

Both parties correctly submitted on the applicable law on the matter at hand. The petitioner did submit on elections, constitutional, democratic and good governance principles generally and specifically in relation to the Malawi Electoral Commission. The petitioner and the 1st respondent also submitted on the role of political party representatives and polling station officers during an election. Both

the petitioner and the 1st respondent also did submit on the burden and standard of proof on petitions like the instant one. Namely that a scrutiny and recount of the votes shall be ordered by the court only if it is proved that the same is desirable in terms of section 114 (4) Parliamentary and Presidential Elections Act. The whole of section 114 Parliamentary and Presidential Elections Act is in the following terms

(1) 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 a petition, supported by affidavits of evidence, which shall clearly specify the declaration the High Court is being requested to make by order.

(2) On hearing a petition under subsection (1), the High Court—

- (a) shall subject to subsection 3, make such order or orders as it thinks fit;
- (b) in its absolute discretion, may or may not condemn any party to pay costs in accordance with its own assessment of the merits of the complaint.

(3) An order of the High Court shall under subsection (2) not declare an election or the election of any candidate void except on the following grounds which are proved to the satisfaction of the court—

- (a) that voters were corruptly influenced in their voting contrary to any provision of this Act; or had their ballot papers improperly rejected, or voted more than once;
- (b) that persons not entitled to them were improperly granted ballot papers; or
- (c) that persons entitled to them were improperly refused ballot papers:

Provided that the court shall not declare an election void, after proof of any ground in paragraphs (a), (b) or (c), if it is satisfied that the number of votes involved could not have affected the result of the election;

- (d) non-compliance with this Act in the conduct of the election:

Provided that, if the court is satisfied that any failure to comply with this Act did not affect the result of the election, it shall not declare the election void;

- (e) that the candidate was at the time of his election a person not qualified for election or that he was not properly nominated, or that a duly qualified candidate had his nomination improperly rejected by the returning officer.

(4) The court shall have power to direct scrutiny and recount of votes if it is satisfied, during proceedings on an election petition, that such scrutiny and recount are desirable.

(5) At the conclusion of the trial of an election petition the court shall determine whether the member whose nomination or election is complained of, or any other and what person was duly nominated or elected, or whether the election was void, and shall report such determination to the Commission. Upon such report being given such determination shall be final.

(6) No application shall be made to the High Court for an injunction or for an order restraining the holding of an election within fourteen days immediately preceding the date of the election.

(7) Notwithstanding subsection (6), the High Court shall have power, subsequent to the holding of an election, to declare void the election if, upon hearing the petition referred to in subsection (1), the High Court is satisfied that there are good and sufficient grounds for declaring void the election.

The petitioner and the 1st respondent further did rightly submit that the petitioner bears the burden of proving to the Court on a balance of probabilities the desirability of a scrutiny and recount of the ballot papers.

The petitioner and the 1st respondent also submitted on the standard of proof required for the Court to declare an election null and void on account of irregularity. However, this petition does not at all request for nullification of the election result in question.

The narrow question before this Court is whether it is desirable to order a scrutiny and recount of the votes in the present case. Pursuant to section 114 (1) Parliamentary and Presidential Elections Act, this Court is empowered to make any order that it deems fit, including one for scrutiny and a recount of the votes, on a petition like the instant one. Such an order for a scrutiny and recount of the votes can only be made if the same has been proved to be desirable in terms of section 114 (4) Parliamentary and Presidential Elections Act.

The question is what is the test for determining whether it is desirable to order a scrutiny and recount of the votes?

The petitioner importantly cited relevant foreign case law that is persuasive to this Court in terms of what is the test on the question of ordering a scrutiny and recount of the ballot papers.

The petitioner cited the case of *Mammadov v Azerbaijan (No 2)* 4641/06 [2012] ECHR 18 in which the European Court of Human Rights held that if the electoral Commission discovers mistakes, impermissible alterations or inconsistencies in the records of the result, an elections court can order a recount of the votes in the relevant electoral constituency.

The petitioner also cited the case of *Chlomay v Chuck State Election Commission* [2001] FMCS 6 where it was stated that when an election statute provides that a recount is to be taken if a recount is necessary for the proper determination of the election contest, the proper standard to use to determine whether a recount is necessary for the proper determination of the contest is that a recount will be ordered when the contestant has shown that it is more likely than not that there were substantial irregularities that could have affected the election outcome.

This Court wishes to add that in certain jurisdictions such as Saskatchewan in Canada, as rightly pointed out by the petitioner, a recount may be ordered where the judge is shown that there are vote counting mistakes or errors. The aim is to achieve accuracy of results. For example in the case of *In re The Dominion Elections Act, 1938 In re McCullough and Maple Creek Electoral District* 1940 CanLII 167 (SKQB) [1940] 2 W.W.R. 185 (Sask. D.C.) a recount was granted on the evidence of only two votes being improperly rejected by the deputy returning officer. See also *Koloski v Merasty*, 2006 SKQB 60 (CanLII).

It appears to this Court that the test in section 114 (4) Parliamentary and Presidential Elections Act pertaining to a recount is not about accuracy of results alone. The firm view of this Court is that it is actually necessary for the petitioner, if an order to scrutinize and recount the votes is to be granted, to show that it is more likely than not that there were such irregularities that they could have affected the election outcome. Parliament appears to have included a recount, in the scheme of section 114 Parliamentary and Presidential Elections Act, with the aim to aid in determining the effect on the election result of matters pertaining to circumstances in section 114 (3) (a), (b), (c) and (d) Parliamentary and Presidential

Elections Act. The matters in section 114 (3) (a), (b), (c) and (d) Parliamentary and Presidential Elections Act only have an effect to nullify election results if such matters could have affected the result of the election.

The petitioner in the present matter will therefore have to satisfy this Court that the irregularities complained about are such that they could have affected the election outcome. An order for vote recount will therefore not be granted willy nilly.

The petitioner bears the burden of proof on a balance of probabilities. The petitioner argues that one irregularity that entitles him to an order of recount herein is that the 1st respondent breached section 93 (2) Parliamentary and Presidential Elections Act by not providing the petitioner's monitors with copies of the tally sheets for every polling centre in the Neno South constituency.

Section 93 (2) Parliamentary and Presidential Elections Act provides as follows

Representatives of political parties at a polling station shall be entitled to a copy of the duly signed summary of the final result of the poll at that polling station.

The charge of the petition is that his monitors were not given copies of tally sheets at the polling centres by the agents of the 1st respondents. The petitioner argues that by not giving copies of tally sheets to the petitioner the 1st respondent aided in returning the wrong results in the Neno South constituency. This is the case given that the tally sheets would have given the petitioner a better latitude to verify the final outcome of the election but the petitioner was denied that.

The 1st respondent's response was that section 93 (2) Parliamentary and Presidential Elections Act does not say that the 1st respondent shall give the party representatives or monitors copies of tally sheets but rather that the monitors are entitled to copies of the tally sheets. The 1st respondent argued that the petitioner's monitors knew of their entitlement but the petitioner does not state that these monitors were refused copies of the tally sheets. In other words, that it was incumbent on the monitors to ask for the copies of the tally sheets.

This Court is of the view that the provisions in section 93 (2) Parliamentary and Presidential Elections Act entitling political party representatives otherwise known as monitors to copies of tally sheets is fundamental to transparency and accountability in the election process. That transparency and accountability is

geared at ensuring that the will of the people upon exercise of political suffrage is safeguarded. It is therefore a weak excuse on the part of the 1st respondent in a matter of such importance as electoral transparency and accountability not to take positive steps to provide copies of tally sheets to the petitioner's monitors. If the monitors are entitled to copies of the tally sheets they must be given the same and should not be precluded from being given the same on account of the fact that they did not ask for the same. The thinking of the 1st respondent on this particular issue is very regressive. It is important that the 1st respondent take all positive steps to ensure transparency in the electoral process by, among other things, providing tally sheets to monitors since they are entitled to the same and for good reasons. Electoral transparency builds understanding of the electoral process, the difficulties encountered and why electoral administrators and election officers make decisions. More importantly, greater transparency increases the credibility of the electoral process and the legitimacy of the results. With greater transparency it becomes more difficult for participants and voters to reject the election results or the legitimacy of the newly elected representatives.

The 1st respondent may borrow a leaf to ensure electoral transparency, from other jurisdictions, like Canada, where once a vote count is finished the returning officer prepares an official statement of the results, the equivalent of the tally sheet. Copies of the statement of results are enclosed in the ballot box for use by the returning officer, delivered to the representative of each candidate and mailed to each candidate. See *The Canadian Electoral System* at www.parl.gc.ca. That is what is called progressive in ensuring electoral transparency. This Court would even venture to suggest that the 1st respondent keep a record where monitors would sign off on being given a copy of the results or to show they declined to get a copy.

It may be necessary for Parliament to enact these simple but effective safeguards into the Parliamentary and Presidential Elections Act instead of leaving the provision as ambiguous as it is in section 93 (2) of the said Act.

The finding of this Court is that the 1st respondent was in breach of section 93 (2) Parliamentary and presidential Elections Act by its failure to provide copies of tally sheets to the petitioner's monitors as they are entitled to the same under the said provision. This breach in itself does not entitle the petitioner to a recount although it did preclude the petitioner from having better latitude in verifying the

final result. However, the breach assumes greater importance as it is connected to the second charge being made by the petitioner that he had to rely on his own compilation of results since his monitors were not given copies of the tally sheets. This becomes apparent in the arguments on the next ground for seeking the recount of votes.

The petitioner then asserts that the 1st respondent had a duty under section 94 Parliamentary and presidential Elections Act to ensure that the polling centre presiding officers transmitted the polling centre results to the District Commissioner under conditions of strict security as against tampering and interference. Section 94 Parliamentary and presidential Elections Act provides as follows

The presiding officer of a polling station shall, with all dispatch, deliver to the office of the District Commissioner of his district under conditions of absolute security against loss, tampering or interference—

- (a) the record prepared under section 93;
- (b) all the ballot papers collected in separate lots corresponding to the classification under which they were counted;
- (c) all unused ballot papers; and
- (d) all voters registers and other work items provided to that polling station.

Section 93 on record to be prepared by the presiding officer of a polling centre is in the following terms

(1) The presiding officer shall cause to be prepared by the polling station officers—

- (a) a record of the entire polling process at his polling station containing—
 - (i) the full particulars of the polling station officers and representatives of political parties;
 - (ii) the total number of voters;
 - (iii) the total number of votes for or under each classification of votes;
 - (iv) the number of unused ballot papers;

(v) the number of ballot papers which have been the subject of complaints, if any;

(vi) the discrepancies, if any, between votes counted and the number of voters;

(vii) the number of complaints and responses thereto and decisions taken thereon by the polling station officers;

(viii) any other occurrence which the polling station officers consider to be important to record; and

(b) a brief summary of the final result,

and such record and summary shall be legibly signed by the presiding officer and each of the other polling station officers and, if any be present, at least one representative of each political party.

(2) Representatives of political parties at a polling station shall be entitled to a copy of the duly signed summary of the final result of the poll at that polling station.

(3) The presiding officer shall post at the polling station a copy of the duly signed summary of the final result of the poll at that polling station.

The petitioner contends that there was tampering and interference with the tally sheets that, as earlier indicated, are full of alterations and adulterations made after his monitors signed on the tally sheets. The basis of the petitioner's assertion is the compilation of the results that the petitioner made as depicted in exhibit PK 1 which results differ in several respects with the official results returned by the 1st respondent as depicted in the table above.

The 1st respondent objects vehemently to the use of exhibit PK1 by the petitioner. The 1st respondent argued that exhibit PK1 is unofficial and subjective. The exhibit PK1 is based on what the petitioner termed raw data obtained by his monitors but that raw data is not produced in evidence. Exhibit PK1 is neither signed for nor dated. The 1st respondent whilst admitting that alterations were made on some of the tally sheets denies that these were made after the petitioner's monitors signed for them. In fact 1st respondent stated that the alterations were made to correct genuine errors and the petitioner's monitors signed for the tally sheets with those alterations.

This Court wishes to note at the outset that the petitioner was indeed forced to use unofficial documents in view of the 1st respondent's failure to provide his monitors with copies of the official results as lamented by the petitioner himself. That is why it is imperative that the 1st respondent provide the copies of tally sheets to monitors at the polling centre and not wait to be asked for the same. The conduct of the 1st respondent is what has resulted in the petitioner using what the 1st respondent now terms unofficial and subjective results without raw data as depicted in PK1.

However, the more important matter relates to the allegation of tampering with the tally sheets by returning officers of the 1st respondent resulting in alterations on some of the tally sheets which the petitioner claims had affected the outcome of the parliamentary poll for Neno South constituency. This Court took time to carefully scrutinize copies of the tally sheets, that is, both the altered and unaltered ones alongside exhibit PK1. Initially, this Court was very skeptical of the 1st respondent's submission that this Court should not rely on exhibit PK1 as a basis for doubting the official results as depicted on the tally sheets. Upon lengthy and careful reflection this Court decided to properly scrutinize exhibit PK1 to see if it provides a proper basis in fact for the petitioner to prove on a balance of probabilities that the tally sheets were tampered with after being signed for by the petitioner's monitors and that otherwise the result of the election would have been different indeed if it were not for such tampering.

Before venturing to comment on exhibit PK1 this Court wishes to say something about the importance of unofficial initiatives such as depicted in exhibit PK1. PK1 may be termed as a parallel vote tabulation albeit at a very small scale. Parallel vote tabulation is important in any election process as it enhances confidence and deters election fraud. But for parallel vote tabulations to enhance confidence and deter fraud, three conditions must be met as suggested by Garber and Cowan, *Virtues of Parallel Vote Tabulations*, *Journal of Democracy* 4 (2) (1993) 95-107. Firstly, the sponsors of the operation must be viewed as independent and honest by a large segment of the population concerned with the vote thus parties and government controlled media often do not qualify for parallel vote tabulation. Second, the mechanisms of the vote-count operation must generally be thought capable of providing accurate data-the more complicated the operation, the more difficult it will be for skeptical government officials and the general public to understand and accept. Thirdly, the sponsor must conduct the operation openly

with an attendant press and public relations strategy, for a secret deterrent is of no value.

This Court agrees with the 1st respondent that exhibit PK1 is indeed subjective but is a result of the 1st respondent's own conduct in failing to provide copies of tally sheets to the petitioner.

This Court notes that by the petitioner's raw data as tallied in exhibit PK1 the petitioner beat the 2nd respondent by 139 votes. However and more importantly, this Court also noted some alterations and adulterations of the record of votes in favour of the petitioner on PK1 as follows

Polling Centre	Kamkwatira	Khembo
Chididi	283 (altered from 253 to 283)	57
Chuluchamankhwala	261 (altered from 161 to 261)	21
Mkomaliwiro	278 (altered from 228 to 278)	31
Total minus alterations	4599	4640

The petitioner has vigorously objected to alterations on some copies of the tally sheets in issue on this petition. If the same rule is applied to the petitioner's exhibit PK1, namely that alterations and adulterations ought not to be allowed, on the basis of PK1 the petitioner still lost to the 2nd respondent in the Neno south parliamentary election. It appears to this Court that, as rightly submitted by the 1st respondent, indeed it would be extremely dangerous and prejudicial to rely on PK1 as a basis for resolving this petition.

The firm view of this Court is that if the petitioner's monitors used raw data in compiling PK1 then the unadulterated figures on PK1 must be the right figures of votes cast for the petitioner and the 2nd respondent. Those initial figures on PK1 do tally with what was returned by the 1st respondent and signed for by the petitioner's monitors on the tally sheets. A very clear example is the return of results for Chididi polling centre. For Chididi polling centre the tally sheet produced by the 1st respondent and signed for by the petitioner's monitor shows that the petitioner polled 253 votes against 57 for the 2nd respondent. Similarly, the petitioner's PK1 prior to being altered shows that the petitioner also polled 253 votes. It is only after alteration that PK1 shows that the petitioner polled 283 votes at Chididi polling

centre. This strongly suggests that the changed figures for the petitioner must have been brought in as an afterthought to give an edge to the petitioner over the 2nd respondent. This is especially so considering further that, when one looks at PK1 the compilation of results for all the candidates does not contain any alterations at all. It is only the petitioner's column of results that has alterations that have been highlighted by this Court for the three polling centres including for Chididi polling centre.

The petitioner asked this Court on the basis of his PK1 to order a recount of the votes. This Court agrees with the 1st respondent that exhibit PK1 is not a reliable and honest document at all for the reason that it appears to have been altered to present a situation where the petitioner appears to have had an edge over the 2nd respondent when in fact he did not. These are fundamental reasons why exhibit PK1 cannot be a basis for ordering a scrutiny and recount of votes as sought. Exhibit PK1 as subjective as it is, lacks any independence and appears to have been altered to give an appearance of an edge to the petitioner over the 2nd respondent.

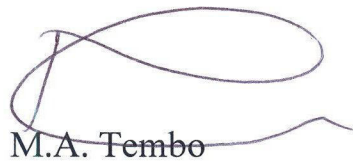
And so the Petitioner has failed to prove his case to the requisite standard. He has failed to prove that it is more probable than not that the tally sheets were tampered with by the agents of the 1st respondent to give an edge to the 2nd respondent in the 2014 parliamentary election for Neno South constituency.

This Court however has a word for the 1st respondent concerning transmission of records with utmost security viv-a-vis the alterations of tally sheets. Utmost security of tally sheets is critical. This Court would suggest that proposals be made by the 1st respondent for Parliament to provide clear and detailed regulation on how to deal with alterations on election tally sheets in particular. Such proposals should include a provision that any alteration should be immediately countersigned by the one making the alteration and all the monitors to signify that they agree to and witnessed the alteration. Further, a separate record be kept by the 1st respondent also signed for by the one making the alteration and by the monitors. That record must indicate in words the initial figure of votes and the new figure after alteration to avoid opportunity for further alterations. Such simple but effective provisions will ensure integrity and security of the tally sheet transmission process in sharp contrast to the shocking copies of tally sheets that

this Court has seen in evidence which are only signed for at the back and a host of alterations are on the front of the same. Such tally sheets can easily attract accusations of tampering post signing by the monitors as was alleged on this petition. Such records do attract a lot of doubt with regard to the election result and all effort must be undertaken to ensure the integrity of such election records.

In view of the foregoing findings of this Court as to the highly unreliable nature of the evidence of the petitioner, the petition fails and is consequently dismissed and the petitioner is condemned in costs of the petition.

Made in open court at Blantyre this 3rd day of July 2014.



M.A. Tembo

JUDGE