

Key court ruling widely hailed

It is known as the warm heart of Africa and Malawi's highest court has sent pulses racing across the continent over the past week. **Legalbrief** reports that the small landlocked nation made history last Monday when a panel of five judges ruled in favour of an opposition bid to cancel May's presidential election because of fraud allegations. In their unprecedented ruling, the Constitutional Court judges concurred that **'the irregularities and anomalies have been so widespread, systematic and grave ... that the integrity of the results has been seriously compromised'**. And the fallout continues to be felt with the opposition United Democratic Front calling on the state to prosecute those involved in the 'Tipp-ex' presidential election which saw the court order a fresh election. The **Nyasa Times** reports that party secretary-general Kandi Padambo says prosecuting the perpetrators and those involved in the manipulation of the vote in favour of the Democratic Progressive Party candidate President Peter Mutharika would deter other would-be offenders in future elections. 'It has also revealed gross incompetence and total disregard of the electoral laws on the part of the Electoral Commission during the electoral process,' he said.

Mutharika has thanked opposition leaders for bringing their grievance to court, underlining that only a democratic state would allow such a move. However, he has also attacked the ruling, labelling it 'the death of Malawi's democracy'. **BBC News** reports that the opposition disagrees. **They have been celebrating Monday's ruling as a new dawn for the country's democracy.**

In a further significant development, the electoral commission is seeking to suspend the ruling, court papers have revealed. Malawi Electoral Commission chairperson Jane Ansah sought an order 'suspending the enforcement of the judgment pending the hearing and determination' of an appeal. A **TimesLIVE** report notes that the court ordered fresh elections within 150 days, but **Ansah accused the court of acting in 'excess of its jurisdiction'**. She said organising the re-run required at least 261 days. 'I ... believe that by ordering the legislature to convene and pass (new) legislation, the court acted in excess of its jurisdiction and had infringed on the independence and immunity of Parliament,' she said.

The majority of Malawians late last year considered the political opposition justified in challenging the declared results of the election, a national survey by **Afrobarometer** shows. They also saw the country's courts as trustworthy and impartial. The survey provides insights into how Malawians perceived their judiciary as the pivotal legal challenge advanced and public debate continued to rage. Most citizens were aware of the court case, and most said the opposition parties were justified in filing a legal challenge against Mutharika's victory. Large majorities saw the courts as impartial and trustworthy, and most said the President must always obey the law even if he disagreed. However, **the respondents were split as to whether the losing side in an election should always have the right to challenge its defeat in court.** Among key public institutions, the courts were second only to the Malawi Defence Force (78%) in perceived impartiality.

Will the ruling set a precedent for more bravely independent judicial rulings on other African elections or will Malawi instead follow Kenya's path where a spark of judicial independence over a disputed election three years ago saw a relapse into the familiar pattern of incumbent presidential predominance? Institute for Security Studies consultant Peter Fabricius says the judgment, coming almost a year after the vote, was a victory for civil society which had mounted unprecedented and sustained mass mobilisation in Malawi. 'As far as can be established, the Malawi court's annulment of last year's election was unprecedented in Africa – except, significantly, for one previous ruling. That was of the Kenyan Supreme Court throwing out the re-election of President Uhuru Kenyatta in the August 2017 elections, **also because of irregularities in vote tallying.** As the Kenyan example shows, presidential power is not easily vanquished. Mutharika has already announced his plans to appeal this week's decision. So it may be premature to celebrate this as a lasting victory for democratic justice.

And former DA leader Mmusi Maimane notes that the difference in view by the court and the AU and SADC observer missions is indicative of a failure of observer missions as a whole to do their jobs effectively. 'It sets a worrying trend in Africa where vote rigging is now part of the process. I commend the courts in Kenya and Malawi. They stood strong and this case is historic. In general, we have abdicated our regional responsibility and rubber-stamped many elections that we should have been critical of. **The golden standard is still the ballot box, or rather it is supposed to be the ballot box.** The ballot has proven a weak tool for accountability in Africa, because liberation parties have maintained control of the electoral system, in some countries for over 50 years,' he

says in an analysis in the [Nyasa Times](#).

Ironically, the independence of the judiciary in SA has also come into sharp focus over the past week with Justice & Correctional Services Minister Ronald Lamola warning that the country risks becoming a 'banana republic' if it is not respected. [Business Day](#) notes the judiciary has been under renewed attack since Judge Dhayanithie ('Dhaya') Pillay issued a warrant of arrest for former President Jacob Zuma after he failed to appear in court last week and his legal team did not provide the judge with a medical certificate that she deemed sufficient. **The task team governing the ANC Youth League warned the judiciary 'and its friends' not to threaten the peace of SA.** 'If you start a fire, you are bound to see flames,' it said. Lamola is part of the task team, but he said court decisions must be respected and it was the role of all members of society to protect and defend the judiciary's independence. If you don't protect and defend the independence of the judiciary, you are going to slide into lawlessness, you are going to slide into a banana republic,' Lamola said.

Similarly, the Archbishop of Cape Town Thabo Makgoba on Sunday urged President Cyril Ramaphosa to use his State of the Nation Address to 'send a clear signal that attacks on judges have to stop'. The [Sunday Times](#) reports that he appealed to Ramaphosa to 'draw a line on the sand' on attacks on the judiciary. 'I appeal to you, out of respect for the Constitution and the rule of law, please send a clear signal that attacks on judges have to stop. **It would give confidence to the judges that they can do their jobs without interference, and it would give confidence to all of us.** It is critical to the future of our nation that we keep our hands off the judicial system,' he said.