



THE JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE No. 2028 OF 2009

Between:

ALEX STANELY CHIMIKO

PLAINTIFF

AND

GROUP VILLAGE HEADMAN KAPICHI
TRADITIONAL AUTHORITY KAPICHI

1st DEFENDANT
2nd DEFENDANT

RULING

The plaintiff commenced this action by way of writ of summons claiming declarations that he is the rightful person to exercise the power and authority of Village Headman Chimiko and that the defendants have no power to remove the plaintiff from his chieftaincy position as well as an order of permanent injunction restraining the defendants from exercising power or authority of VH Chimiko or interfering with the lawful exercise of such leadership position. Therefore the bone of contention in this matter is the self-declaration by the first defendant, Group Village Headman Kapichi since July 2009 that he is the village headman for Chimiko village and his purported exercise of chieftaincy powers such as collecting funeral contributions and making public announcements in the said village. The plaintiff filed an *inter partes* summons for an order of interlocutory injunction seeking a restraining order against the defendants on the issue in dispute.

The summons was heard by the late Honourable Justice Manyungwa and I was assigned to prepare and pronounce the ruling following the sudden demise of His Lordship.

The plaintiff filed two affidavits, one which was sworn by himself and a joint affidavit in support of the application which sworn by Alinafe Makina and Ndazona Harry, who claim to be members of the royal family for Chimiko chieftaincy. The plaintiff also filed skeleton arguments in support of the application. The affidavit evidence on record reveals that the Chimiko village was founded in 1920 by Chimiko 1 who ruled the people of the village up until his death in 1949. Subsequently, there were several people who were successively appointed to the throne after the death of the founding chief. The joint sworn statement sworn by Alinafe Makina and Ndazona Harry enunciates the customary process of identifying a chief for Chimiko village. It states that once a chief dies, he gets succeeded by his nephew who happens to be an eldest son of the sister to the deceased chief. In the event that there is no nephew capable of ascending to the chieftaincy, the brother to the previous chief is appointed to take up the throne. The deponents affirm that the power to appoint a successor is duly vested in a group of elders from the royal family by way of a meeting.

The evidence reveals that Mr Alex Stanley Chimiko, the plaintiff herein, was sworn in as Village Headman Chimiko to succeed Chimiko 3 after his demise in 2003. The plaintiff's installation was witnessed by three Village Headmen, namely: Ndombole, Sitima and Beula and was never disputed by anybody. The village headman elect had been acting in the position for four years without any disturbance. In a twist of events, in 2009, the first defendant started exercising chieftaincy powers of Chimiko village to the utter dismay of the royal family. The first defendant claimed that those powers had been conferred upon him by Traditional Authority Kapichi, which is asserted to be in contradistinction to the provisions of section 9 of the Chiefs Act. This provision confers powers to appoint Village Headmen or Group Village Headmen on Senior Chiefs (Traditional Authorities) in order to help them in performing his functions properly and not to remove or replace a sitting chief. It is also argued that the first defendant is not a blood relation to the Chimiko chieftaincy/clan. It is submitted that the plaintiff is the only rightful person to exercise powers and authority of Village Headman Chimiko.

The plaintiff argues that the prevailing custom in the Chimiko clan demands that chiefs be replaced only upon their death or in very rare occasions, when they commits a very serious offence or are incapacitated so that they cannot

ably perform the functions of their office. In such a scenario it is still the Chimiko clan electing a person from within the clan to be acting as chief for Chimiko village and priority is given to nephew of the predecessor chief failing which, the chief's brother. It is contended that it is not the duty of a Traditional Authority to impose on a village, a village headman. Section 11 of the Chiefs Act which provides that the President may by writing under his hand remove from office the Paramount Chief, Chief or Sub-Chief but the Chiefs Act is quiet on the removal of a Village Headman or Group Village Headman from the throne.

The appointment to the office of Village Headman or Group is not the exclusive preserve of members of the royal family. It is the Chief (Traditional Authority) who has the final say in accordance with tradition. The plaintiff asserts that in this matter, there is no indication that two names were presented to the Traditional Authority as the royal families could not agree on one candidate. If two names were presented the Senior Chief could only have appointed one person.

The defendants who were supposed to be represented by Legal Aid did not appear on the date of hearing the summons neither did their legal practitioners. They also failed to enter appearance to the action and file any documents in response to the plaintiff's summons.

The principles on the grant and/or refusal of an interlocutory injunction are well settled under case law. The guidelines set in the case of *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 to establish whether an applicant has adequate case for the granting of an interlocutory are a consideration of the following:

- i. whether the applicant had a strong on merely an arguable case;
- ii. the adequacy of damages as a remedy;
- iii. the balance of convenience;
- iv. whether the status quo should be maintained;

If the applicant satisfies the above test, the grant or refusal of an injunction is a matter for the exercise of the court's discretion on the balance of convenience.

In regard to the application for a permanent injunction restraining the defendants by themselves, their servants or agents or howsoever otherwise from exercising the power or authority of Village Headman for Chimiko Village this court notes that a long passage of time that has lapsed since the action was commenced and the summons was filed and considering that the plaintiff has failed to take steps to prosecute the main action I exercise my discretion and dismiss the application for an interim order of injunction. The fact that the plaintiff is pursuing an interim relief

does not and should not operate as an automatic stay on the prosecution of the main action.

Considering that the court on 22nd September 2009 made an order that Legal Aid should represent the defendants this court no makes no order in regard to the costs occasioned by this summons.

Delivered in open court this 26th day of September 2018 at Chichiri, Blantyre.



Dorothy nyaKaunda Kamanga
JUDGE

Case Information:

The late Hon Justice Manyungwa
Mr. Chidothe,
Defendants
Mrs. Mangisoni/ Ms. Million

Presiding Judge.
Counsel for the Plaintiff.
Absent
Court Clerks.