

REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISRTY
CIVIL DIVISION
CIVIL CAUSE NO. 231 OF 2008

BETWEEN

WYNDHAM RICHARD CHECHAMBA..... CLAIMANT

AND

AWALI SEGULA AND OTHERS.....RESPONDENT

Coram: Honourable Mr. Justice D.T.K. Madise
Mr. Chibwe of Counsel for the Claimant
Respondent absent/unrepresented
Mr. M. Mbekeani, Official Court Interpreter

Madise, J

JUDGEMENT

1.0 Introduction

1.1 The claimant in this matter commenced this action by way of originating summons seeking several orders and declarations from the court. The summons are supported by a sworn statement from the Claimant. The case was first called for hearing on 17th January 2018. The Respondent did not turn up for the trial and no reasons were given for the none attendance. I decided to give the Respondent another chance and the case was adjourned to 19thFebruary 2018.

1.2 The Claimant prepared a notice of adjournment dated 12th February 2019 which was served on the Respondent's lawyer on 15th February 2018. On the appointed day (19th February 2018), the Respondent did not show up neither did the lawyer. Since no reasons were given for their none-attendance, I allowed the Claimant to present his case.

1.3 The Claimant then proceeded to adopt his summons, the affidavit and skeleton arguments. The matter was then adjourned for final submissions and judgement. I now proceed to give my opinion on the matter.

2.0 The Questions For Determination

(1) Whether the Respondents are eligible to perform their duties as chiefs.

(2) Whether the 1st Respondent is entitled to participate in matters of succession involving the chieftainships of the Malemia, Kuntamanji and Kubwana royal families.

(3) Whether the 1st Respondent can act as head of the Malemia, Kantamanji and Kumbwana royal families.

3.0 The Facts

3.1 According to the sworn statement of Richard Chechamba in support of the originating summons the Malemia, Kantamanji and Kumbwana chieftainship were established near or around Lake

Chirwa according to the Yao custom. Heirs to their throne are nephews and grandnephews.

3.2 During this time, Village Headman Kumbwana had four daughters namely;

- Alekeni Chiani (Mrs Walusa)
- Sigele Chiani (Mrs Chiutula)
- Emmie Chiani (Mrs Lambe)
- Jessie Chiani (Mrs Chechamba)

3.3 When Chief Malemia died in 1929, nephews born from Malemia's sisters became heirs. Specifically, Gerald Chiutula son of Sigele Chiani (Mrs Chiutula) took over the throne up to 1946.

3.4 Thereafter the family agreed to a rotational chieftainship and Russell Chechamba son to Jessie Chiani (Mrs Chechamba) became chief. However due to young age the Chechamba family was advised to take over another time to allow the son finish school and become of age. Allan Masokonesya, son of Alekeni Chiani then became chief.

3.5 The Claimant alleged the chieftainship was supposed to revert back to the Chechamba royal family as the rotational agreement. After the demise of Allan Masokonesya (Chief Malemia III) Mavuto Lewis KapandaNsalu has been claiming the throne of Chief Malemia.

3.6 A meeting was later convened by the District Commissioner for Zomba on the issue of succession of the Malemia chieftainship. At that meeting the Respondent rejected the reversion of the chieftainship to the family of Jessie Chiani which was contrary to the agreement reached by the chief's council. Due to this stalemate Charles Masokonesya continued to act while waiting the appointment of the new chief.

- 3.7** After this event, the 1st, 2nd and 3rd Respondents went to the house of Allan Masokonesya and chased the widow out of the house and Mavuto Kapandansalu declared himself acting chief Malemia by removing Charles Masokonesya. The matter was referred to the Zomba District Commissioner but nothing changed.
- 3.8** When chief Chikowi was called to intervene on the matter, he declared that the family of Jessie Chiani could not hold both positions of Chief Malemia and Chief Kuntumanji at the same time. Chief Chikowi then made a determination that the Malemia chieftainship had to go to the family of Kapandansalu which was part of the family of Allan Masokonesya (deceased)
- 3.9** The Claimant did not agree with the position taken by Chief Chikowi since it had allowed the family of Alekeni Chiani to have another go at the chieftainship of Malemia since the predecessor was from the same family. The claimant stated that there was nothing wrong in one family holding two positions as long as it was their turn. He insisted that the rotational agreement had to be followed to the letter.
- 3.10** When the Ministry of Local Government set up a committee of Yao chiefs to investigate the matter, Chief Nkoola, Jalasi and Chimwala invited Chief Chikowi to be part of the committee. The Claimant objected the inclusion of Chief Chikowi since he had already taken a position on the matter. But the Claimant's voice went unheard. The committee in its determination gave the same verdict Chief Chikowi gave that one family should not hold two positions at the same time. The Claimant was aggrieved.
- 3.11** When Chief Kuntumanji died the Claimant as head of the family appointed Kennington Mlanga from the line of Jessie Chiani in order to avoid a power vacuum and his name was presented to the District Commissioner for Zomba. In conclusion the Claimant

stated that the first Respondent was not a member of the Kuntumanji or Malemia royal families and therefore could not take part in the determination on the affairs of succession of the said chieftainships.

3.12 As earlier stated the Respondents did not attend trial on two separate occasions and no reasons were given for the failure to attend the call of the trial court. I will now proceed to give my views on the matter based on the available evidence and the relevant law.

4.0 The Issues

There are three (3) main issues for determination before me;

(a) Whether the Respondents are eligible to perform their duties as chiefs.

(b) Whether the 1st Respondent is entitled to participate in matters of succession of the Malemia, Kuntumanji and Kubwana chieftainship.

(c) Whether the first Respondent can act as head of the Malemia, Kuntumanji and Kumbwana chieftainship.

5.0 The Law

5.1The burden and standard of proof in civil matters.The celebrated case of Miller vs. Minister of pension (1947). All ER 372 at 373-374 in which Lord Denning gave perhaps the best definition of how a court should balance and weigh the evidence before it in a civil matter as opposed to a criminal case. He proceeded as follows.

"If the evidence is such that the tribunal can say we think it is probable than not. The burden has been discharged but if the probabilities are equal, it is not.

5.2 Several local authorities have validated the Miller case and it now settled law that the burden and standard of proof is set at the beginning of the trial by the state of pleadings and remaining unchanged throughout the duration of the trial. In simple terms, he/she who alleges the existence of certain facts must be the first to prove his/her case as in the ordinary state of things a positive is easier to prove than a negative.

5.3 The relevant provisions in this matter are sections 4 and 9 of the Chiefs Act which we reproduce in total.

Section 4 Chiefs Act

(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.*

Section 9 Chiefs Act

(1) A chief may appoint such number of Group Village Headmen and Village Headmen as he may consider necessary to assist him carrying out his function

6.0 The Finding

- 6.1** There is no dispute that there are three main families who are privy to appoint successors to the chieftainship of Malemia, Kuntumanji and Kubwana royal families. These are the families of Alekeni, Sigele and Jessie.
- 6.2** There is no dispute that the three ladies are the custodians of the three chieftainships according to the Yao culture and tradition. It is my finding that the Claimant as apparent head of the families has no say on who becomes a chief. The three senior ladies made a determination which the claimant was aggrieved with and he has come to this court to challenge that determination.
- 6.3** The Claimant stated that the families agreed on a rotational chieftainship. No evidence has been led in support of this claim. There is evidence however that Chief Chikowi made a determination that no royal family can hold two positions of chief at the same time. The Claimant was not happy.
- 6.4** When a committee of Yao Chief was called upon to investigate the matter the Committee came to the same conclusion but the Claimant was not happy. This matter must come to a final conclusion and the Court will follow the prevailing culture and tradition of the Yao people of Malawi.
- 6.5** There is no dispute that the village headman Kumbwana had four daughters namely Alekeni Chiani (Mrs Maluwa), Sigele Chiani (Mrs Chiutula), Jessie Chiani (Mrs Chechamba) and Emmie Chiani (Mrs Lambe).
- 6.6** There is no dispute that only nephews or nieces of Kumbwana can become chiefs that is to say the children of the four sisters. However it appears that there are serious disagreements as to who will become chief of the Kuntumanji and Malemia families.

Chief Chikowi declared that the two positions cannot be held by one family.

6.7 The Claimant told the Court that according to the Yao custom a chief is appointed by woman folks (matrilineal) of the royal family. After an appointment has been made the women report to the head of the family who their choice is. The custom is that the head of the family (mwinimbumba) has no authority to appoint a chief.

6.8 I have gone through the evidence and on the balance of probabilities I make the following orders.

(1) The surviving daughters of VH Kubwana must call for a meeting within 14 days and choose who will become Chief Malemia and Kuntumanji.

(2) The said women folks must be guided by the determination of Chief Chikowi that no one family can hold two positions at the same time.

(3) The sisters from the royal family will decide whether the current holders of the office should continue as per the Yao culture and tradition or that new names must be nominated and appointed as per Yao tradition and the directions of Chief Chikowi must be taken into account.

(4) The women folks must then submit the names to the rightful head of the family for onward transmission to the DC for Zomba within 21 days.

(5) Installation of the chiefs if new name are proposed shall take place within 90 days by the Minister responsible for Local Government.

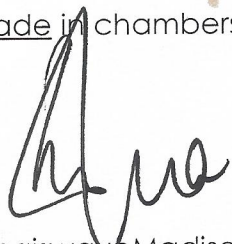
In these premises the prayers sought by the Claimant are here by dismissed for lack merit. The summons must fail.

7.0 **Costs**

7.1 There are the exclusive preserve of the court, but they normally follow the event. The Claimant is condemned in costs of this failed action.

I so order

Made in chambers in Blantyre in the Republic on 22nd February 2019.



Dingiswayo Madise



Judge.