



**JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
CIVIL REVIEW CAUSE NO. 731 OF 2021**

BETWEEN

**SGVH MDIMA (On his own behalf and on behalf of all
Senior Group Village Headmen and Village Headmen
of Mthunthumala ward under T/A Mbwatalika) CLAIMANT**

AND

LUCIANO CHATSEDA (T/A MALILI) DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Taumbe, Counsel for the Claimant
Mr. Nkhata, Counsel for the Defendant
Mr. Henry Kachingwe, Court Clerk

RULING

Kenyatta Nyirenda, J.

This is this Court’s ruling on a preliminary objection raised by the Defendant.

The matter lies within narrow compass. On 8th September 2021, the Claimant commenced the present case and the statement of case provides as follows:

1. *The Claimant is a Malawian National and is presently serving as Senior Group Village Mdimba under T/A Mbwatalika and brings this suit in his own behalf and on behalf of all Senior Group Village Headmen and Village Headmen of Mthunthumala Ward under T/A Mbwatalika.*
2. *The defendant herein is currently serving as T/A Malili and is being sued in that capacity.*
3. *In or around 2017, the then President of the Republic, by the powers vested in him under the Chiefs Act promoted Group Village Headman Mbwatalika to Traditional Authority.*

4. *Upon promoting T/A Mbwatalika, in or around July, 2018 the President demarcate the boundaries between the newly promoted T/A Mbwatalika and T/A Malili, the Defendant herein. In its communication, the Secretary for Local Government and Rural Development indicated that the existing boundary between Mtunthumula and Chiwenga Wards be the boundaries for the T/A Malili and T/A Mbwatalika.*
5. *As a result of the communication, the claimants herein being chiefs from Mtunthumula Ward fell under the jurisdiction of T/A Mbwatalika.*
6. *Chiefs were happy when they received the news of the demarcation as they were not happy with the administration of T/A Malili and were happy that their suffering and tribulations had come to an end.*
7. *However, for reasons best known to the Defendant, he willfully disobeyed the directive of the President and claims that the boundary is not a demarcated by the President.*
8. *The Defendant is going around the area (Mtunthumula Ward) and appointing chiefs who he deems to be his sympathizers*
9. *The conduct of the Defendant has created chaos in the area.*
10. *The Defendant has no respect towards T/A Mbwatalika to the extent of appointing chiefs close to the T/A's house.*
11. *Chiefs from Mtunthumula Ward are tired of the character and conduct of the Defendant and the situation in the area is so tense that it can breed violence.*
12. *Being law abiding citizens, the Claimants have managed to calm down their subjects not to deal with the situation as they wish.*
13. *As a result of the Defendant's conduct, there is no development in the area as development partners fear of what the instability may do to their lives and property.*
14. *The Defendant without any regard to T/A Mbwatalika has been conducting ceremonies in the claimants' area (Mtunthumula) even though the area falls under T/A Mbwatalika.*
15. *Chiefs from Mtunthumula do not want to work with T/A Malili as the Government already directed that the claimants are under T/A Mbwatalika which is a great relief to the claimants considering the atrocities the claimants suffered whilst under T/A Malili, the Defendant herein.*
16. *As a result of the defendant's actions herein, there is chaos and instability in the area and the claimants have suffered loss and damage."*

The Claimant also made an application for an order of interlocutory injunction restraining the Defendant from interfering with the affairs of the area under the jurisdiction of T/A Mbwatalika and visiting the area of Mtunthumala under T/A Mbwatalika and a further order requiring the Defendant to respect the boundary between his territory and that of T/A Mbwatalika as directed by the President pending the final determination of the matter herein or a further order of this Court.

The application was accompanied by a statement sworn by the Claimant wherein he deposes more or less what is averred in the statement of case.

On 22nd September 2021, the Defendant filed with the Court the following statement of defence:

1. *The Defendant makes no comment to the contents of paragraph 1 of the Statement of case but puts the Claimant to strict proof of his allegation.*
2. *The Defendant admits the contents of paragraphs 2 and 3 of the statement of case.*
3. *The Defendant admits contents of paragraph 4 and 5 of the statement of case and further pleads that the said decision of the President as contained in a memorandum dated 1st August, 2018 was alleged to have been gazetted.*
4. *The Defendant makes no comment on the contents of paragraph 6 of the statement of case as the same contains matters beyond his knowledge.*
5. *The Defendant denies that he disobeyed the directive of the president as alleged in paragraph 7 of the statement of case and puts the Claimant to strict proof of his allegation.*
6. *The Defendant refers to paragraph 8 of the statement of case and avers that he has jurisdiction over part of Mtunthumula ward as such there is no illegality with his conduct in appointing village headmen under provisions of the Chiefs Act.*
7. *In the alternative, the Defendant pleads that he has never been furnished with the gazetted decision of the President despite asking for the same from the Office of the Secretary for Local Government and Rural Development.*
8. *The Defendant denies the contents of paragraphs 9, 10, and 11 of the Claimant's statement of case and puts the Claimant to strict proof thereof.*
9. *The Defendant refers to paragraph 12, 13, 14 and 15 of the statement of claim and denies that he exercises jurisdiction over Traditional Authority Mbwatalika's area or that he has committed atrocities in the area of T/A Mbwatalika and the Claimant is put to strict proof thereof.*
10. *The Defendant repeats paragraph 9 hereof and pleads that contrary to the Claimant's pleadings, the Claimant and other subjects of T/A Mbwatalika have installed village headmen in the territory of T/A Malili in defiance of a court order dated 2nd September, 2019 which quashed the decision to re-demarcate the boundaries between Traditional Authority Mbwatalika and Malili.*
11. *The Defendant further avers that he respects the boundaries that exist between his area of jurisdiction and that of T/A Mbwatalika as contained in the order dated 2nd September, 2019 or what was there before the communication by the Secretary for Local Government and Rural Development dated 1st August, 2018.*
12. *The Defendant wholly denies the particulars of loss and damage contained in paragraph 16 of the statement of claim and the sub paragraph thereof and puts the Claimant to strict proof thereof.*

13. *The Defendant therefore denies that the Claimant is entitled to the reliefs claimed under subparagraph i, ii, iii, and iv of paragraph 16 of the statement of claim, on the basis that the Claimant's claim does not contain a cause of action, is embarrassing, frivolous, vexatious and an abuse of the court process.*
14. *In the alternative, the Defendant pleads that this court is functus officio in regards to the matters in the statement of case therefore the claim should be dismissed with costs.*
15. *Save as herein before expressly admitted, the Defendant denies each and every allegation of fact contained in the Statement of Case as if the same were set out herein and traversed seriatim."*

On 22nd September 2021, the Defendant also filed with the Court a notice of preliminary objections which notice states that:

- "1. *The main action is frivolous because it does not contain a cause of action.*
2. *The application for injunction is an abuse of court process since the Court has already granted an injunction to the Defendant on the same facts.."*

There are skeleton arguments in support of the preliminary objections and the relevant part of the skeleton arguments state as follows:

"2. **LAW AND DISCUSSION**

Whether the Court is functus officio in regards to the present proceedings

- 2.1 *In Arnold Kampeni and five others vs ESCOM Civil Cause Number 255 of 1998, this Court stated that functus officio is a common law rule that prohibit, in absence of statutory authority, the reopening of a matter before the same court, tribunal or other statutory actor which rendered the final decision. Once a validly made final determination is issued, the court is powerless to change it, other than to correct obvious technical and clerical errors, or unless specifically authorised to do so by statute or legislation. See also Chandler vs Alberta Association of Architects [1998] 2 S.C.R 848.*
- 2.2 *In the above cited matter, Justice Nyirenda held that the functus officio rule exist to provide finality to judicial decisions so that people and businesses are afforded the certainty they require to operate effectively. The ability to revisit and change determination could easily disrupt the lives and businesses of those affected by the determinations, and cause them hardships and loss....if a court is permitted to continually revisit or reconsider its final order simply because it has changed its mind or wishes to continue exercising jurisdiction over a matter, there would never be finality to a proceeding. See also Ethel Kansawa Chimpeni vs Administrator General Probate cause number 185 of 1993; Anna Kagwira vs Henderson Kagwira civil cause number 24 of 2012.*

2.3 *The Defendant argues that the "dispute" or the reliefs claimed herein were already the subject of the courts determination in Judicial Review cause number 9 of 2018. In the said matter, the court quashed the decision of the office of the President of the Republic of Malawi to re-demarcate the boundaries between T/A Malili and T/A Mbwatalika. At that point, the court became *functus officio* in relation to that boundary dispute in so far as re-demarcation is concerned. However, the present proceeding is simply asking the court to reopen the issue which it has already determined. The Claimant's claim must therefore be dismissed for being baseless and an abuse of the court's process.*

Whether the Claimant's claim has a cause of action

- 2.4 *The Defendant argues that the Claimant's claim is premised on an error of fact and law. Firstly there is no decision re-demarcating the boundaries between T/A Malili and T/A Mbwatalika. The Decision of the President of the Republic of Malawi in regards to the re-demarcation of the boundaries was quashed by a court order dated 2nd September, 2019 and boundaries reverted to what they were before 1st August, 2018.*
- 2.5 *Secondly, it is not clear what the cause of action in this matter is because the same does not come out clearly in the pleadings. According to Order 7 rule 1.(a) of the Courts (High Court) (Civil Procedure) Rules a statement of case shall - set out the material facts between the parties as each party sees them, but not the evidence to prove them. The Claimant's statement of case is basically trying to give evidence on his "claim." The Defendant has had problems in coming up with a defence without falling in the trap of pleading the evidence.*
- 2.6 *At pages 16-17 of Bullen and Leake and Jacobs, Precedent of Pleadings, 12th edition (1975) the learned authors posits that;*
- "It is as well to emphasize the cardinal importance of pleadings in the system of civil litigation, particularly in the High Court. A party is not well served if his pleading is drafted in a hurried, shoddy, slipshod, unthinking manner, on the basis that whatever is stated in the pleading will do and may be developed by particulars or discovery or evidence at the trial or may be amended in due course; and conversely a party is well served whose pleading states his case with clarity and precision, with full particulars and details, with understanding of the law, an insight into the substantive rights of the parties, and intelligent anticipation of how the case of the party will need to be prepared and presented to the Court ... pleadings should therefore be drafted with all due care and circumspection."*
(underlining supplied by us)
- 2.7 *The Defendant argues that Claimant's pleadings were drafted without regards to the law on pleadings. The Pleadings does not have a cause of action consequent which the whole action should be dismissed.*

3. **PRAYER.**

3.1 *Therefore, the Defendant prays that the application for an injunction and the whole action should be dismissed for being frivolous, vexatious and an abuse of the court process with cost.*"

I have considered this matter. Both the main case and the application for an order of interlocutory injunction purport to rely on a letter written by the Secretary for Local Government and Rural Development to the District Commissioner for Lilongwe. The letter is dated 1st August 2018 and the body thereof reads thus:

"I wish to report to you that His Excellency, the President of the Republic of Malawi, has directed re-demarcation and gazetting of the boundary between Traditional Authority (T/A) M'bwatalika and Traditional Authority Malili with effect from 17th July, 2018.

The directive says that the existing boundary between Mtunthumula and Chiwenga wards be boundaries for the Traditional Authority Malili and Traditional Authority M'bwatalika.

Section 3(3), Chapter (22:03) of the Chiefs Act gave powers to the President by Order to declare or alter the boundaries of sections and subsections of a district thereby creating boundaries for existing and new chieftaincy.

To this effect, you are requested to fully implement the directive and report to the Ministry the outcome of the boundary re-demarcation exercise accordingly.

Signed

Charles Thombozi

For SECRETARY FOR LOCAL GOVERNMENT AND RURAL DEVELOPMENT"

By an order of the Court in Judicial Review Cause No. 9 of 2018 dated 2nd September, 2019, the decision to re-demarcate the boundaries of Traditional Authority Malili was quashed. The Court further ordered the Defendants, namely, the President of the Republic of Malawi, The Principal Secretary for Local Government and Rural Development and the District Commissioner for Lilongwe District Council, to respect the boundaries as they were before their decision of 1st August 2018. The Claimant has not adduced any evidence to show that the order of the Court was ever reversed on appeal or otherwise.

In the premises, I fully agree with Counsel Nkhata that the application for an order of interlocutory injunction and the main action are frivolous, vexatious and an abuse of the court process. Accordingly, both of them are dismissed with cost. It is so ordered.

SGVH Mdimba v. Luciano Chatsenda T/A Malili)

Kenyatta Nyirenda, J.

Pronounced in Court this 2nd day of November 2021, at Lilongwe in the Republic of Malawi.

A handwritten signature in black ink, appearing to read 'Kenyatta Nyirenda', enclosed within a hand-drawn oval. A vertical line extends from the right side of the oval.

Kenyatta Nyirenda
JUDGE