



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MISCELLANEOUS CIVIL CAUSE NO. 73 OF 2012

BETWEEN:

ABEL LAZALO1ST PLAINTIFF

JAMES WOTCHI NJANJE.....2ND PLAINTIFF

-AND-

NELSON STENDALA.....1ST DEFENDANT

SENIOR CHIEF DZOOLE.....2ND DEFENDANT

MINISTRY OF LOCAL GOVERNMENT.....3RD DEFENDANT

CORAM: HON. JUSTICE DR. C.J. KACHALE, *Judge*

***Chibwana*, of Counsel for the Applicant**

***Kalasa*, of Counsel for Plaintiffs**

***Makono*, of Counsel for the 1st and 2nd Defendants**

***Tembwe*, Court Clerk**

RULING ON APPLICATION FOR JOINDER AS A PARTY MADE UNDER ORDER 15
RULES 4 (1) AND 6 (2) (3) RULES OF THE SUPREME COURT (RSC)

Introduction

Earlier today my court reserved its decision on the application by one Matsiri Andrea Chakhaza (the applicant) to be joined as a party to the present proceedings on the authority of Order 15 r 4(1) and 6 (2) (3) of the RSC. The application is supported by an affidavit sworn by the applicant's counsel as well as skeletal arguments discussing the relevant law. The second plaintiff has filed

an affidavit in opposition to the application. Counsel for the 1st and 2nd defendants told the court that he does not oppose the application; for the plaintiffs it was suggested that the application is rather late, coming when the matter has already reached the defence stage.

Court's reasoned determination of the issues

Having carefully considered all the matters surrounding the present application the following is my court's determination: besides the parties' submissions my court has had recourse to the very instructive decision of Mwaungulu, J (as he then was) in the case of **Nseula-v-Attorney General [1996] MLR 401** where the application of Order 15 rule 16 (2) (b) (ii) was considered extensively. That rule states that

"Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application order any of the following persons to be added as a party, namely any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter."

In granting the application the learned judge observed (with appropriate discussion of numerous precedents) that (at pages 408 and 410)

"Once a party is necessary to ensure that all matters are dealt with effectively it matters less that there is not a cause or action against that party and the court can order a party to be joined on its own motion....The rule should be accorded the widest and most liberal interpretation. [It] allows the court to add...any person who should have been a party and whose presence is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon..."

The applicant has filed an elaborate affidavit detailing his interest in the present dispute. Of course the plaintiffs contest that position (and in a way adding fuel to the dispute). The subject-matter of this action being the right to assume a chieftaincy, it is quite clear to the court that any decision from this action will have implications on the applicant's alleged interest in the same chieftaincy. In other words, his involvement in these proceedings will in fact ensure that all relevant parties (since he in fact represents one of the affected royal families) are able to present their side of the story; that would in turn preclude the need for continued litigation on the question of succession to the contested throne. It is my considered opinion that this scenario represents a classic case worthy if

a joinder order. It would not serve the interests of the parties to defer the claims of the applicant to another day, when there are proceedings to which he can competently be added for a comprehensive adjudication and therefore more just conclusion of the entire dispute. The court will give impose proper terms to address the concerns of the plaintiffs, which at most raise issues of expediency and not necessarily the justice of the whole case.

Final orders

It has thus been concluded by this court that the application fits the purview of the applicable rule and is accordingly upheld on the following terms:

- a. The applicant is hereby added as 4th Defendant to the present action.
- b. He must bear all costs occasioned by his inclusion into these proceedings as such, including the costs necessary to recall all witnesses who have hitherto testified before this court as well as the costs of this application.
- c. The applicant must file his defence (and any counterclaim) to the action within 7 days hereof.
- d. All other parties will have a further 7 days to reply to such defence (or counterclaim).

By this order the court will direct the Registrar to list before me the continuation of this trial for three consecutive days within the first month of the next Court Sessions.

Order accordingly.

Made at Lilongwe this 27th day of February 2015.

C.J.Kachale, PhD
JUDGE