



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 2400 OF 2009

BETWEEN:

CLEMENT PEARSON (on his own behalf and on behalf
of the Royal Family for CHINSEU CHIEFTAINCY) PLAINTIFF

-AND-

EMMA DYSON FIRST DEFENDANT

WELOSI MBAKA ALSO KNOWN AS
TRADITIONAL AUTHORITY MACHINJIRI SECOND
DEFENDANT

CORAM: Justice Jack N'riva Judge
Claimant represented by Mr. Mickeus, Legal Practitioner
Mrs. D Mtegha, Court Official

JUDGMENT

This issue in this matter arises out of wrangles over chieftaincy. The claimant argues that he was supposed to become Village Headman (VH) Chinseu. That was after his royal family indorsed him after the death of the incumbent. As the royal family brought his name to the Traditional Authority (T.A.), they were surprised to hear that Group Village Headman (GVH) Machinjiri had already proposed Ms. Emma Dyson's name as the next VHM. The claimant

argues that Ms. Dyson was not entitled to become VH. The argument is that she only held the position as a caretaker as she was counsellor to the deceased VHM.

The claimant, therefore, made an application to this court effectively to make orders that he, and not Ms. Dyson, is entitled to become VHM Chinseu and that T.A. Machinjiri no power to appoint or a person to ascend to the chieftaincy. In other words, the court should order that Emma Dyson should not be made VHM Chinseu.

As a matter of fact, the defendants did not contest the application.

The question for determination is whether the claimant should be entitled to the claims he is making.

The sworn statement of the claimant shows that he is the grand child of Mai Aida who reigned as VH Chinseu from 1942 until her death in the year 2000. He stated that the place where Chinseu Village is, was originally an estate. The owner of the estate, James Jameson, had some employees on the estate. One such a person was a Mr. Chikapa who had three daughters Meriya, Mariyana and Aida.

Emma Dyson, the first defendant is the grand child of Meriya Chikapa.

According to him, when Mr. James first acquired the estate, the area was under the jurisdiction of T.A. Machinjiri. As time was passing by, the area became populated. Subsequently Mr. James requested T.A. Machinjiri to recognise the said area as a distinct village. He proposed Chinseu to take up the position of VH for the village.

T.A. Machinjiri accepted Mr. James' request and accordingly installed Mr. Chinseu as VHM and the said area was named after him and he reigned until his death in 1939. Chinseu family left the area after the death of Mr. Chinseu

in 1939 leaving a power vacuum until 1942 when Mr. James handed over the chieftaincy to Mai Aida.

From that time until her death in 2000, the said Aida reigned as VH for Chinseu Village. In 2001, the royal family for Chinseu village appointed Benito Chinseu to take over the position of VH. Benito was a son of the late Chinseu and was raised and brought up by Miss Aida. Benito did not stay in power for long. He died four years later.

Ms. Emma Dyson served as counselor during the reign of Benito Chinseu. In 2000, she started claiming that she was the one to take over the chieftaincy of the village.

T.A. Machinjiri endorsed Ms. Dyson as the right heir to the Chinseu throne and was intending to install her as VH Chinseu.

Ms. Dyson does not come from the family of Mai Aida and cannot ascend to the throne unless appointed by the royal family. According to Chinseu chieftaincy, once a VH dies, the royal family convenes a meeting and appoints another chief.

The claimant's argument, therefore, is that T.A. Machinjiri has no power to determine who becomes the next chief for the village; the royal family is supposed to tell the T.A. of their choice. Ultimately, he argues that he is the correct person to ascend to the chieftaincy stating that the royal family (of which he is part) appointed him.

There is a supplementary sworn statement. It is made by Stephano Raphael who is also from Chinseu Village. His statement also offers, just like the one by the claimant, the historical background to the chieftaincy.

He is the head of Chikapa family, one of the families that were given land at the historical cite where Chinseu is currently located. He said he was the son of Mariana. He stated that his grandfather had never been VH Chinseu or any

other VH. He further said that the appointment of Benito Chinseu was not done by the Chikapa family but by Ida's family.

During Benito's reign, Emma Dyson served as a counsellor. When Benito died, Emma Dyson became a caretaker of the VH's business on an interim basis. During that period, she started claiming that she was entitled to be made the next VH. The royal family appointed the claimant to become the next VH but when the name was communicated to the T.A., they got information that Emma Dyson's name had been presented to the T.A. and the T.A. endorsed the name.

The T.A. sent them back to GVH Machinjiri to sort out the issue but it did not work.

That was the evidence according to the sworn statements.

The issue for determination is whether the claimant is the rightful candidate to become VH Chinseu. Alternatively, the issue is whether the first defendant should become the VH and whether TA Machinjiri has power to appoint the second defendant as VH.

It is common knowledge that societies have different criteria and methods for ascending to chieftaincy. Such criteria are based on customary norms and practices. In this dispute, there has been no challenge to the allegations by the claimants. The claimants have argued that according to their norms, the royal family was that of Mayi Ida. They have also demonstrated that that royal family is responsible for appointment of a VH. The royal family appointed Clement Pearson as the next VH. They have also demonstrated that the first defendant was not appointed as a VH.

In that vein, although the Chief has power to appoint VHs and others¹, when making the appointment, he or she has to be satisfied that the customary criteria have been fulfilled.²

The Chief must be satisfied that such a person is entitled to hold such position according to the prevailing cultural practices in that particular area. As stated in *Emily Wanjani v Agnes Nakaoma and Traditional Authority Juma*, in exercising the powers of appointment conferred by section 9(1), a Chief is enjoined to take into consideration prevailing customary law. The Court said:

Under section 4, before appointing anyone as Paramount Chief or Chief, the President must be satisfied that such person is entitled to hold such an office under customary law and that similarly under section 14 a Paramount Chief, Chief or Sub-Chief in appointing his counsellors must act in accordance with customary law.

In *Laudon Lamon Chiputu v Lezina Mtambo and others* [2014] MLR 158 (MSCA) the Supreme Court said the chief has the power to appoint and dismiss village or group village headman subject to approval by the government and subject to proper consultations and selection by the family.

In this matter, the claimant has demonstrated that he belongs to the royal family of Chinseu and that after the death of Benito, the family appointed him to become the next VH Chinseu. The claimant has similarly demonstrated that the first defendant does not belong to the royal family. He has demonstrated that she was a mere counsellor of the deceased VHM and was

¹ Section 9 of the Chiefs Act: *A Chief may appoint such number of Group Village Headmen and Village Headmen as he may consider necessary to assist him in carrying out his functions.*

² *Emily Wanjani v Agnes Nakaoma and Traditional Authority Juma*, Civil Cause No. 2369 of 2004 (HC, PR),

appointed in an acting capacity to serve the village before the appointment of the next VHM.

The claimant has convinced this court that the first defendant's family or grandparents had never been heads of Chinseu Village. Therefore, she cannot be entitled to become the next village headman. Thus, it was wrong for the second defendant to propose the name of the first defendant as VH Chinseu.

The defendants have not disputed any of the allegations raised by the claimant. Where a party makes a factual allegation against another and that other does not answer back, the courts take the assertion as undisputed.³

In all this, the claimant is the rightful person to be installed as VH Chinseu.

In summary, this court:

- declares that the first defendant is not entitled to ascend to the chieftaincy.
- declares that the second defendant has no power in this matter to appoint or impose a person to ascend to the chieftaincy in issue.
- makes an order restraining the first defendant from exercising chieftaincy powers or authority over Chinseu Village.
- declares that it is only a member of the family of Mai Aida's family that can ascend to the chieftaincy of the village in dispute.
- declares that only the Mai Aida's family has power to appoint a chief for Chinseu Village

³ MSCA in *Press Trust and another v Rolf Patel and others* 14 MLR 271

- declares that the claimant is entitled to ascend to the chieftaincy of Chinseu Village.
- awards to the claimant costs of this action. If the parties do not agree on the issue, the Registrar shall assess the costs.

DELIVERED at Blantyre this day of 11th December, 2017

A handwritten signature in blue ink, appearing to read 'J N'RIVA', is written over a faint circular stamp.

J N'RIVA
JUDGE