



IN THE HIGH COURT OF MALAWI  
 LILONGWE DISTRICT REGISTRY  
 CIVIL CAUSE NO. 730 OF 2020

BETWEEN:

CATHERINE CHIPHWANYA (on her own behalf .....CLAIMANT  
 and on behalf OF THE Chiwoza Family)

AND

ANDERSON KATUWA .....1<sup>ST</sup> DEFENDANT

ESSAU WILLIAM.....2<sup>ND</sup> DEFENDANT

DANIEL MIZECK (On his own behalf and on behalf .....3<sup>rd</sup> DEFENDANT  
 of the family of Layikoti Makwasa (Deceased))

CORUM : R. M CHINANGWA JUDGE

Kamphantengo Counsel for the Claimants

Chikwakwa Counsel for the Respondents

Nyirenda Court Clerk

RULING ON DISCHARGE OF AN INTERLOCUTORY INJUNCTION

The claimant claims the following reliefs:

- i. A declaration that the Defendants are not part of the Chiwoza royal family from where the heir to the Chimutu chieftaincy is appointed.
- ii. A declaration that the claimants are the real members of the Chiwoza royal family from where the heir to the Chimutu chieftaincy is appointed.
- iii. An order of permanent injunction restraining the Defendants from calling themselves by, or using, the name Chiwoza family for the purposes of claiming the chieftaincy of Traditional Authority Chimutu in Lilongwe District.
- iv. Costs of this action.

The applicants had filed an application for an injunction at which the court ordered the application should be heard interpartes on a given date. On the assigned date the claimants did not avail themselves as such the court granted the application for the injunction and ordered that this matter be merged with Case number 327 of 2020, as the court was informed that the said matter and this matter are addressing the same issue, being Chiwoza Chieftaincy.

This ruling pertains to the discharge of the injunction which was obtained in the absence of the claimants. In support of their application to discharge the injunction the claimant filed an affidavit. The respondents did file their response too. Below is a reprint of the same.

## **2. THE AFFIDAVITS**

The claimants sworn statement in support of the application for an order discharging the interlocutory injunction was filed by the claimants Counsel. It reads as follows:

3. THAT the claimant served us with an application for an interlocutory injunction restraining the Defendants from using the name Chioza family for the purposes of claiming Chimutu Chieftaincy. The hearing of the application was set to take place on 24<sup>th</sup> August, 2020.
4. THAT I prepare necessary documents such as sworn statement and skeleton arguments in opposition to the application by the Claimant and filed them with the Court on 21 August,

2020 and served the Claimant's Legal Practitioners the same day. The sworn statement and skeleton arguments are hereto attached and marked as EC 1 and EC 2 respectively.

5. THAT however hearing on 24<sup>th</sup> August, 2020 did not take place and the matter was adjourned to an unspecified date which was yet to be fixed and communicated.
6. THAT however, I learnt of late that the hearing of the application took place on 28<sup>th</sup> September, 2020 in our absence and injunction was granted reluctantly. The notice of adjournment was served on us but due to reasons beyond our control, was not diarized and the notice went missing hence, our absence on the day of the hearing.
7. THAT though we did not attend, we were ready to defend the matter as evidence by our filing of the sworn statement and skeleton arguments in opposition to the application for an order of interlocutory injunction.
8. THAT notwithstanding the preceding paragraphs, the injunction was obtained on the suppression of material facts and that their conduct is an abuse of the Court process.
9. THAT the Claimant did not reveal that the Defendants are claiming the chieftaincy of Chimutu through Chioza Family as a royal family in the Civil Cause no 327 of 2020 in which the Court granted the injunction to the Defendants on the Chimutu chieftaincy against Grant Josua, Fyison Sendeya, T/A Kalumbu, T/A Kalolo and District Commissioner of Lilongwe District Council.
10. THAT the injunction obtained by the claimant in this matter is only aimed at frustrating the proceedings in the above cited case as it leaves the Defendants in an awkward situation as they have no other family lineage through which they can claim the chieftaincy in question successfully in Court. The conduct of the claimant is thus oppressive and constitutes an abuse of the court process.

11. THAT further the claimant did not state that she belongs to Chanika family and not chioza. The Chanika family is a royal family on its own which owns a Chieftaincy and the current chief is Abaki Mbirima. The said Chanika chieftaincy is under Chimutu Chieftaincy.
12. THAT the claimant further did not reveal that she is not claiming the throne to Chimutu Chieftaincy as she not among the contenders whose names were submitted to the District Commissioner's office. The name of the 1<sup>st</sup> Defendant name was submitted as being one entitled to throne of Chimutu Chieftaincy. She did not demonstrate any damage or violation of her rights by the use of the name Chiodza by the Defendants and not entitled to the relief of injunction.
13. THAT the claimant misled the court and the true name of the alleged Yesafu Chiwoza is Yesafi Mkandira who has never been a chief since time immemorial. The said Yesafi Mkandira came to the area from Mkumbwa Village in Dedza, He came to the area following his sister by the name Lamesi Mkandira who married an Uncle to Layikoti Makwasa by the name Mr. James. Yesafi Mkandita does not therefore belong to the Chiwoza family.
14. THAT the claimant in this matter is an agent of the Defendants of the case above and have connived and/conspired to frustrate the above-named proceedings. They are neighbours, they side each other in the above-named proceedings although they are not parties to it. they are being used by the Defendant's opposing parties in the other case. This is an abuse of the Court process and this matter must be dismissed.
15. THAT it is in the interests of justice to discharge the injunction as the same will prejudice the other proceedings in Civil Cause no. 327 of 2020 and have devastating effects on the Defendants.

In reply to the above Cathrine Chiphwanya adopted the statement filed for the application as her response to the application herein as below:

3. THAT I have read the sworn statement of Anderson Katuwa on his own behalf and on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in opposition to the application for an interlocutory injunction and I reply to the same as contained hereinunder.
  
4. THAT I deny the contents of paragraph 5 of the Sworn Statement of Anderson Katuwa and I state that:
  - i. I am the true descendant of Chiwoza and I belong to the Chiwoza family. I am not from the Chanika family.
  
  - ii. The history of the Chiwoza family is that the mother of Chiwoza was Msamatha. Msamatha was mother to Chiwoza and Pendawako, from whose family line I was born. According to the Chewa system of succession, I am entitled to the throne of my uncle Chiwoza.
  
  - iii. Msamatha's sister was Mwawindwa and their mother was Sawinya. From Mwawidwa came the Chanika family while from Msamatha came the Chiwoza family. thus clearly I am not from the Chanika family and I am not connected to the Chanika chieftaincy.
  
  - iv. I reiterate that the Defendants are not at all in the family tree of the Chiwoza family and they are not connected to the Chiwoza family.
  
5. THAT I deny the contents of paragraph 5 of the Sworn Statement of Anderson Katuwa and I state that Rutiya and Mzule were not children of Chiwoza. I state that actually Rutiya and Mzule were not at all connected to the Chiwoza family and neither were they connected or entitled to the Chimutu chieftaincy.

6. THAT I deny the contents of paragraph 7,8 and 9 of the Sworn Statement of Anderson Katuwa and I state that:

- i. I do not know any Yesafu Mkandira and I do not claim any connection to a Yesafu Mkandira.
- ii. I reiterate that Yesafu Chiwoza was my uncle and he is the one who was in charge of the Chimutu Chieftaincy. It was Yesafu Chiwoza who gave the chieftaincy to the Phwerekere family and also to Josiya Chitseka.
- iii. The fact that the Defendants do not know Yessafu Chiwoza is actually goog evidence that they do not belong to the Chiwoza family.

7. THAT I deny the contents of paragraph 10 of the sworn statement of Anderson Katuwa and I state that:

- i. It was the family of Layikoti Makwasa that met and appointed the 1<sup>st</sup> Defendant to becaome chief Chimutu and not the family of Chiwoza. The family of Layikoti makwasa has been using the name of Chiwoza in order to appoint the 1<sup>st</sup> Defendant. I state that the Chiwoza family was not at all consulted when the 1<sup>st</sup> Defendant was proposed.
- ii. When we heard about that the family of Layikoti Makwasaa proposed the 1<sup>st</sup> Defendant and the Phwetekere family proposed Davis John Sendeya be appointed chief chimutu, we protested at the Lilongwe District Commissioner's family. However, the Lilongwe District Commissioner did not help us and that is why we have brought the present lawsuit against the Defendants.
- iii. The truth is that the Anderson Katuwa's mother is a direct sister to the 2<sup>nd</sup> Defendant and she married Thomas Katuwa. The 2<sup>nd</sup> Defendant comes from the

family of Mgowa who was an uncle to Layikoti Makwasa. Mgowa and his brothers were never chief anywhere and they were never entitled to the Chimutu chieftaincy. Thomas Katuwa was also never entitled to the chieftaincy of Chimutu.

iv. I reiterate that Layikoti Makwasa was never the rightful heir of the throne of Chimutu and he was enthroned amidst protest because he was not from the Chiwoza family. However at the time of his appointment, the Chiwoza family had no one who could become chief Chimutu because everyone who would rise to claim the chieftaincy was killed.

8. THAT I refer to paragraph 13 and 14 of the Sworn statement of Anderson Katuwa and deny that I am an agent or that I am connected to the Phwetekere family who are Defendants in the Lilongwe District Registry's Civil Cause N0. 327 of 2020. I state that the Chiwoza family is equally protesting the appointment of any person from the Phwetekere family because the chieftaincy of Chimutu comes from the Chiwoza family. I further state that the Phwetekere family, the Chiwoza family and the Layikoti makwasa family are not related or connected to each other.

9. THAT I deny the contents of paragraph 15, 16, 17 and 18 of the Sworn Statement of Anderson Katuwa and state that our rights as the Chiwoza family to inherit the throne of chief chimutu is in jeopardy by reason of the conduct of the defendants in claiming that they are from the Chiwoza family, to which they do not belong.

10. THAT we, the Chiwoza family, have no alternative remedy available to us and the only way to stop the Defendants from this unreasonable conduct is by way of an order of injunction from this court.

11. THAT I understand that the sworn statement herein shall be used in the proceedings. I understand that if my statement is false in any way, I may have committed perjury and be liable to a substantial penalty.

12. WHEREFOR I respectfully pray to this Honourable Court for an order of injunction restraining the Defendants from calling themselves by , or using, the name of Chiwoza family for the purposes of claiming the chieftaincy of Traditional Authority Chimutu in Lilongwe District until final determination of the matter or until a further order of this court.

### 3. Issue for Determination

The issue for determination is whether the injunction granted on 29<sup>th</sup> September 2020, should be discharged on ground of suppression of material facts.

### 4. Analysis of Law and evidence

In **Bon Elias Kaotcha Kalindo and others v Springstone Company Ltd and another** [2013] MLR 25 (HC), “material facts include not only facts known to the applicant but also any additional facts which should be known if proper inquiries are made”. In this case the defendnats argue that the material fact which has been suppressed by the claimants are: the defendnats are claiming the chieftaincy of Chimutu through Chiwoza family as a royal family in Civil cause number 327 of 2020; claimant did not state they belong to Chanika family and not Chiwoza family; that the claimant if not claiming the throne to Chimutu Chieftaincy. As stated earlier a material fact is one which is known to the applicant or facts which can be known on proper inquires. In this case it is difficult to tell with the evidence before the court if the said facts which are alleged to have been suppressed were known to the claimant or should have been known on proper enquirers. The defendnats have not shown on a balance of probabilities that the said facts were known to applicant or were to be known on proper enquires. To score the point, in the case of **Bon kalindo cited above** the court was shown, on application to discharge an injunction on suppression of material facts, Exclusive Prospecting Licence which the applicant had wand not a mining licence which the applicants alleged to have had at the time of obtaining the injunction. In this case if anything, the issues raised by the defendant are very issues that should go for trial and cannot be ascertained at this stage.

Now on the question of whether the injunction in this matter will affect the injunction on case number 327 of 2020, this court first notes that the injunction herein was granted based on the facts before it; neither of the parties have brought to this court a copy of the claims in matter number 327 of 2020; this court cannot make an order that will affect case number 327 of 2020 the matter is not before this court. The way forward would be there being an order for merger, the parties are to make the necessary applications on file number 327 of 2020 to ensure that the matter progresses smoothly. The application fails.

**5. Finding**

The order of injunction stands and the matter number 327 of 2020 is merged with this one. Since matter 327 of 2020 is at an advanced stage, this matter will proceed on matter number 327 of 2020.

**Pronounced this 16<sup>th</sup> day of February 2021 at LILONGWE**



**R.M CHINANGWA**

**JUDGE**