



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL DIVISION  
**CIVIL CAUSE NO. 130 OF 2024**  
(Before Honourable Justice Mambulasa)

**BETWEEN:**

**GEORGE CHIPWAILA.....1<sup>ST</sup> CLAIMANT**

**-AND-**

**GEOFFREY BANDA.....2<sup>ND</sup> CLAIMANT**

**-AND-**

**ALEX PHILLIP DIMBA.....3<sup>RD</sup> CLAIMANT**

**-AND-**

**JAMES CHITSULO.....4<sup>TH</sup> CLAIMANT**

**-AND-**

**CRINO MASULANI.....5<sup>TH</sup> CLAIMANT**

**-AND-**

**MALAWI ELECTORAL COMMISSION.....1<sup>ST</sup> DEFENDANT**

**-AND-**

**ATTORNEY GENERAL (NATIONAL REGISTRATION**

**BUREAU).....2<sup>ND</sup> DEFENDANT**

**CORAM: HON. JUSTICE MANDALA MAMBULASA**

Dr. Kalekeni Elson Kaphale, SC, Advocate for the Claimants

Mr. Joel Elifala, Advocate for the Claimants

Mr. Felix Tambulasi, Advocate for the Claimants

Mr. Bob Chimkango, Advocate for the Claimants

Mr. David Matumika Banda, Advocate for the 1<sup>st</sup> Defendant

Mr. Lawrence Lunguzi, Advocate for the 1<sup>st</sup> Defendant

Hon. Thabo Chakaka Nyirenda, Attorney General for the 2<sup>nd</sup> Defendant

Ms. Caroline Machado, Court Clerk/Official Interpreter

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**RULING**

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**MAMBULASA, J**

**The Claimants' Case**

- [1] The 2<sup>nd</sup> Claimant alleges that on various dates between 10<sup>th</sup> and 19<sup>th</sup> August, 2024 the National Registration Bureau (NRB) conducted an outreach registration exercise in Blantyre-Bangwe Constituency which among other areas, covers Kachere Township, where he ordinarily resides and does business.
- [2] On or about 19<sup>th</sup> August, 2024 he presented himself to the NRB's personnel at Kachere Market Registration Centre to register for the National Identity Card, where he was told that they were only registering

100 persons per day. As such, NRB was distributing 100 forms daily. He was thus given a form to fill, which he was to present the following day.

- [3] On the following day, he returned to Kachere Market Registration Centre and found that it was closed and there were no NRB personnel carrying out registration. The registration exercise had ended. He was thus left with a filled but unregistered form, which now had become useless.<sup>1</sup> There is attached and exhibited a copy of the registration form marked as, “GB1”.
- [4] He confirms that at the said centre, he also witnessed several other persons being returned by NRB’s personnel as the machines were not working properly and would often stop working.
- [5] The 2<sup>nd</sup> Claimant also confirms that he witnessed several persons who were not given any registration forms and as such were unable to register for National Identity Cards, until the process was closed in the area which covers Mapanga Ward in Blantyre-Bangwe Constituency.
- [6] The 2<sup>nd</sup> Claimant further confirms that many people who are citizens of Malawi resident at Kachere Township and the surrounding areas were returned from the centre and could not register for the National Identity Cards.

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<sup>1</sup> The Court does not agree with this assertion. The form could have been presented to any NRB centre or office for registration if he was so minded to do.

- [7] Due to incompetencies of NRB, he was unable to register for National Identity Card, although he is a citizen of the Republic and qualified to vote under the Constitution.
- [8] He is aware that registration for the 2025 General Elections starts on 21<sup>st</sup> October, 2024 and that he will not be eligible to register and vote in the elections if the 1<sup>st</sup> Defendant insists on National Identity Cards as the sole identifier for people to register.
- [9] He verily believes that the provision providing for a National Identity Card or number to determine eligibility is unlawful and unconstitutional as it deprives him of his right to vote.
- [10] Unless restrained by an order of the court, the 1<sup>st</sup> Defendant intends to apply section 12 of the Presidential, Parliamentary and Local Government Elections Act, 2023 despite the fact that the provision violates his right to vote and falls foul of section 77 of the Constitution.
- [11] In the circumstances, he verily believes that this is a case where it is in the interests of justice for the court to issue an order of injunction to stop the continued commission of an unlawful and unconstitutional act until the constitutionality of the legal provision is determined by the court.
- [12] The 2<sup>nd</sup> Claimant prays to this Court for an order of injunction restraining the 1<sup>st</sup> Defendant from implementing its decision to enforce the provisions of section 12 of the Presidential, Parliamentary and Local Government Elections Act, 2023 which mandates the Malawi Electoral

Commission to only accept the National Identity Card as the sole qualifier/identifier of individuals for registration to vote in elections governed under that Act, until the determination of this matter or until a further order of the court.

[13] The other Claimants also swore a joint Sworn Statement in Support of the application whose contents were exactly the same as that of the 2<sup>nd</sup> Claimant. As such, its contents will not be reproduced here.

[14] The 3<sup>rd</sup> Sworn Statement in Support of the application for an interlocutory order of injunction was sworn by Advocate Mr. Tambulasi.

[15] He depones that the Claimants bring this action pursuant to section 77 of the Constitution.

[16] The 1<sup>st</sup> Defendant is a statutory body established under the Constitution and under statute and mandated to administer elections in Malawi under the Presidential, Parliamentary and Local Government Elections Act, 2023.

[17] In the conduct of its duties and the exercise of its powers, the 1<sup>st</sup> Defendant is primarily mandated to comply with the Constitution as well as statutes, provided these, do not conflict with the Constitution.

[18] Section 40 (3) of the Constitution grants every person the right to vote in elections in Malawi.

[19] The franchise in Malawi is exclusively provided for under section 77 of the Constitution which describes persons that are eligible to vote in elections in Malawi. The section grants the right to vote to:

19.1 citizens of Malawi or if not a citizen, persons that have been ordinarily resident in Malawi for seven years;

19.2 persons in sub-paragraph 19.1 above who have attained the age of 18 years or provide proof that on or before the polling day, they shall have attained the age of 18 years, and

19.3 are ordinarily resident in that constituency or were born there or are employed there or carry on business there.

[20] There is supposed to be no other restrictions to the right to vote in Malawi other than the ones provided under section 77 (3) of the Constitution, which outlines which persons are not qualified for registration as a voter.

[21] In or around 2023, the National Assembly in Malawi passed the Presidential, Parliamentary and Local Government Elections Act, 2023 (the Act). The President of the Republic of Malawi assented to the same into law on 18<sup>th</sup> February, 2023 and it was published in the *Gazette* on 21<sup>st</sup> February, 2023.

[22] Section 12 of the Act provides that “*a person who is eligible to be registered as a voter in an election shall, as proof of eligibility, present in*

*person to a registration officer, proof of his or her national registration issued by the National Registration Bureau”.*

[23] He refers to the Sworn Statements filed by the Claimants and states that he verily believes that section 12 of the Act infringes section 77 of the Constitution in so far as it:

23.1 restricts the right to register as a voter only to those people as would present to a registration officer proof of their national registration issued by NRB, a restriction which section 77 of the Constitution does not impose;

23.2 leaves out of eligibility for registration persons being citizens who have not been able to be registered in the national identity cards database or persons that have been ordinarily resident in Malawi for seven years and have not yet had occasion to acquire a national identity card issued by the NRB;

23.3 leaves out of eligibility for registration individuals who have attained the age of 18 years or would attain that age on the voting day but have not had occasion to acquire a national identity card issued by the NRB;

23.4 subjects the issue of acquiring eligibility to vote to the efficiency (or lack thereof) of the NRB; and

23.5 overlooks the fact that the exercise of the mandate of the NRB can be subject to political manipulation.

[24] Section 77 of the Constitution does not render itself subject to additional qualifiers into the franchise imposed by an Act of Parliament hence any qualifiers imposed by a statute that are additional to or more than those under section 77 of the Constitution are by that very fact unconstitutional in so far as they limit the franchise.

[25] In elections that have occurred since the enactment of the Presidential, Parliamentary and Local Government Act, 2023 the 1<sup>st</sup> Defendant has insisted on registering as voters only such individuals as have presented to it an identity card issued under the National Registration Act and have refused to register as voters those that have failed to produce such.

[26] On 2<sup>nd</sup> August, 2024 at the launch of the 2025 General Elections, the 1<sup>st</sup> Defendant through its chairperson reiterated its position that for the purposes of the 2025 General Elections, the only acceptable forms of identification are the National Identity Card, whether valid or expired and a slip from the NRB with an ID Number. There is attached and exhibited a copy of the statement by the 1<sup>st</sup> Defendant marked as, “FT1”.

[27] On 8<sup>th</sup> September, 2024 at the launch of the 2025 General Elections Pilot Registration Phase, the 1<sup>st</sup> Defendant through its chairperson reiterated its position that for purposes of the 2025 General Elections, the only acceptable forms of identification are the National Identity Card, whether valid or expired and a slip from the NRB with an ID Number. The 1<sup>st</sup>



Defendant further states that they will have placed at the registration centres, staff from the NRB, but such staff will not be registering any new registrants. There is attached and exhibited a copy of the statement by the 1<sup>st</sup> Defendant marked as, “FT2”.

[28] He verily believes that the provision providing for a National Identity Card or Number to determine eligibility is unlawful and unconstitutional as it is in conflict with section 77 (1) of the Constitution and as such cannot stand the constitutional test.

[29] Unless restrained by an order of the court, the 1<sup>st</sup> Defendant intends to apply section 12 of the Presidential, Parliamentary and Local Government Elections Act, 2023 despite the fact that the provision falls foul of section 77 of the Constitution.

[30] In the circumstances, he verily believes that this is a case where it is in the interests of justice for the court to issue an order of injunction to stop the continued commission of an unlawful and unconstitutional act until the constitutionality of the legal provision is determined by the court.

[31] He thus prays to this Court for an order of injunction restraining the Defendant from implementing its decision to enforce the provisions of section 12 of the Presidential, Parliamentary and Local Government Elections Act, 2023 which mandates the 1<sup>st</sup> Defendant to only accept the National Identity Card as the sole qualifier/identifier of individuals for registration to vote in elections governed under that Act, until the determination of this matter or until a further order of the court.

[32] When the Court considered the without notice application brought by the Claimants, it was of the firm view that it should come on notice to the Defendants. The Court made an Order for Directions to that effect and set strict timelines that had to be complied with by the parties as well as the Court itself due to the urgent nature of the application.

### **The 1<sup>st</sup> Defendant's Case**

[33] The Sworn Statement of the 1<sup>st</sup> Defendant was made by its Chairperson, Justice Annabel Mtalimanja.

[34] She depones that she considered the nature of the reliefs which are being sought by the Claimants in the substantive case and the reasons which they are seeking a court order of injunction, and she verily believes that the Claimants are not entitled to the reliefs.

[35] She states that she is aware that for the Court to consider granting an order of injunction in a claim of this nature, it must be satisfied that there is a serious case to be tried and that the balance of justice or convenience must be in favour of granting the injunction.

[36] She states that this is not a case in which an injunction should be granted.

*There is no serious issue to be tried in the substantive case*

[37] The case against the 1<sup>st</sup> Defendant is totally misplaced as it is not responsible for addressing the issues which the Claimants have raised in their sworn statements in support of this application.

[38] The Malawi Electoral Commission (the Commission)'s mandate to organize, administer and preside over the conduct of elections is provided by law under the Constitution, the Malawi Electoral Commission Act, and the Presidential, Parliamentary and Local Government Elections Act, 2023 as key pieces of legislation. These pieces of legislation govern the conduct of elections including the powers, functions and duties of the Commission.

[39] The Commission cannot allocate itself any other powers, duties or functions that are not specifically provided by these pieces of legislation. She also verily believes that the Court cannot give the Commission more powers beyond the provisions of the Constitution and the Acts of Parliament.

[40] It is a clear provision of the Constitution under section 76 (2) (d) that the duties and functions of the Commission include to ensure compliance with the provisions of the Constitution and any Act of Parliament. The requirement that a person who is eligible to be registered as a voter in an election shall, as proof of eligibility present in person to a registration officer, proof of his or her national registration issued by the NRB is provided under section 12 of the Presidential, Parliamentary and Local Government Elections Act, 2023 (the "Act").

[41] She verily believes that in view of the constitutional provision of section 77 (1) and (2) and section 76 (2) (d), the provision of section 12 of the Act cannot be deemed to be unconstitutional.

[42] Section 77 of the Constitution specifically makes citizenship and age as eligibility criteria for a person to qualify to register as a voter in an election. The Act then sets out proof of these criteria by providing that a person must present proof of registration with the NRB.

[43] It would be absurd to conclude that the meaning of section 40 (3) and 77 (1) and (2) of the Constitution is that any person that presents himself or herself at a registration centre to register as a voter must be allowed to register. Under section 12 of the Act, the law provides a way of establishing that the criteria mentioned under section 77 (2) of the Constitution have been met.

[44] She depones that she read the Skeleton Arguments filed by the Claimants and verily believes that it is not correct that the right to vote and or to contest for election to a public office is only subject to the other Constitutional provisions. For example, the law gives statutory power to the Commission, under the Act, to prescribe requirements for candidate nomination including prescribing nomination fees which must be paid by candidates to become eligible to contest. If a person fails to pay nomination fees, they are barred from contesting notwithstanding the fact that the right to contest for election into a public office is a constitutional right just like the right to vote.

[45] The requirement that a person must present proof of eligibility by presenting proof of registration with the NRB is an example of a restriction or limitation that may be placed on the exercise of constitutionally given rights and freedoms in that it is prescribed by law, reasonable, recognized

by international human rights standards and is necessary in an open and democratic society.

[46] She refers to the foregoing and state that the requirement of producing proof of eligibility to register to vote is a prevalent requirement across the world and within the region.

[47] Comparatively, the law in a number of countries including, Kenya, Republic of South Africa, Zambia and other countries require voters to provide proof of citizenship which is almost a universal criterion to be eligible to register to vote.

[48] She verily believes that inefficiencies of the NRB as duty bearer responsible for registration of citizens, whether alleged or proven, does not form a basis upon which the Court can make a declaration, invalidating a statutory provision for being unconstitutional.

[49] Without prejudice to the foregoing, the Court does not have the power to prescribe other forms of proof of eligibility to register as a voter unless such prescription are duly made into law through an Act of Parliament.

[50] In view of the foregoing, she verily believes that the Claimants do not have any serious issue to be tried before the Court so as to be entitled to an order of injunction.

*Balance of justice and convenience*

[51] The Claimants have mentioned that they are residents of Kachere Township in Blantyre, but they have not mentioned where they are intending to register as voters.

[52] As required by law, the Commission published a notice of commencement of voter registration in the *Government Gazette* of 27<sup>th</sup> September, 2024. According to the publication, registration of voters will not commence in Blantyre, until 9<sup>th</sup> November, 2024. A copy of the said *Gazette* containing the list of councils is now produced and exhibited as, "AM 1".

[53] Therefore, the Claimants have sufficient time to register for the National Identity Card and then present the proof of such registration to the voter registration officer once registration of voters commences.

[54] The Commission has already started and is in the course of deployment of voter registration materials to all the Councils that are part of Phase I of the voter registration process as appearing in the *Gazette*. The deployment plan was already unveiled to stakeholders during the meeting of the National Election Consultative Forum (NECOF) on 10<sup>th</sup> October, 2024. A copy of the report of the Commission which was presented to the Forum on behalf of the Commission is now produced and attached and marked as "AM 2".

[55] Further to the foregoing paragraph, the Commission, working within the confines of the law and the electoral cycle approach to management of elections commissioned Malawi Electoral Commission Strategic Plan

2023-2028 and the 2025 General Election Operational Plan which outlines the implementation of activities towards the 2025 General Elections. As such, the Commission has made significant expenditure of public money to fund these activities, including deployment of materials, staff, security, transport logistics, mass recruitments and trainings, media, civic and voter education and meetings with stakeholders.

[56] Therefore, if an order of injunction is granted and it is later established that the Claimants ought not to have been granted the order, the costs of redeployment will be so huge that Claimants will not be able to cover such costs.

[57] The Claimants have not mentioned in their sworn statements what steps they took or have taken so far to bring it to the attention of the NRB as the duty bearer that they are having challenges to register for the national identity card.

[58] Meanwhile, she verily believes that the NRB has not stopped and continues to register citizens across the country including in Blantyre where Kachere Township is.

[59] In fact, the copies of application to register as a citizen, purportedly filed with the NRB, that have been filed by the Claimants with the Court do not bear any of the Claimants names except that of Mr. Geoffrey Banda.

[60] Lastly, on this point the Claimants are seeking the invalidation of a statutory provision for being unconstitutional. The granting of the injunction will have the effect of disposing of the substantive matter to finality.

*Prayer*

[61] The Claimants are not entitled to the order of injunction which they are seeking. Therefore, this application should be dismissed with costs to the 1<sup>st</sup> Defendant.

**The 2<sup>nd</sup> Defendant's Case**

[62] The Sworn Statement in Opposition by the 2<sup>nd</sup> Defendant was made by its Principal Secretary, Mr. Mphatso Sambo.

[63] He states that he verily believes that National Identity serves as proof of citizenship of individuals. In the 2019 tripartite elections, the Commission used the National Identity to register voters. In the 2020 Fresh Presidential Elections, the Commission also used the National Identity to register voters for the said elections. He verily believes that this was done to prevent non-Malawians from casting their votes during the said elections.

[64] To ensure a seamless process during the registration of the voters in the aforesaid elections, the NRB rolled out mass registration exercises across the whole country in 2017. In 2018, the NRB carried out another registration exercise in readiness for the 2019 tripartite elections. Furthermore, after the 2020 Fresh Presidential Elections, the NRB



undertook other two mass registration exercises. The first one took place in 2021. The second one which was more intensive took place from 2023 to 2024.

[65] In the years 2020 up to 2023, the NRB has been registering Malawians continuously, and subsequently issued them with National Identity in what is deemed as a “*continuous registration exercise*”.

[66] In 2023, Malawi enacted the Presidential, Parliamentary and Local Government Elections Act, 2023. He states that he has been advised by Counsel and verily believes the same to be true that in the said Act, Commission is mandated to recognise the National Identity as issued by the NRB as proof of a person’s eligibility to register for voting during an election.

[67] The Commission signed a memorandum of understanding with the NRB to ensure that the whole process is smooth. There is now produced and shown a copy of the Memorandum of Understanding marked and exhibited as, “MS1”.

[68] Further to this, from May 2023 up to June 2024, the NRB conducted a program that was aimed at registering all eligible Malawians in all of the Commission’s voting centres. This program was referred to as an “*National Identity Outreach Registration Program*”. Further to this, the NRB disseminated communication through several media outlets

informing all eligible Malawians to go to these centres to register so that they are issued with National Identity.

[69] Each and every voting centre as established by the Commission had its own NRB centre. The NRB deployed at least two officers at each and every centre. For clarity, if a district has 20 registration centres, the NRB would deploy not less than 40 registration officers in that district.

[70] From June 2024 up to August 2024, the NRB, commenced another *Mop-Up Exercise* aimed at registering people who did not register in the initial outreach registration program. The NRB did this by revisiting all the Commission's voting centres. Just as with the outreach program, the NRB disseminated communication through several media outlets informing all eligible Malawians to go to these centres to register for them to be issued with National Identity.

[71] The said exercise was conducted alongside District Commissioners, Traditional Authorities, Members of Parliament, Councilors and a District Registration Taskforce.

[72] Despite the conclusion of these two programs, the NRB is still registering Malawians continuously throughout Malawi. For instance, he noticed that the Claimants are based in Blantyre. In Blantyre, there are a number of centres that are still registering, and issuing people with National Identities such as Ndirande Post Office, Limbe Post Office, Bangwe Post Office, Soche Post Office, Lunzu Post Office and Blantyre NRB Offices,

among other centres. Furthermore, there is Chiradzulu NRB offices at Chiradzulu District Council, and Post Office like Namadzi Post Office.

[73] Furthermore, registration of people by the NRB is different from the voter registration exercise conducted by the Commission such that any person wishing to get a National Identity can be registered at any NRB centre in Malawi, whether at a school, post office, outreach registration centres or even in prisons.

[74] The NRB provides another alternative of registering people, in the sense that a person can download the National Identity application form from the NRB online platform, fill in the necessary information, and present the form at any NRB centre. Such a person will be registered by the NRB's agents manning such centres.

[75] All these measures highlight the capacity of the NRB to issue all eligible Malawians with National Identities. As further proof, the Commission through the National Statistics Office had a target of registering 10.9 million Malawians. There is produced and shown a copy of the document showing targets set by the Commission exhibited and marked as "MS4".

[76] The NRB beat the target set by the Commission by registering over 12.5 million Malawians.

[77] Furthermore, when one is registered with the NRB, the applicant's registration form is issued with a machine generated receipt with a QR code and a National Identity number and in so doing the form can be used

as a National Identity on its own, which can be used when opening bank accounts, registering phone numbers, Affordable Input Program (AIP), and when applying for passports. The Commission recognises the said form as proof of eligibility.

[78] Currently, these application forms are readily available, and can be found at all NRB's centres. Further, those with the capacity can access the forms on the NRB's online platform.

[79] Furthermore, all of the NRB's centres are open for continuous civil registration and all centres will remain open during the voter registration exercise scheduled to be conducted by the Commission. Therefore, a person can visit such centres to apply for a National Identity that can be used as a proof of registration with the NRB. The forms to be issued to him or her at such centres, when properly filled and registered can be used when registering during the voter registration exercise by the Commission.

[80] Additionally, unless proof is provided by the Claimants, and if they do not have any sinister motives, failure on their part to register does not mean that the NRB has failed to register a lot of eligible Malawians. Even in the Claimants' case they still have a lot of time to apply and get a National Identity in readiness for the voter registration exercise by the Commission.

[81] He verily believes that the balance of convenience tilts against granting the order of injunction sought by the Claimants. If the injunction is

granted, the 1<sup>st</sup> Defendant will be prevented from implementing the law. Additionally, he verily believes that the Claimants would be incapable of indemnifying the Defendants when it is later found that the injunction was wrongly granted.

[82] He refers to Sworn Statement of the Claimants, and denies that each NRB centre was registering 100 people per day. This is the case because, each centre had not less than two registration officers. One registration officer can register one person within 5 minutes on average and that ideally translates that 12 people could be registered within one hour. Furthermore, since the registration exercise spans from 8:00a.m. up to 5:00p.m. this ideally means that one registration officer can register 96 people in a day, and since the centre is manned by two registration officers, it ideally means that 192 people are registered within a single day.

[83] For instance, during the *Mop-Up Outreach Registration*, it registered 772 people at the Kachere Market Registration centre for five days, where the Claimants allege that they were not permitted to register. This simply means that, it registered more than 100 people per day at the said centre.

[84] Furthermore, NRB also extends the time for registering people at its centres in instances where such centres have been affected by other inconveniences.

### **Issue for Determination**

[85] There is one issue to be determined by this Court and it is whether an interlocutory order of injunction should be granted in this matter restraining the 1<sup>st</sup> Defendant from implementing its decision to enforce section 12 of the Presidential, Parliamentary and Local Government Elections Act, 2023.

[86] Section 12 of the Presidential, Parliamentary and Local Government Elections Act, 2023 mandates the Commission to require national registration by NRB as proof of eligibility for a person to be registered by it as a voter.

### **The Law**

[87] The law on the grant or refusal of an interlocutory order of injunction is well settled in Malawi. It is provided for under Order 10, rule 27 of the Courts (High Court) (Civil Procedure) Rules, 2017.

[88] Order 10, rule 27 provides as follows:

The Court may, on application, grant an injunction by an interlocutory order when it appears to the Court-

- (a) there is a serious question to be tried;
- (b) damages may not be an adequate remedy; and
- (c) it shall be just to do so,

and the order may be made unconditionally or on such terms or conditions as the Court considers just.

[89] In order to put the matter into proper perspective, it is important that some sections in the Constitution concerning this application be reproduced.

[90] The first is section 40 (3) of the Constitution. It states as follows:

Save as otherwise provided in this Constitution, every person shall have the right to vote, to do so in secret and to stand for election for any elective office.

[91] The next is section 77 of the Constitution which provides that:

(1) All persons shall be eligible to vote in any general election, by-election, presidential election, local government election or referendum, **subject only to this section.** (*Emphasis supplied*)

(2) Subject to subsection (3), a person shall be qualified as a voter in a constituency if, and shall not be so qualified unless, at the date of the application for registration that person-

(a) is a citizen of Malawi or, if not a citizen, has been ordinarily resident in Malawi for seven years;

- (b) has attained the age of eighteen years or provides proof that on or before the polling day he or she shall have attained the age of eighteen years; and
    - (c) is ordinarily resident in that constituency or was born there or is employed or carries on business there.
- (3) No person shall be qualified for registration as a voter in a constituency if that person-
  - (a) is under any law in force in the Republic adjudged or otherwise declared to be mentally incompetent;
  - (b) is under sentence of death imposed by a court having jurisdiction in the Republic, either before or after the appointed day; or
  - (c) is disqualified from registration as a voter on the grounds of his or her having been convicted of any violation of any law relating to elections passed by Parliament and in force at the time of, or after, the commencement of this Constitution, but such disqualification shall be valid only with respect to registration for the election in question and the person so disqualified shall be qualified to be registered as a voter in the next or any subsequent election.
- (4) Where any person is qualified to be registered in more than one constituency as a voter, he or she may be so registered only in one of the constituencies.
- (5) No person shall exercise more than one vote in any one election.



## Arguments by the Parties

- [92] The gravamen of the Claimants' argument is that section 77 of the Constitution, which is on the franchise, is exclusive and any other limitations to the franchise, are restricted to the same section and not any other law. They argued that the section contains words that militate against any limitation on the franchise.
- [93] They contended that this section is the only one in the entire Constitution that is drafted in the manner in which it is. The Claimants highlighted that the words, **subject only to this section** at the end thereof were put there by the framers of the supreme law of the land for a purpose.
- [94] The Claimants argued that while section 40 (3) of the Constitution opens the door on the franchise, section 77 of the Constitution closes and seals it up. They further argued that section 77 goes beyond prescribing the qualifications for eligibility to register as a voter, but it also outlines and hedges all disqualifications.
- [95] The Claimants' question therefore is: does section 77 of the Constitution leave room for any other legal provision to supplement the eligibility of voters? Put differently, is there a possibility that a person who is eligible to register as a voter under section 77 of the Constitution may be prevented from doing so for failure to provide proof of eligibility as required by section 12 of the Presidential, Parliamentary and Local

Government Elections Act, 2023? If that is possible, why did the framers of the Constitution use the words, **subject only to this section**?

[96] By way of comparison, the Claimants referred the Court to section 104 of the Constitution which establishes the Supreme Court of Appeal for Malawi. This section provides that the Supreme Court of Appeal shall have such jurisdiction and powers as may be conferred on it by the Constitution or any other law. The Claimants pointed out that where the Constitution wishes to defer some other matters to any other law, it expressly states so. Section 77 of the Constitution on the franchise does not defer anything to any other law. This raises the question again: can section 12 of the Presidential, Parliamentary and Local Government Elections Act, 2023 provide another qualifier to the franchise, so, they asked?

[97] The Claimants also referred the Court to article 75 of the Constitution of Zambia. It is to the effect that every citizen of Zambia who has attained the age of eighteen years shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections to the National Assembly, be entitled to be registered as such a voter under a law in that behalf, and no other person may be so registered. They argued that in this case, the framers opened the article up to a law. A similar argument was made in reference to sections 82 and 83 of the Constitution of Kenya which provides for Parliament to enact laws regulating the registration of citizens as voters. That is not the case with section 77 of our Constitution, so, they contended.

[98] The Claimants therefore invited the Court to find that they have passed the threshold in that there is a serious question to be tried in this application, and that in constitutional and human rights litigation damages are not an adequate remedy and that the balance of justice or convenience tilts in favour of granting the interlocutory order of injunction sought, so that the 1<sup>st</sup> Defendant should not only use national registration issued by NRB but open up to other forms of proof of eligibility in order that all eligible voters such as the Claimants who had difficulties to register for the citizen identification are allowed to register and exercise their right to vote.

[99] Taking its turn, the 1<sup>st</sup> Defendant argued that under section 76 (2) (d) of the Constitution, it has a duty and function to ensure compliance with the provisions of the Constitution and any Act of Parliament. In the instant case, section 12 of the Presidential, Parliamentary and Local Government Elections Act, 2023 requires that it only accepts national registration issued by the NRB as the only proof of eligibility for registration of voters. It is what it is and the 1<sup>st</sup> Defendant has no choice but to comply with the said section.

[100] The 1<sup>st</sup> Defendant also argued that the Claimants did not cite section 77 (2) (b) of the Constitution, which requires provision of proof by persons that on or before the polling day, he or she shall have attained the age of eighteen years.

[101] The 1<sup>st</sup> Defendant submitted that granting an interlocutory order of injunction suspending the enforcement of section 12 of the Presidential, Parliamentary and Local Government Elections Act, 2023 would leave it without any guidance on the proof of eligibility as provided for under section 77 of the Constitution. To the extent that section 12 is not adding or changing anything to the eligibility set under section 77 but only provides for proof of such eligibility, it is not unconstitutional.

[102] The 1<sup>st</sup> Defendant further argued that if one was to take the approach suggested by the Claimants, then, the entire Presidential, Parliamentary and Local Government Elections Act, 2023 (the Act) would be invalidated for being unconstitutional. It gave but one example. Under section 40 (3) of the Constitution, every person has a right to stand for any elective office. Under the Act, the 1<sup>st</sup> Defendant has been given powers to set nomination fees. If a person cannot afford to pay the nomination fees set, they cannot and should not be heard to argue that the 1<sup>st</sup> Defendant has violated their right to stand for an elective office and therefore that the section granting the power to set nomination fees is unconstitutional. That would lead to absurdity. The same argument applies in the context of section 12 of the Act *vis-à-vis* section 77 of the Constitution.

[103] The 1<sup>st</sup> Defendant pointed out that the Claimants in their arguments never referred the Court to Acts of Parliament in Zambia, Kenya and Republic of South Africa. For instance, section 5 (3) of the Elections Act of Kenya requires citizen identification and a passport as proof of eligibility. In Zambia, section 8 of the Electoral Process Act requires production of a

national registration card as proof of eligibility. Republic of South Africa too has a legislation that requires possession of an identity for a person to register as a voter and yet it has one of the most liberal constitutions in the world.

[104] To sum it up, the 1<sup>st</sup> Defendant contended that the requirement of proof of eligibility as provided for under section 12 of the Act, is something that is practiced in most countries in the region. It is not unconstitutional and as such there is no serious question to be tried in this matter.

[105] On damages not being an adequate remedy in this type of litigation, the 1<sup>st</sup> Defendant joined issues with the Claimants.

[106] On whether it would be just to grant the interlocutory order of injunction, the 1<sup>st</sup> Defendant argued that the Claimants did not have any element in their favour. They are residents of Kachere Township in Blantyre. Registration of voters in Blantyre will only commence on 9<sup>th</sup> November, 2024 for a period of two weeks. They have time between now and then to go to any NRB centre close to them to register for citizen identification so that they could be registered as voters when the turn for Blantyre district comes.

[107] It was also contended that the Claimants did not present any evidence as to what they did when they faced the alleged challenges. There is no reason for the Court to grant an interlocutory order of injunction being sought by the Claimants.

[108] The 2<sup>nd</sup> Defendant took issues with the Claimants. It argued that their turn as Blantyre residents has not yet come and that they have time to register for citizen identification and later use it for voter registration. It argued that the application is therefore academic and moot and should be dismissed as no person is allowed to sue in anticipation of an event.

[109] The 2<sup>nd</sup> Defendant argued that section 77 of the Constitution does not prescribe the mode of proof of eligibility, i.e. an objective criterion. That matter was deferred to an Act of Parliament. It went on to contend that if the Constitution was to provide for everything in it, even the High Court Library would not contain it.

[110] The 2<sup>nd</sup> Defendant further argued that the case of *Nseula* held that the Court should avoid pedantic interpretation and no section of the Constitution should be interpreted in isolation from the others that have a bearing on the same subject matter. It referred the Court to have regard to sections 6, 7 and 76 (2) (d) when interpreting section 77 of the Constitution. Section 12 of the Act was enacted in order to have an objective criterion for proof of eligibility and that this provision must be followed by all as Parliament is presumed to know what is best for its people.

[111] It was also argued that the Court cannot at this stage declare section 12 of the Act to be invalid and unconstitutional without invoking section 9 of the Courts Act. To that extent, the presumption that a statute or indeed a provision therein is valid and constitutional remains and there is no good

reason to grant the interlocutory order of injunction being sought by the Claimants.

[112] The 2<sup>nd</sup> Defendant further argued that section 12 of the Act was enacted to ensure integrity of the elections and that as a country, we have moved on and we cannot go back to those old days. In any case, during the year 2019 General Elections and the year 2020 Fresh Presidential Elections, the citizen identification was the only proof of eligibility that was used to register voters. The *status quo* has been there for the past six years or so and cannot qualify under the principles for the grant of injunctions.

[113] The Claimants made brief responses. The first was that section 77 (1) of the Constitution has a unique wording. It does not defer anything to legislation. That unique wording must be given its effect. Second, the Court has no business protecting a *status quo* that is unconstitutional. Third, section 77 (2) of the Constitution has nothing to do with requiring proof of eligibility, except to the limited extent that persons who shall attain the age of eighteen years by the polling day are required to produce proof to that effect for them to be registered as voters. Fourth, no statute can restrict the franchise. Fifth, the issue before the Court is not academic or moot. It is a serious matter concerning the constitutionality of a provision of a statute. Sixth, the Court was urged to have at the back of its mind, sections 12 (1) (f), 15, 46 (3) and 108 (2) of the Constitution when considering the application.

### **Determination of the Application**

[114] The Court will examine a few sections in the Constitution starting with section 6. It provides as follows:

Save as otherwise provided in this Constitution, the authority to govern derives from the people of Malawi as expressed through universal and equal suffrage **in elections held in accordance with this Constitution in a manner prescribed by an Act of Parliament.** (*Emphasis supplied*)

[115] Section 76 (1) is couched in the following terms:

The Electoral Commission shall exercise such functions **in relation to elections as are conferred upon it by this Constitution or by an Act of Parliament.** (*Emphasis supplied*)

[116] As correctly argued by the 1<sup>st</sup> Defendant, it has a duty and function to ensure compliance with the provisions of the Constitution and any Act of Parliament under section 76 (2) (d) of the Constitution.

[117] It is a canon of constitutional interpretation that the Constitution must be read as a whole, and that one section should not be read in isolation from others, and that the sections should not destroy each other but rather sustain the other or others.<sup>2</sup> These two sections speak to elections. That elections shall be held in accordance with the Constitution in a manner prescribed by an Act of Parliament. Further, that the 1<sup>st</sup> Defendant shall ensure compliance with the provisions of the Constitution and any Act of

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<sup>2</sup> *Nseula -vs- Attorney General and another* [1999] MLR 313.



Parliament. The franchise and voter registration are some of the components of any election.

[118] The conclusion to be drawn from this is that sections 40 (3) and 77 of the Constitution relied upon by the Claimants cannot be read in isolation from other sections on the subject of elections in the same Constitution. Sections 6 and 76 (1) and (2) (d) of the Constitution will also have to be considered in this limited investigation.

[119] When that is done, it emerges that the framers of the Constitution envisaged that other than the Constitution itself, an Act of Parliament would also make provision for matters concerning elections. In this regard, the Presidential, Parliamentary and Local Government Elections Act, 2023 is indeed one such key pieces of legislation.

[120] The Court readily agrees with the argument by the Claimants that in doing so, an Act of Parliament cannot provide for anything that is contrary to the Constitution itself as a supreme law.<sup>3</sup> Such an Act of Parliament or a provision therein, would run the risk of being challenged and declared invalid by a competent court of law.<sup>4</sup>

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<sup>3</sup> See sections 5, 10 (1), 11 (1), 88 (1) and 199 of the Constitution. The supremacy of the Constitution has also been affirmed and reaffirmed in a number of cases including: *The State and Speaker of the National Assembly –vs- Mary Nangwale* Miscellaneous Civil Cause No. 14 of 2005 (High Court) (Lilongwe District Registry) (Unreported) at page 9.

<sup>4</sup> See for instance, *Director of Public Prosecutions –vs- Banda & Others* [1997] MLR 7 (SCA).

[121] The Court also agrees with the 2<sup>nd</sup> Defendant's argument that there is a presumption in law that every statute is deemed regular, valid and constitutional until the contrary is proved and determined by a competent court of law.<sup>5</sup> The other presumption in law is that a statute or indeed a provision in a statute must not be denied its effect.<sup>6</sup>

[122] The inescapable conclusion to be drawn from the above exposition of canons of constitutional and statutory interpretation is that even when considering the franchise, one cannot just consider selected provisions from the Constitution. All provisions having a bearing on a subject matter in the Constitution must be brought to bear. In this regard, the franchise being a component of an election, all provisions speaking to elections must be considered.

[123] The question is: is section 12 of the Act adding to or introducing anything more than what is required under section 77 of the Constitution?

[124] Section 77 of the Constitution requires those to be registered as voters to be citizens of Malawi or if not citizens, those persons that have been ordinarily resident in Malawi for seven years and have attained the age of eighteen years or will attain the age of eighteen years by the polling day.

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<sup>5</sup> *Ndyanabo -vs- Attorney General* [2001] EA 495.

<sup>6</sup> *Nippo Corporation -vs- Shire Construction*, Civil Cause No. 372 of 2011 (High Court of Malawi) (Principal Registry) (Unreported).

[125] For citizens of Malawi, the NRB issues to them Citizen Identification.<sup>7</sup> For persons ordinarily resident in Malawi for seven years, the NRB issues to them non-Malawian Citizens Identification. This explains why Parliament did not specify one document in section 12 of the Act. It just provided for proof of national registration issued by NRB.

[126] Production of a Citizen Identification by a citizen is a method of proving that one is a citizen of Malawi and has attained or will attain the age of eighteen years by a certain date. The same is true with a non-Malawian Citizen Identification. It proves that one is ordinarily resident in Malawi and also the age of the person. The database of the NRB would also have details of where a person comes from in Malawi. The same would also be true of the period of residence in Malawi for non-Malawian citizens.<sup>8</sup> This eligibility criteria is what is provided for under section 77 of the Constitution.

[127] The Court is unable to see anything new or more that section 12 of the Act has introduced beyond what is provided for under section 77 of the Constitution. The Court agrees with the submission by the Defendants that what section 12 of the Act has really done is to require proof of eligibility thereby providing guidance to the 1<sup>st</sup> Defendant as it registers voters. The section has also provided an objective standard that would ensure integrity of elections.

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<sup>7</sup> See section 7 (1) (a), 8 and 13 of the National Registration Act, Cap. 24:01 of the Laws of Malawi.

<sup>8</sup> See sections 7 (1) (b), 8 and 13 of the National Registration Act, Cap. 24:01 of the Laws of Malawi.

[128] The Court could not help it but entertain this wandering thought. If all persons in Malawi who meet the eligibility criteria set by section 77 of the Constitution to register as voters had a national registration issued to them by the NRB, would there be these proceedings in this Court? Is the problem section 12 of the Act as it is, or its effect, or the possibility that some people may not be able to register as voters because they may not have a national registration issued to them by the NRB?

[129] In this Court's view, the problem seems to be the possibility that some people may not be able to register as voters because they may not have a national registration issued to them by the NRB. Looked at it this way, there does not appear to be any real conflict between section 77 of the Constitution and section 12 of the Act. Consequently, the Court is unable to find that there is a serious question to be tried as required by Order 10, rule 27 (a) of the Courts (High Court) (Civil Procedure) Rules, 2017.

[130] The Court will proceed to consider the other requirements under Order 10, rule 27 of the Courts (High Court) (Civil Procedure) Rules, 2017 for purposes of completeness.

[131] The Court agrees with the arguments by both the Claimants and the Defendants that damages would not be an adequate remedy in this matter. This point is so well settled in our law that it does not require citation of any authority.

[132] On the third requirement or principle, whether it would be just to grant the order sought by the Claimants or not, the Court is of the firm view that it would not be just to do so for at least three reasons.

[133] First, the Claimants and those they saw might have faced challenges to register for citizen identification with the 2<sup>nd</sup> Defendant in August 2024 but they still have some time to do so between now and when voter registration exercise for Blantyre starts on 9<sup>th</sup> November, 2024. The Court agrees with the submission by the 2<sup>nd</sup> Defendant that the Claimants herein sued in anticipation of an event.

[134] Second, granting the interlocutory order of injunction sought by the Claimants that would allow the 1<sup>st</sup> Defendant not to enforce section 12 of the Act and then, effectively open up to other forms of proofs of eligibility, would be acting contrary to section 76 (2) (d) of the Constitution. This provision as we have seen, requires the 1<sup>st</sup> Defendant to ensure compliance with the Constitution and any Act of Parliament. The Constitution also binds the Court.<sup>9</sup> In addition, the Court is enjoined to protect and enforce the Constitution and all laws, unless and until, a duly constituted Court declares a particular law invalid and unconstitutional.<sup>10</sup> At this stage, there is no any such declaration of invalidity or unconstitutionality of section 12 of the Act. In any event, the Court cannot do so alone.<sup>11</sup>

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<sup>9</sup> See Section 4 of the Constitution.

<sup>10</sup> See Section 9 of the Constitution.

<sup>11</sup> See *Almeida -vs- Almeida*, MSCA Civil Appeal No. 11 of 2022 (Sitting at Blantyre) (Unreported).

[135] Third, granting the interlocutory order of injunction sought by the Claimants, would leave the 1<sup>st</sup> Defendant to its own devices to fashion other forms of proofs of eligibility outside the law for conducting elections in Malawi. The fact that the 1<sup>st</sup> Defendant is responsible for running elections does not entitle it to write electoral laws. That is the function of Parliament.

[136] It would not even matter whether the 1<sup>st</sup> Defendant would propose those other forms of proofs of eligibility with the consent and participation of electoral stakeholders. That would be a very slippery and dangerous path to take regard being had to the holding of the High Court sitting in a constitutional cause in *Chilima et al -vs- Mutharika and Electoral Commission*<sup>12</sup> where such actions were found to be illegal and unconstitutional. The Court would also not want to send mixed messages to the 1<sup>st</sup> Defendant where in one instance it is accused of not following the law and in another, when it is complying with the law, it is sanctioned by the same court to disregard the law. The Court would not want to create such anarchy and confusion.

[137] Similarly, even the Court would also not be able to prescribe other forms of proofs of eligibility outside the current legal framework if it were to grant the interlocutory order of injunction sought by the Claimants. That would be akin to the Court entering a territory reserved by the Constitution for the legislature. Courts are enjoined to respect at all times

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<sup>12</sup> Constitutional Reference No. 1 of 2019 (High Court of Malawi) (Lilongwe District Registry) (Unreported) Judgment of 3<sup>rd</sup> February, 2020.

the doctrine of separation of powers as enshrined in the Constitution.<sup>13</sup> The application therefore fails. However, this is not the end of the matter.

[138] Reverting to the diagnosis that the Court did in identifying where the real problem lies in this matter, the Court has a duty to ensure that the right to vote is enjoyed by all persons who meet the set eligibility criteria. The possibility that persons who meet the eligibility criteria set by section 77 of the Constitution would not be registered as voters for failure to provide proof of eligibility as required by section 12 of the Act is real in the context of Malawi due to various challenges.

[139] This is notwithstanding the fact that the 2<sup>nd</sup> Defendant claimed to have beaten the target that it set in conjunction with the 1<sup>st</sup> Defendant of registering 10.9 million people in readiness for the 2025 General Elections. The 2<sup>nd</sup> Defendant stated that it had registered around 12.5 million people.

[140] The figures provided by the 2<sup>nd</sup> Defendant are open to at least two interpretations. First, there are more people who are eligible to vote who may not be registered with the 2<sup>nd</sup> Defendant. Second, it may also mean that having exceeded the set target, there are fewer people who are eligible to vote remaining to be registered with the 2<sup>nd</sup> Defendant.

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<sup>13</sup> *State -vs- Director of Public Prosecutions, ex parte Trapence and another* [2018] MLR 337.

[141] Whichever way one looks at it, whether there are more or few people who are eligible to vote and are able and willing to do so, but they are unregistered with the 2<sup>nd</sup> Defendant, their right to vote must be protected and enforced at all cost. Actually, even if it was only one person who wishes to exercise his or her right to vote remaining to be registered by the 2<sup>nd</sup> Defendant, the Court would still be concerned for two reasons.

[142] First, following the amendment to the Constitution which now requires that the President shall be elected by a majority of more than fifty percent of the valid votes cast through, universal and equal suffrage, it is one person's vote that could break a tie if two presidential candidates amassed equal number of votes.<sup>14</sup>

[143] Second, it is an underlying principle of the Constitution that the **inherent dignity** and **worth of each human being** requires that the State and all persons shall recognize and protect human rights and afford the fullest protection to the rights and views of all individuals, groups and minorities.<sup>15</sup>

[144] The right to vote entrenched in section 40 (3) of the Constitution creates positive obligations on the part of the State to ensure that it is fulfilled.<sup>16</sup> It is not disputed that the 2<sup>nd</sup> Defendant has put in place mechanisms to

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<sup>14</sup> See section 80 (2) in Constitution (Amendment) Act, No. 13 of 2020.

<sup>15</sup> See section 12 (1) (d) of the Constitution.

<sup>16</sup> ICCPR *General Comment No. 25*.



ensure that every person is able to register for either citizen identification or non-Malawian citizen identification so that in turn, they may also register as voters.

[145] Even then, there are those who for various reasons, have not been able to register, but wish they could. That is why the 2<sup>nd</sup> Defendant stated in its evidence that it is still registering people using its offices, district council offices and post offices.<sup>17</sup>

[146] For some people, the places where the NRB centres or offices are located may be too far for them and may not even have money for transport to get there. For others, it may be because of mobility challenges due to such factors as old age, injury, illness, disability etc. Yet, there is an opportunity that has been created for them by the presence of NRB officers in the 1<sup>st</sup> Defendant's registration centres near where they live.

[147] During the hearing of the application, the Court directly engaged the Defendants on this point to appreciate why they would not be able to register those who meet the eligibility criteria set by section 77 of the Constitution in the registration centres of the 1<sup>st</sup> Defendant and then allow them to register as voters immediately thereafter. The response was that the processes are separate and that those responsible for vetting and approval of forms duly completed by those seeking national registration would not be in the 1<sup>st</sup> Defendant's registration centres.

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<sup>17</sup> See Para 72 above.

[148] The response was not satisfactory to the Court. Certainly, there should be a way in which vetting and approval of forms could be done either through use of technology or deployment of more staff and resources to the 1<sup>st</sup> Defendant's registration centres. The Court is unable to appreciate why both processes cannot take place simultaneously when all relevant stakeholders including the Police, political party representatives are in one place. It is very possible for both Defendants to perform their mandates under their relevant pieces of legislation but in one place. It cannot lie in the mouth of one to tell the other what it cannot do and where under its mandate. Each of them should remain in their lane and concentrate on its mandate as provided in the law notwithstanding that they are working together in collaboration.

[149] The right to vote is exercised once in every five years, unless there is a by-election or, a fresh election is ordered by a court of competent jurisdiction. It is one of the most important political rights partly because it provides a singular opportunity for people to take direct part in their government and affect fundamental change in the direction of their government.<sup>18</sup> Every person who is eligible to register as a voter should not be barred from registering and voting in an election for failure to provide proof of eligibility when the proof could be easily provided to them near where they live or stay. This is a case where two birds may be killed with one stone, thereby making optimal utilization of public resources to serve all manner of people better.

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<sup>18</sup> D. M. Chirwa, *Human Rights Under the Malawian Constitution*, 1<sup>st</sup> Edition (2011) 395.

[150] The Court associates itself with the profound wisdom of Yacoob J of the South African Constitutional Court when he said:

The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says that everybody counts...Rights may not be limited without justification and legislation dealing with the franchise must be interpreted in favour of enfranchisement rather than disenfranchisement.<sup>19</sup>

[151] In view of the foregoing, the Court directs and orders the 2<sup>nd</sup> Defendant to immediately take steps and put in place adequate mechanisms that would ensure that persons who meet the eligibility criteria set by section 77 of the Constitution and present themselves at the 1<sup>st</sup> Defendant's registration centres, but do not have proof of eligibility issued to them by it, are assisted to register in its database and given a unique identifier in line with the requirements of section 12 of the Act and then allowed to register as voters thereafter with the 1<sup>st</sup> Defendant.

[152] Costs are in the discretion of the Court as is provided by law.<sup>20</sup> When the Court decides to make an order on costs, the general rule is that the unsuccessful party pays costs of the successful party.<sup>21</sup> In this application however, even though it has not been successful, the Court has made an order that may benefit other people beyond the Claimants herein. As such, it would not be right to condemn the Claimants with costs of this

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<sup>19</sup> *August -vs- Electoral Commission* 1999 (3) SA 1 (CC) para 16.

<sup>20</sup> Section 30 of the Courts Act, Cap. 3:02 of the Laws of Malawi.

<sup>21</sup> Order 31, rule 3 (2) of the Courts (High Court) (Civil Procedure) Rules, 2017.

application. The Court orders that each of the parties shall bear their own costs.

[153] Made in Chambers this 25<sup>th</sup> day of October, 2024 at Blantyre, Malawi.

  
**M. D. MAMBULASA**  
**JUDGE**