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**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 429 OF 2015**

BETWEEN:

**DANIEL CHINYAMA
AND
DAFTER BANDA
GROUP VILLAGE HEADMAN JUMBE SENIOR
CHIEF SOMBA**

PLAINTIFF

**1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT**

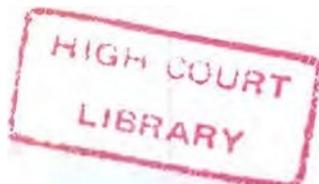
CORAM: JUSTICE M.A. TEMBO

Tandwe, Counsel for the plaintiff
Domasi, Counsel for the defendants
Chanonga, Official Court Interpreter

JUDGMENT

This is the decision of this Court on the plaintiff's claim by originating summons seeking determination of several questions, namely, whether the 3rd defendant has authority or power under the Chiefs Act or any other written law to remove from office a duly enthroned chief; whether, if the 3rd defendant has such powers, the procedure followed in the matter by the 3rd defendant was proper, lawful, fair and/or one prescribed by law; whether, if the 3rd defendant has such powers, the reasons on the basis of which the 3rd defendant made his decision to dethrone the plaintiff was a proper ground on which the said decision could be based and whether in any case the 1st defendant has any right to ascend to the chieftaincy of Matalala village considering the culture and custom followed in the said village.

The plaintiff seeks the following orders and reliefs from this Court upon determination of the questions outlined above, namely,



- i. an order that the 3rd defendant has no power or authority at all to dethrone a properly enthroned village headman especially one who has served in the position for many years.
- ii. An order that, even if such powers were available to the 3rd defendant, the procedure followed by the 3rd defendant was not proper, lawful, fair and/or prescribed by law.
- iii. An order that, even if such powers were available to the 3rd defendant, the reasons on the basis of which the 3rd defendant made his decision to dethrone the plaintiff was not a proper ground on which the said decision could be based.
- iv. Costs of this action and such further orders or other relief as this Court may determine.

The plaintiff and the defendants filed affidavits in support of their respective cases. The deponents were cross-examined on their respective affidavits.

This being a civil matter, it is well settled that the standard of proof is on a balance of probabilities. And he who asserts the affirmative on an issue bears the burden of proof to that requisite standard. See *Tembo and others v Shire Bus Lines Limited* [2004] MLR 405 applying *Miller v Minister of Pensions* [1947] ALL ER 372. The plaintiff therefore bears the burden of proof on the issues herein to the requisite standard.

It is convenient to lay down the evidence of the parties before considering their submissions on the issues for determination.

The plaintiff's evidence by affidavit on which he was cross-examined is as follows. That he is village headman Matalala under the jurisdiction of Group Village Headman Jumbe and Senior Chief Somba within Blantyre District. He added that his late father was Village Headman Matalala until his death in 2010.

The plaintiff stated that some years before his death his father called the royal family members to choose a person to act as his assistant because at that time his health was failing him. He added that Mrs Grace Makhaira, his late father's niece, was chosen and acted as assistant until she voluntarily resigned.

The plaintiff then stated that in 1994 he took over the position of assistant to the Village Headman Matalala after his elder brother Patrick Chinyama died.

The plaintiff then stated that in 2010 his father, Village Headman Matalala, died. Subsequently, the plaintiff was installed Village Headman Matalala by Senior Chief Somba in the presence of Group Village Headman Jumbe, village members, Mrs Nasuluma, a granddaughter of the late Village Headman Matalala and Mr Dafter Banda the 1st defendant who is a great grandson of the late Village Headman Matalala.

The plaintiff further stated that sometime in 2014, a faction emerged against his chieftaincy which was led by the 1st defendant. He stated that the 1st defendant argues that since the Matalala chieftaincy is Ngoni then the elder grandchild is the heir to the throne.

The plaintiff also stated that the 1st defendant alleged that the plaintiff is not fit to be a chief because the chieftaincy belongs to the 1st defendant's uncle. Further, that the plaintiff is a womanizer, does not fairly distribute farming subsidy coupons, is a drunkard and does not attend funerals.

The plaintiff further stated that the case against him on the above-mentioned allegations was heard before Senior Chief Somba's Court and the Senior Chief's Court ruled that the 1st defendant be installed Chief Matalala and that the plaintiff be his deputy.

The plaintiff added that the decision of Senior Chief Somba's Court was based on the fact that the plaintiff had served as Village Headman for a long time and on the allegation that the plaintiff is childish. A copy of the decision was tendered in evidence.

The plaintiff asserted that he finds the decision by Senior Chief Somba to be unreasonable and unjustifiable because in this jurisdiction chieftaincy is for life and has no term limit.

The plaintiff asked the Senior Chief for a note to enable him to take the matter on further appeal elsewhere but to no avail.

The plaintiff then stated that on 10th August, 2015 Mrs E. Thom, on behalf of the Matalala family, wrote the District Commissioner for Blantyre to intervene in this matter but nothing has been done. Meanwhile, the 3rd defendant was set to install the 1st defendant as Village Headman Matalala on 15th October 2015 before which the plaintiff obtained an order of injunction restraining the 3rd defendant from proceeding with the installation until determination of this matter.

During cross-examination, the plaintiff reiterated that the case before Senior Chief Somba involved him and the 1st defendant and the 1st defendant claimed that he should be successor to the Matalala Village Headman.

The plaintiff stated that Group Village Headman Jumbe took the village roll from him. He added that whilst the case was being heard before Senior Chief Somba an issue came up that the plaintiff is from the Sena tribe and cannot therefore succeed to the Matalala chieftaincy.

He went to say that at the Senior Chief's Court the plaintiff and 1st defendant was asked to count how many followers each had and that the one who had many followers would prevail in the case. He added that there was no vote but counting of the followers of each party to the case.

The plaintiff was referred to the decision of Senior Chief Somba and he stated that the reasons for his removal as indicated in the said decision were not true, namely, that he was a drunkard and womanizer. He reiterated that the Senior Chief decided to remove the plaintiff not on account of the reasons in the decision but on counting the followers of the plaintiff and the 1st defendant.

The plaintiff admitted that there is a case against him before the Magistrate Court where he was found with a case to answer on the accusation that he took borehole parts to put on a different borehole.

He went on to state that his father did not become a chief after the death of his maternal uncle but he took over the chieftaincy from his own father from Ntcheu. He added that his late father's uncle was on a different lineage of chieftaincy of the Kambale. The plaintiff said his grandfather is Kambalame. He added that the Kambalame chieftaincy is different from the one in issue in this matter.

The plaintiff said his father was on the Matalala chieftaincy lineage. He added that he took over the Matalala chieftaincy and that it will not change to be Kambalame chieftaincy.

The plaintiff then stated that Grace Makhalira was a niece to his late father and she was appointed by the family to be an assistant to his late father after he had asked for some assistants. He added that the family included Ms Nasuluma who was daughter of his late father's sister and Grace is her daughter. The plaintiff stated that his late father asked for assistants before he gave his chieftaincy to his children including the plaintiff.

The plaintiff stated that if Grace Makhalira was made a chief in 2010 there would have been a problem because only a child of a chief can be successor to a chief and Grace Makhalira is not such a child.

The plaintiff then stated that Group Village Headman Jumbe asked him, through a boy he had sent, to hand over the village roll pending resolution of the dispute with the 1st defendant stating that what was happening was a war. He denied that he voluntarily handed over the village roll as alleged by Group Village Headman Jumbe.

The plaintiff also denied handing over the village roll to Ms Kutani but he said there was a dispute between himself and Ms Kutani's son who also claimed the chieftaincy. He added that Ms Kutani's son apologized after the matter was discussed.

The plaintiff then said that the 1st defendant came to him with a large group of people and Group Village Headman Jumbe advised the plaintiff to hand over the village roll to the Group Village Headman. Awilo N'dala is said to have come to collect the village roll. He added that Group Village Headman Jumbe was concerned with the matter and did not force the plaintiff to hand over the village roll but he asked that he should keep the village roll until the issues herein are resolved.

The plaintiff stated that it was Mr Chaweza, Mr Kutani and Mr Kamwendo who led the people before Group Village Headman Jumbe. He added that Group Village Headman Jumbe said the group wanted the village roll. The plaintiff said he was told that he was from Nsanje and should leave the chieftaincy.

The plaintiff then stated that the matter was referred to Senior Chief Somba before whom people testified apart from himself. He stated that his sister and Ms Mwale testified on his behalf. He added that Mr Gobede and Mr Chaweza testified on 1st defendant's behalf. He also said that the 1st defendant only answered one question put to him.

The plaintiff then denied that he is a drunkard although he admitted that he drinks.

He also denied that he does not attend funerals. He explained that the issue herein was that he went to attend a funeral of a chief's mother when there was another funeral in his village which he later attended after the chief's mother's funeral.

The plaintiff indicated that before Senior Chief Somba the two issues were discussed namely about his being a drunkard and his failure to attend funerals. He added that the issue of his being a womanizer was also discussed. The plaintiff said that he defended himself on all the three issues.

The plaintiff then stated that instead of the Senior Chief following the issues he simply ordered the plaintiff and the 1st defendant to count their supporters and ruled that the plaintiff be deputy village headman because he had 23 supporters against the 28 supporters of the 1st defendant.

The plaintiff however also stated that he as well as the 1st defendant gave evidence before Senior Chief Somba and a decision was made.

During re-examination, the plaintiff stated that he was installed as Village Headman Matalala in 2010 and that the 1st defendant brought his complaint before Senior Chief Somba in 2015.

The plaintiff then stated that in 1994 he was appointed caretaker of the chieftaincy together with his brother because their late father Chief Matalala was sick. He added that when his father asked for assistants from the family the family refused twice and that it is only on the third request that the family chose Grace Makhalira and Mrs Chikuni. At this point the plaintiff and his brother stopped assisting their late father.

The plaintiff added that after a month Grace Makhalira and Mrs Chikuni came to say that they cannot run the chieftaincy. He then stated that at that point the family said the plaintiff and his brother could run the chieftaincy since it was theirs.

The plaintiff then stated that his brother died in 2008 and that the plaintiff continued to assist his father until his father died.

The plaintiff then explained that when his father died, and before burial, he was appointed as Village Headman by his family who submitted his name to the Senior Chief herein.

The plaintiff reiterated that the Kambalame and Matalala chieftainships are different. He stated that his father arrived in Limbe from Ntcheu and settled in the area where the plaintiff is now after getting permission from Senior Chief Somba. He added that Chief Kambalame settled elsewhere.

The plaintiff explained that a village headman's assistant runs errands when a village headman is busy, for instance, attending meetings on behalf of a village headman.

He further explained that being an assistant to the village headman has nothing to do with succession to the village headman.

The plaintiff further stated that Ms Nasuluma was asked to find assistants to the village headman. He added that she had no official capacity but was only a member of the royal family.

The plaintiff further explained that he was at a funeral when he was called by Group Village Headman Jumbe. He added that when he went to the place of the Group Village Headman he found a large group of people. He stated further that Group Village Headman Jumbe told him that the group of people wanted its village roll. Further, that the group said the plaintiff was from Nsanje and of Sena descent and that a village headman would have to be a person from the village herein and not from Nsanje.

The plaintiff explained that he told the Group Village Headman that he was from the village herein because dowry had been paid for his mother when she got married and came to live in the village herein.

He further explained that Group Village Headman Jumbe then told him to hand over the village roll to him to keep it until the matter is resolved and to be returned to the plaintiff once the matter was resolved.

The plaintiff then explained that he was later called by the Senior Chief where he was told that he had surrendered the village roll. He added that Group Village Headman Jumbe is the one who took the roll to the Senior Chief. The plaintiff stated that he did not know that Group Village Headman Jumbe had other motives.

The plaintiff then stated that each of the parties to the dispute explained its side of the matter before the Senior Chief Somba. Further, that thereafter the Senior Chief asked each party to the dispute how many supporters it came with. The plaintiff said he had 23 supporters and the 1st defendant's side had 28 supporters.

He further explained that at this point the Senior Chief ruled that the side that had more supporters carried the day and would run the chieftaincy and that the plaintiff would be deputy to run the chieftaincy together with the 1st defendant's side. The plaintiff asserted that there cannot be two people running the chieftaincy.

He then stated that Mrs Kutani's son would smoke and come to the plaintiff's house saying that the plaintiff took the throne of the brother to this Mrs Kutani's son. He added that when this matter was reported to Group Village Headman Jumbe the Kutani's apologized and the matter was resolved. Further, that Group Village Headman Jumbe promised to report Mrs Kuntani's son to police if he insulted the plaintiff again.

The plaintiff then stated that he drinks at weddings when he is invited as a chief.

He denied the accusation that he does not attend funerals. He explained that the only complaint was about the funeral he attended on the second day in his village after he had to attend another funeral of another chief's mother on the first day. He stated that he however managed to attend both funerals although this raised a complaint.

The plaintiff then stated that on the allegation that he was a womanizer, he denied that allegation before the Senior Chief. He stated that he was accused of asking out girls from the Sikweya and Kumwembe families. He stated that the real issue concerned farming subsidy coupons and the two families apologized to the plaintiff before Group Village Headman Jumbe. The plaintiff stated further that after that he asked the two families to leave his village. He added that the Sikweya family left.

With regard to the borehole parts issue, the plaintiff explained that his village had three boreholes. He stated that one of the boreholes broke down and his father took it for safekeeping. He added that whenever the other boreholes broke down they would take spares from this borehole to fix the others. The plaintiff stated that he also did as his father did when a borehole broke down and he was accused of theft. He stated that these accusations are just being made up so that the defendants find issues with the plaintiff. He added that he has witnesses on the matter of the boreholes and that the issue is before the magistrate court.

The foregoing was the plaintiff's evidence. This Court then heard the evidence of the two witnesses for the defendants. The first witness for the defendants is Group Village Headman Jumbe. The second witness for the defendants is Group Village Headman Mkwapatira.

Group Village Headman Jumbe's evidence by affidavit on which he was cross examined is as follows. He stated that he was installed as Group Village Headman in 2009. He then stated that Village Headman Matalala died on 9th May, 2010.

He stated that he was surprised to learn from Ms Nasuluma who informed him that they had identified the plaintiff as the next Village Headman Matalala to succeed his father.

He added that on 10th May, 2010 he informed Senior Chief Somba about the death of Village Headman Matalala and the successor being the plaintiff. He stated that the Senior Chief was surprised and refused to recognize the plaintiff as the successor since the Senior Chief said he knew Grace Makhalira as the successor who was introduced to him by the plaintiff's late father when he was still alive.

Group Village Headman Jumbe then stated that in October, 2011 Ms Nasuluma informed him that they were going to install the plaintiff as Village headman Matalala and he communicated that arrangement to the Senior Chief.

He added that the Senior Chief reluctantly agreed to come and do the installation of the plaintiff but on the installation date Mr Kutani and Mr Kamwendo who stay at Bvumbwe and Lunzu respectively came to protest against the installation saying that the plaintiff was not the right heir to the Matalala chieftaincy. He stated that he decided not to entertain the complaints because the Senior Chief was already on his way. The installation of the plaintiff as Village Headman Matalala then took place.

Group Village Headman Jumbe then stated that since the plaintiff became Village Headman Matalala there have been many complaints against the plaintiff and that the plaintiff has appeared before his court on may allegations.

He stated that personally he was a victim of theft when a sofa and doors were stolen and were later found with the plaintiff.

He added that Mr Kumwembe and Mr Sikweya complained that the plaintiff was asking their wives for sex and after a full hearing the plaintiff was found liable and he apologized.

He stated further that on 10th December, 2013 Mrs Kutani and Mrs Binya and four others came crying to see him saying that the plaintiff had given her the village roll at night saying that he did not want to be Village Headman Matalala.

He stated further that he called the plaintiff about the matter and the plaintiff stated that he had resigned as Village Headman because he was not being respected. He then stated that he called the plaintiff and the other parties on 14th December, 2013 for a hearing after which he ordered the plaintiff to take back his village roll

which he refused. He added that it was only on 17th December, 2013 when the plaintiff came and collected his village roll.

Group Village Headman Jumbe then stated that on 3rd January, 2015, in the afternoon, a group of people led by Mr Chaweza came to his house and complained that the plaintiff was not attending to their complaints and was refusing to meet them. He added that he sent the group back saying that he wanted to speak to the plaintiff first.

He then stated that on 10th January, 2015 both the plaintiff and Mr Chaweza came and he asked Mr Chaweza to lay his complaint. He added that after the complaint was laid the plaintiff refused to respond and only insisted on surrendering the village roll. He further stated that he tried to stop the plaintiff but he insisted on surrendering the village roll and left without taking leave of him.

He then stated that the plaintiff brought the village roll on the same day and that he in turn took the village roll to the Senior Chief.

He then stated that in his understanding by surrendering the village roll it means the person is no longer a village headman.

He further stated that he was later summoned to appear at the Senior Chief's court. He denied forcing the plaintiff to surrender the village roll.

During cross-examination, Group Village Headman Jumbe stated that he is under Senior Chief Somba.

He stated further that he takes part in determination of matters before Senior Chief Somba. He stated that he is not the Senior Chief's counsellor.

He then reiterated that in 2009 he was appointed as Group Village Headman for Ntuta, Mleso, Jumbe and Matalala village where he lives.

He stated that he sits over matters before Senior Chief Somba.

He added that the Matalala issue in this matter was before Senior Chief Somba. Further, that a decision was made by the Senior Chief and he signed for the said decision. He said he read the said decision.

He then stated that the Matalala chieftaincy is Yao and not Ngoni. He explained that the Matalala people are Ngoni but in a Yao area. He added that in that case succession is patrilineal.

He then stated that he kwons Ms Nasululu who is the grandmother in the Matalala family. He added that she is the niece of the late Matalala the plaintiff s father.

He then explained that Mr Kamwendo and Kutani who are part of the Matalala family came in on the eve of the plaintiff's installation to object to the installation as a result their objections could not be entertained.

During cross-examination, Group Village Headman Jumbe stated that he is present when the Senior Chief is deciding matters concerning any of his villages. He added that he may be asked to give evidence on what happened in such matters. He stated that he does not take part in the decision making which is done by the Senior Chief.

He stated that in the present matter he took part in the hearing and left the Senior Chief to make the decision.

He reiterated that he received a complaint from Mr Chaweza and four others on a Saturday afternoon to the effect that the plaintiff was not attending to them and that the village was not being properly run. Further that when he told the plaintiff about the complaints the plaintiff said that the people wanted the village roll. He added that the village roll is the chieftaincy itself.

He reiterated that he called both parties on the issue on 10th January and the whole village came out. He added that at this time the plaintiff brought the village roll to hand it over and his sisters said the plaintiff should hand over the village roll. He reiterated that in 2013 the plaintiff had also handed in the village roll.

He further stated that he went to Senior Chief and gave him the village roll explaining the problems faced by the plaintiff. He added that the Senior Chief received the plaintiff's village roll and later asked the plaintiff to go and explain about giving up of the same.

He then stated that Mr Chaweza and Ms Nasuluma as royal family members are the ones who advised him that the plaintiff would be successor to Matalala chieftaincy. He added that he took this matter to the Senior Chief before burial of the late chief Matalala.

He reiterated that the Senior Chief asked where the authority was got to make plaintiff successor given that the late Matalala had advised a different successor to the Senior Chief. He added that he explained that it was the Matalala family that had decided on the plaintiff as successor. He added further that the royal family chooses the next chief.

He then reiterated that, culturally, on the installation day he could not send the Senior Chief back due to the objections against the plaintiff as successor.

He then stated that the first three Matalala chiefs succeeded their late uncles. He stated that he heard this from Ms Nasuluma and that is why he said Matalala was a Ngoni chief but in a Yao area. He said he learnt about this after the disputes arose in this matter.

The evidence of Group Village Headman Mkwapatira was that he is a counsellor at Chief Samba's court since 1993. He stated that among other things he helps the Senior Chief in settling disputes involving his subjects.

He then stated that on 7th February, 2015 he was requested by the Senior Chief to attend to a complaint by the plaintiff who alleged that the 2nd defendant took his village roll for Matalala village. He added that the plaintiff complained the Mr Chaweza and Ms Nasuluma were claiming his father's chieftaincy.

He then stated that the Senior Chief summoned both parties and a full hearing was conducted on the matter. He stated that on behalf of Ms Nasuluma those who testified were Ms Nasuluma, Grace Makhalira, Kennedy Chaweza, Group Village Headman Jumbe and others. He also said that on the plaintiff's side those who testified are Emily Chinyama, Danile Chinyama and others.

He stated further that after listening to the evidence it transpired that the plaintiff's father succeeded his uncle who had earlier also succeeded his own uncle. Further, that before his death, the plaintiff's father appointed Grace Makhalira to be the next chief and that hence the Matalala chieftaincy is matrilineal. He added that the plaintiff only came in because Grace Makhalira was unwilling to be chief and her mother Ms Nasuluma was too old and the family opted for the plaintiff as successor. Further, that there was serious misunderstanding between the plaintiff and his cousins due to the plaintiff's conduct.

Further, that there was overwhelming evidence of misconduct against the plaintiff as follows. That the plaintiff willfully surrendering the village register to different

people at different times the last one being Group Village Headman Jumbe. The plaintiff admitted tampering with a borehole by removing parts. That the plaintiff was tried for and was found liable for insulting the modesty of women. That he interfered with a dam project. He insulted Senior Chief Somba. He drunk uncontrollably. Refused to attend funerals. He stole money from cash transfer beneficiaries.

Group Village Headman Mkwapatira stated that having heard all the evidence the Senior Chief found the plaintiff liable and ordered the family members to appoint another person to assume the Matalala chieftaincy and that the 1st defendant won the vote in that respect.

He added that in the circumstances the Senior Chief was fair by dismissing the plaintiff who had lost his right to govern under custom as customary law does not recognize him as a chief and the plaintiff lost the people's confidence and finally that the removal was necessary for the sake of peace, order and good governance.

During cross-examination, he stated that the complaint was not that the 2nd defendant took the plaintiff's village roll. But that the issue was that the plaintiff gave his village roll to the 2nd defendant.

He then stated that the 2nd defendant did not get the plaintiff's village roll but the plaintiff gave his village roll to the 2nd defendant.

He stated that there were two issues about the village roll and the chieftaincy. He added that sometimes one can give up a village roll due to anger but it does not always mean that a person has given up the chieftaincy.

He added that in the present case, the plaintiff gave up the village roll to signify that he gave up the chieftaincy.

He stated that the plaintiff gave up the village roll to the 2nd defendant so that some issues be resolved. He added further that they concluded that the plaintiff gave up the village roll to resign.

He then stated that the plaintiff was a complainant on two complaints. When quizzed further he stated that it is possible for the plaintiff to resign and then complain about the village roll. He added further that a village headman is run by the whole royal family. He further added that the plaintiff could complain in the circumstances since he is human.

He explained further that the Senior Chief makes a decision depending on what he has heard from both parties. He added that the Senior Chief heard both sides and asked how many people came with the plaintiff. He then stated that it is true that the 1st defendant came with more people.

He added that the Senior Chief considered the number of people each side had and also the issues herein pointing to the fact that the plaintiff had contravened the relevant customs. And that these are the reasons why the 1st defendant was to be village headman.

He also stated that he is responsible for ten villages but has no deputy and no village headman has a deputy.

He then stated that the Senior Chief's decision in the present matter was unusual but was made due to the reasons given by the Matalala family. He explained that the Senior Chief did not say that the plaintiff would be a deputy village headman. He added that the royal family complained that the plaintiff had worked as village headman for a long time.

He further explained that it has never happened in his jurisdiction that there is a deputy village headman or assistant, as is the case in this matter.

He then reiterated that royal family had advised that the plaintiff was successor to the late Chief Matalala. He added that at first it was a woman who was appointed as successor to the late chief. He then said that the plaintiff was installed as Chief in 2011 after the royal family chose him.

He then stated that he has been following the present matter and is aware that there is an injunction restraining the defendants from removing the plaintiff. He however explained that a Senior Chief can remove a village headman if he has done something wrong.

He then stated that he heard of the impact of an injunction in this Court. He further stated that the Senior Chief is sidelining the plaintiff but he was not aware if the Senior Chief was not following the injunction. He could also not say whether the chief's honorarium was being paid to the 1st defendant or the plaintiff. He stated that that is a matter within the Senior Chief's jurisdiction and that no one can be paid without the Senior Chief's recognition. He added that it is possible the 1st defendant has been receiving the chief's honorarium. He added further that if the District

Commissioner's office was aware of the injunction it would stop paying the honorarium.

During re-examination, he reiterated that the plaintiff gave up the village roll together with the chieftaincy. He further stated that the Senior Chief called the plaintiff to hear him and Group Village Headman Jumbe also said that the plaintiff gave up the village roll.

He then stated that the plaintiff is not the first chief to be removed for misconduct.

He stated further that Group Village Headman Jumbe brought the village roll to the Senior Chief and asked what should be done. He added that it is not the plaintiff who complained. He explained that later the Senior Chief called the plaintiff to hear him.

He added that the case before the Senior Chief was heard several times after the Senior Chief sent the concerned parties back to resolve their dispute. He added further that the parties could not resolve their dispute. And that on hearing all the other complaints against the plaintiff and hearing the views of the village, that is members behind the plaintiff and the 1st defendant, the Senior Chief decided the matter.

He then stated that a chief must live well with his subjects. Further, that if a chief is failing to run farming subsidy coupons program or cash transfer or a dam or funerals then the Senior Chief heard of these things and made a decision. He added that the plaintiff was given a chance to defend himself since we live in a democracy.

He then explained that a deputy village headman is different to one who would be sent on errands by a village headman. Further, that an assistant to a chief is simply one that can be sent on errands. But that there is only one village headman that can be installed.

He added that they agreed that the plaintiff be an assistant to the 1st defendant since they were assisting and could not overrule the Senior Chief. He also stated that after the Senior Chief ruled that the 1st defendant was village headman he could not follow up on the issue of honorarium but the Senior Chief's clerk was the one to follow up on such matters.

He then stated that the 1st defendant was appointed village headman Matalala after the plaintiff was removed for misconduct. He added that the opponents of the plaintiff are children of the late chief Matalala and other relations.

Both parties filed submissions on the law as applicable to evidence in relation to the issues for determination in this matter.

On his part the plaintiff submitted as follows. That the gist of the plaintiff's case is that he was installed as Village Headman Matalala in 2011 after the death of his father who was the previous Village Headman Matalala. He added that he had assisted his late father since 1994 when his late father's health deteriorated. He noted that the Chieftaincy is Ngoni and therefore patrilineal.

The plaintiff asserted that in 2014 a faction led by the 1st defendant emerged against his chieftaincy. He added that the 1st defendant has been arguing that the plaintiff is not fit to be a village headman on the following grounds; that the chieftaincy belongs to the 1st defendant's uncle being the plaintiff's father, that the plaintiff is a womanizer, that the plaintiff does not distribute farming subsidy coupons fairly, that the plaintiff is a drunkard and that the plaintiff does not attend funerals.

The plaintiff asserted that this matter was heard before Senior Chief Somba who decided that the 1st defendant should take over the village headmanship and that the plaintiff should be his deputy. He asserted further that the Senior Chief based his decision on two principal reasons, namely, that the plaintiff has served as village headman for a long time and that he is childish.

The plaintiff then submitted on the relevant law. He submitted that matters concerning chiefs are provided for in the Chiefs Act. He submitted that the main matter in this case concerns the purported removal of the plaintiff as village headman after having been duly installed. He noted that he was made assistant to the village headman and was removed for having served for a long time and being childish.

The plaintiff referred to section 9 of the Chiefs Act which provides for appointment and functions of village headmen and group village headmen as follows

- (1) A Chief may appoint such number of Group Village Headmen and Village Headmen as he may consider necessary to assist him in carrying out his functions.
- (2) The functions of a Group Village Headman and a Village Headman shall be to assist the Chief or Sub-Chief by whom he is appointed in the performance of his functions and to bring to the notice of that Chief or Sub-Chief any matter in his village or group of villages which is relevant to such functions.
- (3) The remuneration, if any, to be paid to a Group Village Headman or Village Headman shall be such sum as may be approved by the District Commissioner of the District in which the village or group of villages is situated.

The plaintiff then referred to section 11 of the Chiefs Act which provides for the removal and suspension of persons holding the office of Paramount Chief, Senior Chief, Chief and Sub-chief as follows

(1) The President may by writing under his hand remove any person from the office of Paramount Chief, Senior Chief, Chief or Sub-Chief if after due inquiry he is satisfied that-

(a) the person has ceased to be entitled under customary law to hold such office;

(b) the person has lost the confidence of the majority of the people residing in his area; or

(c) such removal is necessary in the interests of peace, order and good government.

(2) Where the President deems it expedient to cause inquiry to be made into the question of the removal of any person from the office of Paramount Chief, Senior Chief, Chief or Sub-Chief, he may by writing under his hand suspend such person from the performance of the functions of his office.

The plaintiff then observed that the Chiefs Act does not provide for the removal or suspension of village headmen or group village headmen. He however referred to section 32 of the general Interpretation Act which provides as follows

Where, by or under any written law, a power is conferred upon any person to make any appointment or to constitute or establish any board, commission, committee or similar body, then, unless a contrary intention appears, the person having such power shall also have the power to remove, suspend, dismiss or revoke the appointment of, and to re-appoint or reinstate, any person appointed in the exercise of the power, or to revoke the appointment, constitution or establishment of, or dissolve any board, commission, committee or similar body appointed, constituted or established in exercise of such power, and to re-appoint, re-constitute, or re establish the same:

Provided that where the power of such person so to act is exercisable only upon the recommendation, or is subject to the approval or consent of some other person, then such power shall, unless a contrary intention appears, be exercisable only upon such recommendation or subject to such approval or consent.

The plaintiff then submitted that on the available evidence, the plaintiff's case ought to succeed. He submitted that having been duly installed he should be left to continue as village headman.

He noted that the Chiefs Act does not provide specifically on removal of village headmen but provides for removal of paramount chiefs, senior chiefs and sub-chiefs.

The plaintiff submitted that even if it was assumed that section 11 of the Chiefs Act applied to village headmen, the 3rd defendant's manner of reaching his decision and the decision itself were both wrongful. Firstly, in the said decision, the 3rd defendant stated the need for the plaintiff to have an assistant but in making his decision he gave the chieftaincy to the 1st defendant and removed the plaintiff as village headman and made him an assistant.

Secondly, this chieftaincy is Ngoni and the Ngoni custom is patrilineal. So, the 1st defendant does not qualify to ascend to the throne.

Thirdly, the 3rd defendant seems to have arrived at his decision by counting how many people were with each party at the hearing. After seeing that the 1st defendant had more people with him, he decided that the 1st defendant had carried the day. If the number of people accompanying a party to the hearing before the 3rd defendant was going to be a determining factor, the parties ought to have been told so in advance.

The plaintiff then submitted that the purported removal of the plaintiff was for reasons not outlined in section 11 (1) of the Chiefs Act.

On their part the defendants submitted as follows. They submitted on the applicable law.

They submitted that the power to appoint Village Headmen rests in the Chief or the Traditional Authority.

They submitted that in section 2 of the Chiefs Act a Village Headman is defined as a person appointed to be a Village Headman under Section 9. Further, that it is important to note that whereas Paramount Chiefs, Chiefs and sub Chiefs are listed in section 4 of the Chiefs Act and to the schedule to the Chief's Act, Village Headmen are not and the criteria stipulated in Section 11(1) of the Chiefs Act therefore does not apply to Village Headmen. The defendants reproduced the relevant sections.

Section 4 of the Chiefs Act which provides that

- (1) The President may by writing under his hand appoint to the office of Paramount Chief, Senior Chief or Chief such person as he shall recognize as being entitled to such office.
- (2) No person shall be recognized under this section unless the President is satisfied that such person -

(a) is entitled to hold office under customary law;

(b) has the support of the majority of the people in the area of jurisdiction of the office in question; and

(c) in the case of the office of Senior Chief, is a Chief and is recognized by all chiefs in his district as being entitled under customary law prevailing in that district to be appointed Senior Chief

(3) The appointment of any person to the office of Senior Chief under sub-section (1) shall not affect the status of the substantive office of Chief or in any way confer on that person additional jurisdiction to the jurisdiction which he had before being appointed Senior Chief

Section 9 (1) of the Chiefs Act which provides that

A Chief may appoint such number of Group Village Headmen and Village Headmen as he may consider necessary to assist him in carrying out his functions.

Section 11 of the Chiefs Act which provides that

(1) The President may by writing under his hand remove any person from the office of Paramount Chief, Senior Chief, Chief or Sub-Chief if after due inquiry he is satisfied that -

(a) The person has ceased to be entitled under customary law to hold such office;

(b) The person has lost the confidence of the majority of the people residing in his area; or

(c) Such removal is necessary in the interests of peace, order and good government

(2) Where the President deems it expedient to cause inquiry to be made into the question of the removal of any person from the office of Paramount Chief, Senior Chief, Chief or Sub-Chief, he may by writing under his hand suspend such person from the performance of the functions of his office.

The defendants submitted that it is only the Paramount Chief, Senior Chief or Sub Chief who is appointed by the President under the principles stated in section 4 of the Chiefs Act. However, that the requirement for entitlement or lack of it under customary law to hold such office has not been mentioned in relation to appointment by the Chief of Group Village Headmen and Village Headmen.

The defendants submitted that they are nevertheless forced to agree with Chipeta J, as he then was, who in *Wanjama v Traditional Authority Juma and Nakoma* (2004) Civil Cause No 2369, said that the Chief's appointment of Group Village Headman and Village Headmen must be based on entitlement to hold the position at customary

law. See also *Edwin v Traditional Authority Likoswe and Petrol* Civil Cause number 162 of 2012 (High Court) (unreported) and *Wanjani v Nakoma and another* Civil Cause Number 2369 of 2004 (High Court) (unreported).

The defendants also submitted that Justice Mzikamanda, as he then was, in *Group Village Headman Mankhambira and others v Matekenya and others*, Civil Cause number 132 of 1999 (High Court) (unreported), had this to say

...a reading of the Act will show that no other authority except the President has such power. While it is the business of the court to interpret the law and apply it to any given set facts of the case, it is certainly not the business of the court to exercise administrative functions to appoint or remove chiefs....The court cannot substitute its decision for an administrative decision. Its province is to review the exercise of the administrative powers to see if it has been done properly. In the present case, this court can make the declaration sought if the decision was arrived at through an improper exercise of administrative power. It is certainly not the business of this court to appoint a new chief. If it is found that the decision was arrived at through an improper exercise of administrative power this court can make the declaration sought and order that the process be started de novo, this time complying with the rules.

The defendants submitted that the court in *Group Village Headman Mankhambira and others v Matekenya* observed that its province is to review the exercise of the administrative powers to see if it has been done properly. And that appointment and removal of village headmen is within the powers of the Chiefs.

The defendants then submitted on the evidence and the law. They started by submitting on the name of Chieftaincy as follows.

The defendants submitted that the name of the chieftaincy is Matalala and not Kambalame. That, in cross-examination, the plaintiff tried to suggest that he inherited the Chieftaincy from the Matalala who inherited it from his father. The defendants submitted that this was clearly false as the plaintiff failed to give a convincing reason as to why the village is now called Matalala and not Kambalame.

The defendants submitted that the Chieftaincy is matrilineal. They submitted that in his viva voce evidence, the plaintiff said that he had been assisting his father in running the chieftaincy since the 1990s. Surprisingly, as he was about to die, according to the plaintiff, the late his father identified Grace Makhalira who was then introduced to Senior Chief Somba as the heir to the throne. The defendants submitted that this is why the Senior Chief was surprised that Grace Makhalira acted contrary to the wishes of the late Hamilton Chinyama. They asserted that if the succession was indeed patrilineal, Hamilton Chinyama would not appoint his niece as the heir to the throne.

The defendants further submitted that there is evidence on record in the affidavit of Dafter Banda regarding the history of the Chieftaincy which was not disputed when the plaintiff was applying for an injunction. Further that, that evidence is part of the court record and remains unchallenged. Further, that it is clear from the affidavit of Dafter Banda, in paragraphs 4 and 5, that the plaintiff's father inherited the chieftaincy from his uncle who was known as Kambalame. And that the said Kambalame inherited the chieftaincy from his uncle Khuopo. And that this is why, in cross examination, the plaintiff said his father inherited Kambalame chieftaincy from his father which is not correct. The defendants asserted that the truth is that Kambalame was Matalala II whilst Hamilton Chinyama was Matalala III.

The defendants then submitted on evidence of the plaintiff's misconduct. They submitted that there were allegations of misconduct against the plaintiff not befitting a village headman. That some of these include theft of borehole parts.

The defendants pointed out that the plaintiff testified that he was found with a case to answer in a criminal case involving theft of borehole parts. The case is before the Blantyre Magistrate Court.

The defendants also pointed out the other forms of misconduct. They observed that the affidavit of Group Village Headman Mkwapatira, in paragraph 8 (d) shows that there was overwhelming evidence of misconduct such as that the plaintiff willfully surrendered his village roll to several people on different dates the last one being Group Village Headman Jumbe, that he admitted tampering with a borehole by removing parts, that he was tried and found liable of insulting the modesty of women, that he interfered with a dam project, that he insulted Senior Chief Somba,

that he is a drunkard, that he refused to attend funeral ceremonies and stole money from cash transfer beneficiaries.

The defendants also refer to the evidence of Group Village Headman Jumbe to the effect that the plaintiff was found with a sofa and doors stolen from Group Village Headman Jumbe and that Mr. Kumwembe and Mr. Sikweya complained that the plaintiff was asking their wives to have sex with him and that after a full trial, the plaintiff was found liable and apologized. Further that on two occasions the plaintiff surrendered the village roll.

The defendants submitted that, naturally, the plaintiff could not admit the misconduct. They submitted further that, although the plaintiff did not admit the misconduct expressly, the plaintiff never said he does not drink or never tampered with the boreholes or was never accused of womanizing, among other things.

The defendants submitted that the plaintiff admitted that he drinks alcohol, stole parts of boreholes, husbands complained about his flirting with women, failed to attend funeral as required of him, surrendered the village roll twice to the Kutanis and Group Village Headman Jumbe.

The defendants submitted further that, there are four tribunals that found something wrong in the plaintiff. That the first tribunal is the plaintiff's subjects. That the subjects found the plaintiff liable of improper conduct and have been longing to talk to him but the plaintiff is not cooperative. That the second tribunal is Group Village Headman Jumbe who found the plaintiff guilty of womanizing, theft and willfully resigning from his post and other offences. Further that there is Senior Chief Somba who after hearing both sides, adjudged the plaintiff unfit to be a village Headman due to many offences he committed. And that there is the Blantyre magistrate Court that has so far concluded that there are enough reasons to believe that the plaintiff committed a criminal offence.

The defendants believe that all those people could not be wrong and that only the plaintiff being the right person. The defendants submit that there should be something wrong with the plaintiff

The question the defendants ask is, what was the plaintiff's superior who is the Senior Chief supposed to do in the circumstances? The defendants answered the question by saying that, surely, the Senior Chief ought to act and in acting as such, he concluded that the plaintiff is childish and has to deputise another person appointed by the family members.

The defendants then submitted on the issue of appointment and removal of village headmen. The defendants submitted that the law gives power to a Chief to appoint any person to be Village Headman or Group Village Headman so that they act as his assistants. Further, that the law does not give any requirement for qualifying as Village Headman other than working as an assistant to the Chief. The defendants concluded that, if there are no requirements for appointment, there should be no requirements for removal. The defendants asserted that it is like the way cabinet ministers are appointed by the President. No procedure for appointment and no reason for removal is required or demanded.

The defendants then submitted on the procedure followed on the removal of the plaintiff by the Senior Chief. The defendants submitted that even though the law does not force the Senior Chief to give reasons for removing his assistants known as Village Headmen or Group Village Headmen, the Senior Chief in the present case followed principles of fairness and natural justice. That there was a complaint to him by aggrieved villagers and the Senior Chief then summoned the parties to a hearing and a judgment was passed. That, there were charges and full trial involving cross examination of witnesses before a decision to demote the plaintiff was made.

The defendants then submitted on the question of customary law. The defendants noted that it is said that for one to be a village headman, the customary law principles applicable in the area are followed. They submitted that they do agree. They submitted further that, in terms of section 64 of the Courts Act, the court ascertains customary principles applicable in the area by having or hearing from experts of customary law from the material area.

The defendants submitted that in the present case, the plaintiff did not call expert witness to prove the customary principles. Consequently, that the defendants' assertion that the chieftaincy is Yao in nature as it follows the customary principles

applicable in the area is unchallenged.

The defendants prayed that the plaintiff's case be dismissed and that the matter be referred to the Senior Chief who is better placed to handle the matter herein.

This Court shall determine the issues raised by the plaintiffs originating summons in turn. The first question being whether the 3rd defendant has authority or power under the Chiefs Act or any other written law to remove from office a duly enthroned chief.

On this aspect, the plaintiff correctly referred to section 9 of the Chiefs Act which provides for appointment and functions of Village Headmen and Group Village Headmen. He also correctly referred to section 11 of the Chiefs Act which provides for the removal and suspension of persons holding the office of Paramount Chief, Senior Chief, Chief and Sub-chief.

He then correctly observed that the Chiefs Act does not provide for the suspension or removal of Village Headmen or Group Village Headmen as it provides for the same with respect to the Paramount Chief, Senior Chief, Chief and Sub-chief.

The plaintiff then correctly referred to section 32 of the General Interpretation Act which provides that where, by or under any written law, a power is conferred upon any person to make any appointment, then, unless a contrary intention appears, the person having such power shall also have the power to remove, suspend, dismiss or revoke the appointment of any person appointed in the exercise of the power.

However, the plaintiff did not make any submission on the power of the 2nd defendant Senior Chief to remove the plaintiff who is a Village Headman in view of section 32 of the General Interpretation Act.

The defendants, on the other hand, submit that the Senior Chief has power to remove a Village Headmen. And they submit that there are no particular requirements under the Act for such removal.

This Court has considered the provisions of the Chiefs Act and particularly notes that section 9 (1) of the Chiefs Act gives power to a Chief like the 3rd defendant to appoint a Village Headman like the plaintiff. This Court has noted that although the Chiefs Act does not provide for powers of removal there appears to be no contrary intention expressed in the Chiefs Act preventing a Chief from removing a Village

Headman for proper reasons at customary law and after a procedurally fair process as required by law.

In the circumstances, this Court is convinced that a Chief has power to remove a Village Headman that he appointed. The 3rd defendant Senior Chief therefore had power to remove the plaintiff, a Village Headman that he had appointed. This also in line with the decision in *Group Village Headman Makhambira and others v Matekenya*.

The second question to be determined is whether the procedure followed in the matter by the 3rd defendant was proper, lawful, fair and/or one prescribed by law.

On this issue, the plaintiff submitted that the 3rd defendant seems to have arrived at his decision by counting how many people were with each party at the hearing. After seeing that the 1st defendant had more people with him, he decided that the 1st defendant had carried the day. The plaintiff submitted that if the number of people accompanying a party to the hearing before the 3rd defendant was going to be a determining factor, the parties ought to have been told so in advance.

On their part, the defendants contended that even though the law does not force the Senior Chief to give reasons for removing his assistants known as Village Headmen or Group Village Headmen, the Senior Chief in the present case followed principles of fairness and natural justice . That there was a complaint to him by aggrieved villagers and the Senior Chief then summoned the parties to a hearing and a judgment was passed. That, there were charges and full trial involving cross examination of witnesses before a decision to demote the plaintiff was made.

This Court notes that on the evidence the plaintiff s submission does not represent the true picture of what actually happened in this matter in relation to the procedure followed by the Senior Chief in removing the plaintiff. The defendants are right in submitting that, on the evidence, the Senior Chief called both parties to the dispute and heard them. The Senior Chief made some findings and in addition to those finding the Senior Chief also checked the levels of support that each party to the dispute had.

The Senior Chief is enjoined by section 43 of the Constitution to ensure procedural fairness when taking administrative action. One of the things the Senior Chief was

required to ensure was that the plaintiff was heard before being condemned. It is clear that the plaintiff was heard.

This Court notes that when one reads section 2 of the Chiefs Act, on the application of the Chiefs Act, it is clear that the Act is providing for the recognition of Village Headmen in addition to providing for their appointment and functions. The Act provides that any person appointed to the position of chief must be recognized at custom. This is expressly provided in section 4 of the Chiefs Act with regard to Paramount Chiefs, Senior Chiefs and Chiefs.

This Court finds that the Chiefs Act must be read to imply that for a person to be appointed as a Village Headman they ought to be recognized as such at custom. This Court therefore agrees with the decision in *Wanjama v Traditional Authority Juma and Nakoma* and the other cases cited by the defendants in that regard.

Unsurprisingly, it is clear from the evidence in this matter, that the plaintiff was initially recognized at custom as a Village Headman before he was appointed as such. This point, leads this Court to conclude that on removal from office the same customary law must be followed.

The Village Headman's family decided who should be Village Headman before the name was taken to the Senior Chief and it follows that they ought to be involved on removal as well. With respect to the Chiefs, they may be removed under section 11 of the Chiefs Act if they have lost confidence of the majority of their people residing in their area.

It can be seen here, that the Senior Chief asked those who were supporting the parties to the dispute so that he could see whether the plaintiff still had support of a majority of the people in his area. This was in addition to the hearing that unearthed other reasons against the plaintiff.

On the evidence, this Court concludes that the Senior Chief followed the correct procedure by hearing the disputing parties and also ascertaining the level of support for each party.

Although the plaintiff alleged that he should have been warned to bring all his supporters in advance, the plaintiff did not provide any evidence that had he been warned he would have had more support than the 1st defendant. But more

importantly, the level of support is only one of the reasons that the Senior Chief used to determine the matter. The Senior Chief also looked at the plaintiff's alleged misconduct that disentitled him from being a Village Headman. So, failure to warn each party to bring supporters is not fatal to the decision of the Senior Chief in view of the other reasons for removing the plaintiff that will be considered in the next question to be determined by this Court.

The third question to be determined is whether the reasons on the basis of which the 3rd defendant made his decision to dethrone the plaintiff formed proper grounds on which the said decision could be based.

The plaintiff submitted that, in his decision, the 3rd defendant stated the need for the plaintiff to have an assistant but in making his decision he gave the chieftaincy to the 1st defendant and removed the plaintiff as village headman and made him an assistant.

The defendants contended that the plaintiff had committed acts of misconduct which entitled the Senior Chief to remove him.

This Court has carefully reflected on the evidence and has come to the conclusion that the Senior Chief received enough evidence to convince him that the plaintiff's misconduct was such as to disentitle him from continuing as a Village headman. The Senior Chief effectively decided that the plaintiff would be an assistant to the 1st defendant.

This Court cannot second guess the reasons for the Senior Chief's decision in view of the evidence against the plaintiff as explained in this Court by the defendants. There were valid reasons for removing the plaintiff in this matter.

The last question is whether in any case the 1st defendant has any right to ascend to the chieftaincy of Matalala village considering the culture and custom followed in the said village.

The plaintiff submitted that the chieftaincy in dispute in this matter is Ngoni and that the Ngoni custom on succession to the Village Headman is patrilineal. So, that the 1st defendant does not qualify to ascend to the throne.

The defendants submitted, to the contrary, that the name of the chieftaincy is Matalala and not Kambalame. That, in cross-examination, the plaintiff tried to suggest that he inherited the Chieftaincy from the Matalala who inherited it from his father. The defendants submitted that this was clearly false as the plaintiff failed to give a convincing reason as to why the village is now called Matalala and not Kambalame.

The defendants submitted that the Chieftaincy is matrilineal. They submitted that in his viva voce evidence, the plaintiff said that he had been assisting his father in running the chieftaincy since the 1990s. Surprisingly, as he was about to die, according to the plaintiff, his late father identified Grace Makhaira who was then introduced to Senior Chief Somba as the heir to the throne. The defendants submitted that this is why the Senior Chief was surprised that Grace Makhaira acted contrary to the wishes of the late Hamilton Chinyama. They asserted that if the succession was indeed patrilineal, Hamilton Chinyama would not appoint his niece as the heir to the throne.

The defendants further submitted that there is evidence on record in the affidavit of Dafter Banda regarding the history of the Chieftaincy which was not disputed when the plaintiff was applying for an injunction. Further that, that evidence is part of the court record and remains unchallenged. Further, that it is clear from the affidavit of Dafter Banda, in paragraphs 4 and 5, that the plaintiff's father inherited the chieftaincy from his uncle who was known as Kambalame. And that the said Kambalame inherited the chieftaincy from his uncle Khuopo. And that this is why, in cross examination, the plaintiff said his father inherited Kambalame chieftaincy from his father which is not correct. The defendants asserted that the truth is that Kambalame was Matalala II whilst Hamilton Chinyama was Matalala III.

This Court notes that the plaintiff was supposed to bring evidence on the fact that the chieftaincy is patrilineal and that the 1st defendant is not supposed to be Village Headman for that reason. Section 64 of the Court's Act requires such proof as rightly noted by the defendants. Apart from making the claims, the plaintiff did not bring any expert or knowledgeable person at customary law to prove what he claimed to be the position with respect to succession to the Matalala Village Headmanship.

On one hand, Group Village Headman Jumbe stated that the first three Matalala chiefs succeeded their late uncles. He stated that he heard this from Ms Nasuluma and that is why he said Matalala was a Ngoni chief but in a Yao area. He said he learnt about this after the disputes arose in this matter.

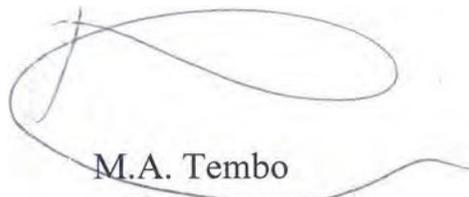
On the other hand, Group Village Headman Mkwapatira indicated to this Court that it transpired at the hearing before Senior Chief Somba that the plaintiff's father inherited the Matalala chieftaincy from his uncle who in turn had inherited the same from his own uncle. These assertions were never challenged by the plaintiff and that casts doubt on the assertion by the plaintiff that succession was patrilineal.

The plaintiff has therefore failed to prove that in the part of the country where the Matalala Ngoni chieftaincy is located, being a Yao area, the succession is patrilineal.

In the foregoing premises, this Court answers the last question in favour of the 1st defendant, namely, that he is entitled at customary law to be Village Headman as per his appointment by Senior Chief Somba.

Consequently, the plaintiff's claim to the orders he was seeking fails in its entirety with costs to the defendants. The injunction granted in this matter earlier on is accordingly dissolved and the 1st defendant may be installed as Village Headman Matalala as appointed by Senior Chief Somba.

Made in open Court at Blantyre this 28th November, 2016.



M.A. Tembo
JUDGE