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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

ELECTORAL MATTER NUMBER 4 OF 2019

BETWEEN:

WELLS JOHN ADAMS

APPLICANT

AND

STELLA KAMANYA MKANDAWIRE

1st RESPONDENT

THE ELECTORAL COMMISSION

2nd RESPONDENT

CORAM: JUSTICE M.A. TEMBO,

Msuku, Counsel for the Applicant
Mankhambera, Court Clerk

ORDER

This is this court's order on the applicant's without notice application seeking an order of interlocutory injunction restraining the 2nd respondent from conducting parliamentary elections for Lilongwe City South West Constituency until determination of the applicant's claim in this matter.

The application is brought under Order 10 rule 27 of the Courts (High Court) (Civil Procedure) Rules.

This Court does not wish to take up too much time dealing with the substance of the application in terms of the grounds for seeking the order without notice.

Suffice to state that on 6th May 2019 the applicant filed an application, under Order 19 rule 3 of the Courts (High Court) (Civil Procedure) Rules, by which he claims that the 2nd respondent irregularly accepted the nomination of the 1st respondent as a parliamentary candidate in the forthcoming parliamentary election when in fact the 1st respondent is not eligible to contest under the relevant laws. And that therefore he was the proper candidate having been second to the 1st respondent in party primary polls. Both the claimant and the 1st respondent contested primary polls in the UTM Party.

The applicant then simultaneously filed the instant application for interlocutory injunction.

On the same day the instant application was assigned to one of my brother judges. My brother judge indicated that he cannot hear this type of case. This is borne out of a note dated 13th May 2019 and on the record.

On 13th May 2019, this matter was assigned to my court. Hence this order.

The parliamentary election sought to be restrained is scheduled to take place on the ninth day from today, namely, 21st May 2019.

The law is quite clear in Order 19 rule 19 of the Courts (High Court) (Civil Procedure) Rules that an application for an interim injunction in connection with an election matter shall be made inter partes, that is, with notice to the relevant defendants.

The applicant's application for an interim injunction without notice is incompetent. It has been made contrary to the relevant rule in Order 19 rule 19 of the Courts (High Court) (Civil Procedure) Rules. It is declined for that reason.

Further, section 114 (6) of the Parliamentary and Presidential Elections Act provides that 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.

What this entails is that even if the applicant's application were to be made inter partes now the same cannot be entertained at this point. The election is scheduled to take place within nine days from today.

An application for an injunction cannot be made now since that is within the period stipulated under the prohibition in section 114 (6) of the Parliamentary and Presidential Elections Act.

For the reasons stated herein the instant application is declined.

Made in chambers at Blantyre this 13th May 2019.



M.A. Tembo
JUDGE