

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CASE NO. 282 OF 2018**

**BETWEEN:**

**JOSEPH SAINI .....CLAIMANT**

**AND**

**TED BELLO (ON OWN BEHALF AND ON BEHALF OF BELLO  
CLAN).....FIRST DEFENDANT**

**AND**

**CHIEF MALEMIA ..... SECOND DEFENDANT**

Coram: Hon J N'riva, Judge  
Mr Kukeza Phokoso for the claimant  
Mr Sauti for the defendants  
Mrs Mtegha Court Official

**ORDER**

The claimants commenced this action against the decision by Senior Chief Malemia of Nsanje District to enthrone the first defendant as Village Headman Mpomba.

With the commencement of the action, the claimant obtained an interlocutory injunctive order ordering the second defendant pending the finalisation of this matter not to install the first defendant as Group Village Headman Mpomba.

I ordered the parties to make representations on whether to continue with the injunction or not. There is also an application by the defendant for this Court to set aside the order of interlocutory injunction.

This therefore is my determination on whether to continue with the injunction order or to set it aside.

Joseph Saini, the claimant, filed a sworn statement in support of the continuation of the interlocutory order of injunction.

On the other hand, the defendants urged the court to set aside the interlocutory order that I granted. The defendants argue that the claimant obtained the order through non-disclosure of material facts. The defendants prepared sworn statements. The first defendant argues that in 2009, Senior Chief Malemia appointed the claimant to assist the Group Village Headman because the Headman failed to carry out his duties due to poor health.

The claimant was especially supposed to carry out duties that required the group village headman to travel or quit in flocked physical activity. Therefore, the claimant was not an acting Group Village Headman but an assistant to the Group Village Headman. Such a person is known as a *Kalinde*.

The defendant further stated that the clan decided that they should appoint a new village headman from another family (not the claimant's) because by the time the chieftaincy had to go to another family. As a result, the client appointed the first defendant as the chief. After the appointment the claimant went to complain to the District Commissioner alleging that he been removed from the chieftaincy.

The sworn statement of the Senior Chief also stated that the claimant was an assistant to the chief pending the appointment of the village headman's successor.

The claimant argued that the injunction should proceed because the claimant has a claim worth pursuing. The argument is that the decision by the Senior Chief is against the law on appointment of village headmen. The claimant further argued that the court will have to decide the rightful heir to the throne. The claimant further argues that the claimant's claims cannot be remediable by compensation. Apart from that, the claimant argues that balance of justice favours the continuation of the injunction because the High Court already quashed the decision to install Mr Bello as the Village Headman. The claimant also argues that he is the Village Headman of the area, a *status quo* we should maintain pending the determination of the matter.

The defendants argue that matters of customary law are questions of fact. The defendants further argue that the claimant did not tell the court that he was never installed as village headman, but that he was holding a position of *Kalinde* because his grandfather was sick and very old. The defendants further argue that the holding of that position is not a bar for the clan to nominate a Group Village Headman and for the Senior Chief to install such a Village Headman. The defendant said that the judicial review did not hold that the claimant was the rightful heir to the throne but found that the District Commissioner for Nsanje and the Minister of Local Government acted in the excess of the powers in interfering with the appointment of the Group Village Headman.

The further issue that the defendant raised was that the discretion to appoint a Village Headman lies with the Senior Chief and that the Court could not interfere with the exercise of such jurisdiction. The defendants therefore argue that there is no serious question to be tried in favour of the claimant. Counsel argues that the claimant came to the court knowing that his claim is frivolous. Counsel argued that the second defendant is Senior Chief therefore he had discretion to appoint the second defendant as a Village Headman under section 9 of Chiefs Act. The defence further said that the claimant lied to the court that he was being dethroned when he had not been enthroned.

In response counsel for the claimant argued that the claimant's claim in this Court is a declaration that the decision by the first defendant is null, illegal and void.

Counsel argues that chief's power to appoint Village Headman is not absolute. They have to act within the prescriptions of the law. Counsel argues that one has to be entitled to become a Village Headman. After the judicial review the claimant expected that the appointment of the group village headman would be from the family of Joseph Saini. Therefore, the claim by the claimant is that the second defendant appointed someone who was not entitled to be Village Headman. Counsel argued that therefore that is a very serious question for trial in this matter. Counsel argues that there is need for the court to consider who is entitled to be the Village Headman in the area. On the materiality of the claimant being a *kalinda*, counsel for the claimant said that the claimant ran the chieftaincy from 2010 to 2012. Therefore, it was not material for him to say that was a *kalinda* because from 2010 to 2012 he was the village headman. Therefore, counsel argued, the claimant was claiming chieftaincy because he was

clearly a Village Headman.

Counsel argued that the *status quo* is that that between the judicial review proceedings and the injunction, the claimant was running the affairs of the chieftaincy. Counsel argued that that is the *status quo* that the court has to maintain.

To resolve this issue the question is whether to proceed with the injunction. The question is whether the claimant has a triable issue. If so, the other question is whether damages would be adequate as a remedy. Finally, the question is whether justice would require that I should sustain the injunctive order.

On the issue of triable issue, there is also this question: whether the claimant did not give the Court the full account of the facts. The defendant argues that the claimant lied to the Court that he was the Village Headman. The defence argues that he was only a *Kalinda*. The claimant insists that he was a Village Headman.

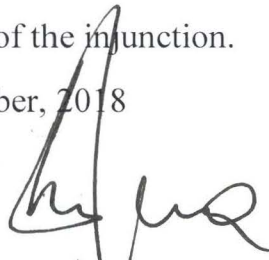
That issue is contentious. However, I remind myself that this is not a stage for resolving factual disputes. One might argue that there is no evidence that the claimant was a Village Headman. However, he attached a letter from the District Commissioner to indicate that the one who was responsible for the running of the village had to stop. The claimant argues that the letter was for him. The letter was directing him to hand over the Chieftaincy and that he should stop receiving *honoraria*. To me it seems the claimant might have gone beyond being a *Kalinde*. It seems to me the claimant has a viable claim. The claimant and his family are against the enthronement of the second defendant as a village headman. The record before me shows that the families are quarrelling over the chieftaincy. They have gone to several fora including a hearing for judicial review. To me, without being conclusive, there are triable issues.

On all these scenarios, I find that the claimant has triable issues.

In the circumstance of all the quarrels surrounding the chieftaincy, my analysis, it would be just to continue restraining the enthronement of Mr Bello until the dust settles in the matter. There being a triable issue and having found that justice is in favour of an injunction, I need not comment much on damages. I doubt if damages would adequately recompense a family's claim to chieftaincy. A claim to chieftaincy is not one that is remediable by monetary compensation.

I, therefore, order the continuation of the injunction.

DELIVERED this 10<sup>th</sup> day of October, 2018



J N'RIVA

JUDGE