

# THE STORY BEHIND MALAWI 2019 ELECTIONS



**21 MAY 2019**

**Presidential Election**

**PROF. ARTHUR PETER MUTHARIKA**  
Democratic Progressive Party (DPP)



**President Of The Republic Of Malawi**  
Declared winner of the 2019 election with **38.57%** of the vote.

**REVEREND LAZARUS CHAKWERA**  
MALAWI CONGRESS PARTY (MCP)



**Main Opposition Contender**  
Declared first runner up with **35.41%** of the vote, Chakwera rejects election results, alleges fraud and petitions the High Court to nullify the results.

**DR. SAULOUS CHILIMA**  
UNITED TRANSFORMATION PARTY (UTM)  
FORMED JULY 2018



**Vice President Of The Republic Of Malawi**  
Declared second runner up with **20.24%** of the vote, Chilima concedes defeat in a leaked statement, congratulates President Mutharika and later back-pedals, then petitions court to challenge the results.

**3 FEB 2020**

**Constitutional Court Ruling Nullifying The Presidential Election**



**Key figures:**  
A panel of **5 High Court judges** who sat to convene a Constitutional Court.

**Facts:**  
In most jurisdictions, the constitutional court is the apex court or the court of last resort. In the Malawi context, the constitutional court is an administrative court that sits between the High Court and the Supreme Court. All the appeals by MEC and President Mutharika were to the Constitutional Court and have now been escalated to the Supreme Court.

**NOVEMBER 2019**



The court dismissed **33 election petitions** for parliamentary results, exonerating the MEC. If the presidential election could be annulled on the basis of maladministration, shouldn't some of the parliamentary petitions have led to nullification given these elections were held under the same conditions? **The inconsistency in the ruling is glaring.**

**JULY 2019**



At the court's instigation, Chakwera and Chilima combine their petition against Malawi Electoral Commission (MEC) and President Mutharika.



**SUPREME COURT**



**CONSTITUTIONAL COURT**



**HIGH COURT**

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3 FEB 2020

## Constitutional Court Ruling Nullifying The Presidential Election



In the court case, several claims regarding administrative issues were raised.

### Claim 1

Tippex was used to rig the election.



**Fact:** Tippex was used for correcting errors; none of the petitioners indicated that vote figures were affected by Tippex.

### Claim 2

Constituency tally centres were used as rigging machinery.



**Fact:** Constituency tally centres that were purportedly used for rigging were in fact set up at the request of political parties (including MCP) and CSOs in 2017.

### Claim 5

There was far-reaching maladministration of the election.



**Inconsistency:** If there was far-reaching maladministration, why weren't all results annulled given that the elections were conducted on the same day by the same commission under the same circumstances?

### Claim 4

There was lack of transparency in the collation of results.



**Fact:** Results reconciled by returning officers could have been followed up by monitors or their political parties in the event of discrepancies, even when reconciled in the absence of the latter.

### Claim 3

There was irregular and illegal delegation of authority.



**Fact:** Commissioners delegating to Chief Elections Officer is allowed by law, hence there was neither irregularity nor illegality.

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## Constitutional Court Ruling Nullifying The Presidential Election



In the court case, several legal inconsistencies emerged.

### Judgement

In their ruling, the High Court judges decided to reframe the interpretation of the term 'majority', insisting it meant 50%+1

**Fact:** The Malawi Supreme Court already ruled on the meaning of 'majority' in the Malawian constitution (it is plurality). Framers of the constitution in 1993 considered 50%+1 but rejected it. Hence the Constitution does not have a framework supporting a run-off (Malawi election was supposed to produce a winner in one go).

**Inconsistency:** How did the panel of 5 High Court judges assume the power to retrospectively reframe the meaning of 'majority' [of votes], more so when the Supreme Court, which is the apex court, had previously ruled on the matter and set a precedent?

### Decree

The High Court judges decreed that a fresh election be held within 150 days.

**Fact:** The decree does not serve the ends of justice as it is impractical. Fresh elections were ordered without considering the logistics, resources and processes required to organize and conduct a credible national election that would reflect the will of the people.

**Inconsistency:** It is inconsistent for the High Court judges to seek to remedy a presumably badly managed election by placing an unreasonable timeframe for the conducting of fresh elections. It is not practical to expect electoral processes such as (i) voter registration; (ii) procurement of material; (iii) preparation of voters' roll; (iv) appointment of new electoral commissioners; (v) passing of new legislation for electoral reforms; (vi) and campaigning as well canvassing for votes to all transpire within 150 days, more so as it is unclear how resources for such an expensive endeavor will be mobilized. Now with acts of nature such as the corona virus (COVID-19) pandemic, the impracticality of the high court judges' timeframe is even more glaring.

### Decree

In their ruling, the High Court judges ordered parliament to craft laws that would give effect to their preferred interpretation of 'majority'

**Fact:** This was a case of judicial overreach.

**Inconsistency:** It was inconsistent with the notion of separation of powers for the panel of 5 High Court judges to order Parliament to make laws that would give effect to their preferred interpretation of the meaning of 'majority' (50%+1). Laws are made by Parliament and should not be imposed by the Judiciary. There must be separation of powers and judiciary can only lobby for a law but not decree it.

### Prohibition

According to the High Court judges, the Attorney General had no standing to represent the Malawi Electoral Commission (MEC) in the Constitutional Court case and furthermore, they barred the AG from representing MEC in future.

**Fact:** The Attorney General is mandated by law to represent MEC.

**Inconsistency:** It is inconsistent with the law for the High Court judges to bar the Attorney General from representing the country's electoral body (MEC).

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In the court case, several political factors shaped the outcome.

### Fact 1

The environment was not conducive for fair adjudication of the case.

**Evidence:** The Human Rights Defenders Coalition (HRDC), MCP and UTM protests created an environment of fear that made it difficult to expect a just ruling.

### Fact 2

Civil society was complicit in burying inconvenient truths.

**Evidence:** Although the Malawi Electoral Support Network (MESN) (with support from USAID through NDI) had parallel results reflecting MEC results they did not join the court case or provide exculpatory evidence. They betrayed Malawians by remaining silent at a time when the country was imploding over a lie that the elections had been rigged. Although NICE deployed monitors, supported by the European Union, it was conveniently silent on its finding regarding the election outcome.

### Fact 3

The opposition political parties muzzled the EU observer mission in order to bury the truth.

**Evidence:** Opposition parties threatened violence against the EU observer mission over their final report on election results.

### Fact 5

The rights of President Mutharika and those who voted for him were ignored.

**Evidence:** President Mutharika won the election with 1,940,709 votes and attained 62 seats in Parliament. These figures are not in dispute.

### Fact 4

The opposition lied that the elections had been rigged, and then together with civil society, they instigated violent protests to vilify President Mutharika.

**Evidence:** The court found that there was no evidence of rigging and no evidence of collusion. In spite of exonerating President Mutharika, the High Court judges still nullified the election and set bad political precedence. Meanwhile, neither the opposition nor civil society have shown any remorse for instigating protests over a blatant lie and destabilizing the country.