



IN THE HIGH COURT OF MALAWI

LILONGWE HIGH COURT

CIVIL CAUSE NUMBER 192 OF 2015

BWTWEEN:

LEXSON MADZIATAYIKA-----PLAINTIFF

AND

MATHEWS LIDONGA-----1ST DEFENDANT

STA KAMENYAGWAZA-----2ND DEFENDANT

THE DISTRICT COMMISSIONER DEDZA-----3RD DEFENDANT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Chamwenda, Counsel for the Plaintiff

Defendants, Absent and Unrepresented

Itai, Court Interpreter

JUDGMENT

This matter came before this court through an originating summons issued by the court on 30th January 2015. The plaintiff seeks the determination of the court on the following questions and reliefs namely:-

1. Whether or not the plaintiff is the rightful owner of Njimbula Village Headmanship at S.T.A. Kamenyagwaza in Dedza district.
2. Whether or not the 1st defendant is the rightful owner of Njimbula Village Headmanship at S.T.A. Kamenyagwaza in Dedza district.
3. A declaration that the 1st defendant is not the rightful owner of Njimbula Village Headmanship at S.T.A. Kamenyagwaza in Dedza district and that therefore he does not have the rights of that Njimbula Village Headmanship.

4. A declaration that the plaintiff is the rightful owner of Njimbula Village Headmanship of S.T.A Kamenyagwaza in Dedza therefore he is entitled to possess, occupy or otherwise deal with the said Headmanship.

The plaintiff further seeks the following reliefs:-

1. An order that the 1st defendant vacates or ceases of the duties of Njimbula Headmanship.
2. An order that the 1st defendant pays damages for wrongful possession and occupation of Njimbula Headmanship.
3. An order preventing the 1st defendant from carrying the duties of Njimbula Headmanship.

Since the inception of this matter, the defendants have not bothered to put in any defence. The defendants did not also turn up for hearing and the court proceeded in their absence after it was satisfied that there had been service of the notice of hearing on them.

The court has thus relied on the affidavit evidence that has gone unchallenged. In a nutshell, the evidence of the plaintiff is that his uncle Biziweck Njimbula was former Village Headman of Njimbula Village until his death in 1957. When the uncle died, the plaintiff together with his brothers were still very young and as such, the plaintiff's mother took over as Village Headman Njimbula in order to allow the plaintiff mature. In 2001, the mother to the plaintiff also died and at that time, the plaintiff was working with MTL so it was difficult for him to take over as Village Headman. The plaintiff therefore decided to use Timothy Madziataika in Acting capacity. In 2004, Mathews Lefitala unlawfully took over the said Village Headmanship yet there is no blood relationship with the plaintiff. The plaintiff took the matter to Group Village Headman Khanganya for assistance but to no avail. He later on took the matter to T A Kamenyagwaza but he was not assisted. He later referred the matter to the District Commissioner Dedza who referred it to STA Kachindamoto who ruled in his favour.

I have looked at the unchallenged evidence that has been presented by the plaintiff in this case. It is very clear from the evidence on record that the plaintiff is the rightful Village Headman Njimbulu and not the 1st defendant. I therefore find in favour of the plaintiff and I accordingly grant the declarations, reliefs and orders as prayed for by the plaintiff with costs.

DELIVERED THIS DAY OF MARCH 2018 AT LILONGWE

M.C.C MKANDAWIRE

JUDGE