



**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL DIVISION**  
**ELECTORAL PETITION NO. 1 OF 2020**

**BETWEEN:**

MARTIN CHIKATI SEKATI NYENGO

1<sup>ST</sup> PETITIONER

SIMEON HARRISON

2<sup>ND</sup> PETITIONER

AND

ELECTORAL COMMISSION

RESPONDENT

GEOFFREY CHIWONDO

1<sup>ST</sup> AFFECTED PARTY

UTM PARTY

2<sup>ND</sup> AFFECTED PARTY

HENRY KAMTEDZA

3<sup>RD</sup> AFFECTED PARTY

**CORAM: THE HONOURABLE JUSTICE JOSEPH CHIGONA**

BRIGHT THEU, OF COUNSEL FOR AFFECTED PARTIES

**ORDER**

**FACTS:**

The 1<sup>st</sup> petitioner and 2<sup>nd</sup> petitioner contested as candidates for parliamentary seats in Mangochi North East Constituency and Mangochi West Constituency respectively in the May 21, 2019 general elections. The Respondent, a constitutional body mandated to manage elections, declared other contestants as winners. The petitioners being dissatisfied with such declaration, petitioned the High Court for various declarations. Through a judgment dated 8<sup>th</sup> June 2020, this court

nullified the results for Mangochi North East Constituency due to serious irregularities. As for Mangochi West Constituency, the High Court nullified the results through a judgment dated 20<sup>th</sup> December 2019. In both cases, the court ordered fresh elections.

In October, 2020, the petitioners petitioned this Court for a declaration that the Respondent should make use of the voters' Roll as was used in the May 2019 general elections and that only candidates who contested during the general elections be allowed to participate in the ordered fresh elections. This was a consolidated petition. They filed the petition after noting that the Respondent was conducting fresh registration for new voters and the decision of the Respondent to invite new contestants for the fresh elections. The petitioners were of the view that the conduct of the Respondent was contrary to the law as pronounced by the Supreme Court in **PROFESSOR PETER MUTHARIKA AND ELECTORAL COMMISSION-V-DR. SAULOS KLAUS CHILIMA AND DR. LAZARUS CHAKWERA**, Constitutional Appeal No. 1 of 2020. In my judgment dated 7<sup>th</sup> October 2020, I agreed with the petitioners that the Respondent was to use the old voters' Roll and was not to invite new contestants for the fresh elections.

### **PRESENT APPLICATION FOR LEAVE TO APPEAL**

Following my judgment, on 27<sup>th</sup> October, 2020, I received an application from the affected parties being represented by counsel Bright Theu, to set aside or vary the judgment. I declined to do so as I reasoned that my hands were tied and that the purported affected parties had the opportunity to make an application to join the case before judgment was delivered, which they did not. I arrived at that decision bearing in mind that as affected parties, they were supposed to make an application to join the case which up to now, they have not. The affected parties through counsel have now brought an application for leave to appeal against my order. I would like to put it on record that I am not against the present application for leave to appeal. However, I have been compelled to make certain observations pertaining to events following my order, which in my considered view, are of much importance to the parties herein and the legal profession.

After I made my order declining to entertain the application to set aside or vary my judgment dated 7<sup>th</sup> October 2020, counsel for the affected parties communicated with Her Honour Bodole, Assistant Registrar, seeking an audience with me. When the Assistant Registrar contacted me with that request from counsel, I declined to grant him audience as my order was clear as to the reasons why I declined to entertain the application.

To my surprise, counsel for the affected parties included what he termed a "postscript" in the formal order for my signature. The so-called postscript provided as follows:

#### **"Postscript:**

Counsel sought audience through the Assistant Registrar after being apprised of the above order. I declined to grant him audience because my judgment of 7<sup>th</sup> October 2020 is final and I took into account O. 23 r.8 of the Court's Rules."

My quick observation is that the postscript contained elements of the conversation between the Assistant Registrar and counsel himself. Nowhere in my order did I state that my order is final. I

have to put in on record that I was surprised by the inclusion of postscript in my order containing things that transpired between the Assistant Registrar and counsel. When I contacted counsel for an explanation, no law was cited to me that allows inclusion of a postscript whose contents are issues discussed between counsel and the Assistant Registrar. I would like to observe that counsel has a duty towards his fellow legal practitioners, clients, community, and the Court. Counsel has a duty not to mislead the Court at all times. I find the inclusion of the postscript containing conversation between counsel and the Assistant Registrar in the formal order misplaced and misleading to the Court. The Court was not a party to that conversation. The order of the Court is clear. I do not think it was proper for counsel to include that postscript in the formal order. I am of the considered view that the practice being advocated by counsel of postscripts is a dangerous practice without any legal authority. It serves no any other purpose than to mislead the court. It has to be discouraged. Once a Court has made its order or ruling, counsel must at all times stick to the order or ruling. There is no need for inclusion of postscripts covering conversations between court officials and counsel. Inclusion of such information changes the order of the Court and I do not think that the Court must proceed to sign that order as it has been changed.

Secondly, I have to state that the behaviour portrayed by counsel to seek an audience with me after my clear order was communicated to him cannot be condoned. I am at pains to accept that behaviour. Once a Court has made its order, counsel ought to be the first one to abide by that order whether he agrees or disagrees with the order. I do not think that seeking an audience with the Court will change anything. I am of the considered view that such an audience with the Court with the aim of bulldozing the court to change its order is unprofessional. The legal profession being a noble profession demands respect of legal practitioners to fellow legal practitioners, clients and more specifically to the Court. As legal practitioners, always remember that your duty is to make sure that you safeguard interests of your clients. Do not take things personal. Legal practitioners must practice or strive to practice the law with dignity and respect to the Court. Do not despise the Court for making an order against you. If not satisfied, appeal.

All in all, the application for leave to appeal is granted.

  
JOSEPH CHIGONA

JUDGE