IN THE MALAWI SUPREME COURT OF APPEAL

M.S.C.A. CIVIL APPEAL CASE NO 10 OF 2016

VUTANI KONDWANI CHIBWANA — APPELLANT

And

HARRY MATEKENYA

NKHWAKWATA — 1ST RESPONDENT

CHAKWANIKA — 2ND RESPONDENT

NKHATABAY DISTRICT ASSEMBLY — 3RD RESPONDENT

CORAM : **Justice D.F. Mwaungulu, JA**

Tembo, Counsel for the Appellant
Mhone, Counsel for the respondent

Minikwa, Court Interpreter

Mwaungulu, JA

JUDGMENT

Précis

On 16 February 2016 this court ordered, without notice on the other party, stay of execution of the judgment of the High Court delivered on 25 January 2016. The Court below granted the reliefs sought by the first respondent, Mr Mnkhwakata, the appellant, seeking certain orders, in form of declaratory judgments, against the appellant, Mr Chibwana, and the Nkhatabay District Council, the first, second and third respondent, respectively, for various actions under the Chiefs Act. That judgment was after this Court's decision of *Group Village Headman Kakopa and Others v Chilozi and another* (2000) Civil Appeal No. 40 MSCA (Unreported) and before this court's decision in *Chakumba v Lilongwe District Council* (2013) Civil Appeal No 91 (MSCA) (unreported). Curiously, the court below never considered *Group Village Headman Kakopa and Others v Chilozi and Another.* Rather, the court below relied on its decision of *Mankhambira and Chibwana* (1999) Civil Case No 132 (HC) (MDR) (unreported). *Group Village Headman Kakopa and Others v Chilozi and Another* and *Chakumba v Lilongwe District Council* case dealt, respectively, with Kabudula and Malili chieftaincies. This case and *Mankhambira v Chibwana,* followed in the court below, concerned the same chieftaincy. Nonetheless, on the principles the case was decided and the presidential reports, the court below should have regarded a decision which, on the point, was probably binding. The two Supreme Court decisions establish the principles and the process under section 4 (2) (a), (b) and (c) of the Chiefs Act on which the President appoints chiefs and others covered by the Act.

The stay of execution pending appeal, based on the undisclosed facts, must be discharged because albeit damages are an inadequate remedy, there is no serious issue for consideration on appeal and the balance of justice or convenience is in favour of refusing stay. It is useful, for two reasons, to go into a bit of detail into what, on the record, happened in this case. First, it appears to this court that the court below, just like the customary law institution, overlooked important aspects under Section 4 (2) (a) and (b) of the Chiefs Act before the president could appoint someone to the position of chief. Secondly, it is in appreciating the process under the Act that the present applications are better resolved.

Background

Events culminating in this action arise because when a predecessor chief died succession to the chieftaincy arose. The clan, it appears, while the process of finding a successor was in process, in 2007, on recommendation of the appellant and the second respondent, elevated the first respondent to act as chief Mankhambira, acting up to 10 September 2013. The succession issue was not resolving as readily and quickly. Three clans feuded about the pretender to the throne. The President, it appears, because the appellant and second respondent, through their clans recommended the first respondent to the President to act as chief, withdrew their support.

The president, acting under sections 11 (1) and (2) and 2 of the Chiefs Act, caused two enquiries. The first report, made by Chiefs Mwaulambya, Karonga, MBelwa and M'bwana, delivered its report on 16 February 2012.It concluded that the Mankhambira chieftaincy was rotational among Chigowo, Chibwana and Chakwanika Clans. The report, because the Chigowo and Chibwana Clans had held the chieftaincies thrice and twice, respectively, recommended to the President that the chieftaincy was to devolve to the Chakwanika clan, for now and later to the Chibwana and Chakwanika clans, in that order. Consequently, the first respondent, belonging to the Chakwanika clan. The clan, recommended the first respondent to the President. The matter, however, was not as simple and, obviously, and was confusing to the president. The president, therefore, ordered another commission of inquiry, comprising this time of Chiefs Mpherembe, Mwirang'ombe and Katumbi. In its report delivered on 4 April 2012, the President was advised that the Mankhambira chieftaincy was not rotational. Having gathered all members of the royal family, the Mankhambira family, by ovation, supported Vutani Kondowe Bwanali, the appellant. It is this action that led the first respondent to commence the action in the court below. At the time of the lower court's judgment, the succession impasse continued. The Court below found for the first respondent. The appellant, therefore, appealed to this court contending that the chieftaincy was not by rotation. He, therefore, based on this, is the right successor on the construction of the second president's reports and should, therefore, be appointed to the chieftaincy. The respondents, however, contended that, beyond the chieftaincy being rotational, the appellant could not succeed his father because, according to their customary law, only nephews succeed.

The court below, by just reading the judgment without considering its merits, chose between the two reports, criticizing the president for vacillating on the earlier report which, in the lower court's mind, was the correct report. The second report actually was faulted for other reasons. The appellant, obviously, is dissatisfied with this conclusion and is appealing against the decision.

The application

It appears the appellant in the court below made, under Order 1, rule 18 of the Supreme Court of Appeal Rules, a similar application which was rejected. This court and the court below have concurrent jurisdiction on the matter. This court, therefore, granted the stay, without notice, against execution of the judgment of the court below. The respondents, therefore, apply to discharge the stay of execution obtained without notice against them. Although the application is, as usual, if by a party against whom execution is stayed, for different reasons impugning the granting of stay of execution obtained without notice, the real issue is whether, on the facts, the applicant, without notice, justified the injunction. The respondent's contention is that the stay of execution granted without notice should be discharged because the appellant failed to disclose material facts, more especially, the judgment of *Mankhambira v Chibwana*, relied on by the court below. The respondent contends, correctly in my judgment, that *Mankhambira v Chibwana* did not decide that the Mankhambira chieftaincy is rotational. The case, rather, decided that only

nephews, not sons of a chief can succeed to chieftaincy. Essentially, therefore, the respondents contend that, with these undisclosed facts, the appellant's failed to prove their entitlement to stay of execution. They are right.

Reasoning

The approach is, as must be, the same where interim relief is sought in anticipation of a final order or judgment and parties, whether, for example, seek an interim injunction or a stay of proceedings, in anticipation of a final judgment or appeal. Interim reliefs, by their very nature, due to uncertainty of the final outcome of proceedings, are a balancing act premised on that, ultimately, interim actions, whatever the final outcome, must better serve the justice of the outcome. Practically, therefore, the court must by a process, adopt interim actions that reduce the risk of injustice or inconvenience to the outcome of legal proceedings. Practically, therefore, courts will, where damages are an adequate remedy for damages following the interim relief, grant interim relief where there is a cogent matter for the proceedings and the interim action accentuates justice and ameliorates the risk of inconvenience or injustice.

Serious matter for appeal

So, the first consideration in this case, just like in any other case where interim relief is sought in the manner described, is whether there is a serious matter for consideration at the appeal. There is, given the vicissitudes of a trial or hearing, inherent injustice where a court grants interim relief on a clear uncontestable or peripheral issue. It must be, therefore, the court must be called upon to exercise this interim jurisdiction where there is a serious matter to be heard on appeal. In this matter, on the law and the facts, there is no serious issue on appeal and, based on it, the interim relief granted may have to be discharged.

To appreciate this point it may be useful to restate, as was in *Chakumba v Lilongwe District Council*, principles emanating from the Chiefs Act. First, the president's appointment of any chief depends on the principle of recognition. This principle, as was stated in the same case, has pervaded this legislation since 1933. In *Chakumba v Lilongwe District Council, this* court observed:

> Among the many principles emerging from these statutory provisions, in their historical context, is that the authority appoints chiefs on the principle of recognition. The second is that the principles of recognition are incremental. Section 2 of the Native Authority Ordinance 1933 does not lay the principles of recognition. It must be by hindsight that this is when, on the evidence in the court below, the Catholic Church, if at all it did, influenced the Governor to appoint an educated and Christian chief. It must therefore be that, because of the broadness of the provision which, as we have seen, gave the Governor the power,

> almost single handedly and without principles on which to operate and that the Governor was enabled to recognize whoever, wherever and whenever, that section 2 of the Native Authority Ordinance 1955 was passed. For the first time the Governor was constrained in that the Governor could not recognize a chief 'precluded' by native law and custom' from being a chief.
>
> This increment, however, could not assuage another potential conundrum. If, as was the case under section 2 of the Native Authority Ordinance 1955, all depended on whether the person was precluded by native law and custom from being a chief the provision actually gave power to the governor to appoint anybody among those not precluded to be chief with the consequence that, even if at customary law an individual person was actually eligible, the governor could appoint anybody among many eligible because customary law did not preclude them. Even then, the power was very large. It was, however, concomitant with good government that a chief was pliant and compliant to central government. On this construction therefore, it was unnecessary that someone was eligible at customary law or that the chief should be supported by the subjects over whom the chief was to control. It is from this vista that Section 4 of the Chiefs Act was a paradigm shift and watershed.

Concerning section 4 of the Chiefs Act, this Court further observed:

> Section 4 of the Chiefs Act 1967 refines the requirement of recognition based on customary law and requires the approval or support, not of central government, but the people in the area where the chief will exercise jurisdiction. The current section 4 of the Chiefs Act, therefore, requires, concerning a chief, appointment based on dual recognition.

Secondly, under the Chiefs Act in its present form, recognition bases on proof of two things. First, the president appoints one as chief where that person is entitled at customary law to be chief. This, as was explained in *Chakumba v Lilongwe District Council,* presupposes that there will be many pretenders, namely those who are entitled to be chief at customary law. The entitlement bases on customary law. This Court in *Chakumba v Lilongwe District Council,* said:

> What, therefore, do the words 'entitled to hold office under customary law' mean? There is one understanding of this provision which, without actually interpreting the section, is vogue

in this court's and the lower court's decisions and which dominates counsel's arguments. This understanding is that the deceased chief's successor at customary law should be appointed chief by the President almost as a matter of course because the words connote determining the successor according to custom. This understanding results in heavy litigation challenging a clan's identification of a pretender. The question then is just the narrow one whether, according to the custom and customary law of the particular chieftaincy one person is or is not entitled to be chief.

I do not think that this is the rendition of the words 'entitled to hold office under customary law', let alone the only one. The words go to eligibility or right to hold the office of chief at customary law. Consequently, those responsible for identifying who should succeed a deceased chief have to identify the pretender from many who may or can succeed in the chieftaincy. The words refer to all such who are entitled, including the one whom ultimately or eventually is identified by those responsible as such successor.

This rendition is peremptory because of section 4 (2) (b) of the Chiefs Act. For, if, the words 'entitled to hold office under customary law' mean the one who should be successor according to customary law, the identification under section 4 (2) (a) suffices by itself and therefore, makes section 4 (2) (b) unnecessary. Section 4 (2) (b) suggests that a person duly identified under section 4 (2) (a) could fail the recognition requirement if he does not have the support of a majority of the people in the area where the pretender will exercise jurisdiction.

As *Group Village Headman Kakopa and Others v Chilozi and Another* and *Chakumba v Lilongwe District Council* demonstrate, successors to the chieftaincy, if restricted at some point under prevailing customary law, are not, under the evolving customary law, restricted to one group of people. Successors can be of either gender and they could be sons or daughters, nieces or nephews, even grandchildren of a predecessor chief. *Chakumba v Lilongwe District Council* recognised that for various chieftaincies, there is a process, at customary law, of determining who the successor will be. *Chakumba v Lilongwe District Council* now requires that whatever institutions or arrangements are at customary law for the process, there is a duty on the appropriate institution handling the matter at customary law to ensure that the process follows customary law and, more importantly, that whatever the outcome, this process is not conclusive. This, thirdly, therefore, is because of the second requirement under the Chiefs Act.

That, even after a spotless customary law process, one has, through the correct customary law process, been determined successor, section 4 of the Chiefs Act, provides for a second mandatory requirement. Section 4 of the Chiefs Act uses the conjunction 'and', denoting that the second requirement is as important to the process as the earlier one. The president, therefore, cannot appoint one simply because that one is entitled per se at customary law to be recognised as chief. Conversely, the president cannot appoint someone who has the support of the people on who the one is going to exercise power. The president must appoint a person who is entitled at customary law to be appointed chief and one who has the support of the people on who one is going to exercise power.

Consequently, as decided in *Chakumba v Lilongwe District Council*, in matters like the present where one, like the appellant, challenges the president's appointment of another, one must show that the other person is not entitled to be chief at customary law and the other whose appointment is contested does not have the support of the majority of the people on who that person is going to exercise power. In my judgment, persons challenging appointment of another in favour of their appointment must also demonstrate that they are equally entitled to be chief at customary law and that the majority support of the people on who that person will exercise power support them.

The Law Reform Commission in its 'Report of the Law Commission on the Review of the Chief Act' dated 5 December 2014 does not remove this requirement. Rather it increases the consideartionss. The other recommendations giving a further discretion to the appointing authority after the democratic choice should be the most criticized as a step backwards to democratization of the process. In its own formulated terms of reference, the Law Commission on the Review of the Chiefs Act, paragraph (a), at page 7 of the report, set out to "..." It sounds unusual and interventionist that when a chief is entitled to be chief and has the support and trust of the people over who authority will be exercised have determined the choice the appointing authority must override that determination on indeterminate considerations suggested in the Act. The Law Reform Commission recommends adoption of the following provision:

> (1) A person shall qualify for appointment as a traditional leader, if the person-
> (a) Where applicable, is a member of the royal family;
> (b) Is entitled to hold office under customary law or tradition;
> (c) Has no criminal record;
> (d) Commands support, respect and trust in the area of jurisdiction;
> (e) Is of sound mind; and
> (f) Is able to read and write English.
> (2) When appointing a traditional leader, an appointing authority shall take into account the following
> (a) Seniority of the person or chieftaincy, as the case may be;

(b) The customary law applicable in the area;
(c) Integrity of the person to be appointed; and
(d) The level of respect the person commands generally.

(3) Government shall, through the Minister, initiate and implement policies and programmes aimed at promoting literacy in royal families.

On any of these two considerations in the current Act, on the facts and the record, none of the parties fulfill the second premise. First, on the first respondents' own admission, any of the clans were eligible and, therefore, entitled to customary law to be chief. Secondly, the first respondent and the appellant never laid evidence to show support or lack thereof of the people on who the respondent was going to rule. For himself, the appellant only succeeded in showing that he, like many, is entitled to be chief at customary law. The appellant did not show that, equally, he had the support of the majority of the people on who he was going to exercise power. The best that there was is the support of more village headmen. This is not the support of the people the chief is to rule. The populace was supposed to be touted. There is, therefore, in my judgment, no serious issue on the appeal. Even if the appeal was to succeed, it will not, because there is no evidence to suggest the popular support of the subjects as required under section 4 of the Chiefs Act, to result in appointment of the appellant or any of the pretenders suggested here. As we see shortly, when considering the balance of justice or convenience, the success of the appeal, has little impact on the status quo ante. Whatever the outcome of the appeal both the appellant and the respondent have to establish support of the people on who nthey will exrcise authority. Only then wil the President, on the present legislation, be able to appoint a chief. This, as I have said suffices to discharge the stay of execution. The stay granted could be discharged on other wider considerations for this sort of interim reliefs.

Damages not adequate remedy

Once there is a matter to go to appeal, the interim relief is not readily given where monetary damages are an adequate remedy for losses during pendency of the interim relief. This will, as it must be, frequently, but not always, be the case where the relief sought is in damages. Where this is the case, however, refusing or granting an injunction where either party cannot pay the damages may lead to injustice. It may lead to injustice where it has the effect of arming the rich and disarming the poor. Where all is equal, however, it would be unjust to accept or refuse an interim relief where a party will not be able to cover losses following the interim relief. Interim reliefs, therefore, must base on good judgment. Where damages are an inadequate remedy, therefore, it is more likely that an interim injunction will be given.

There is no doubt in my mind that when the remedy is whether one should exercise certain legitimate power, damages cannot be an adequate remedy for failure, by an interim relief, to exercise that power or to exercise power which was not legitimately one's. Therefore, the

question doesn't arise in this case and it is unnecessary to even consider whether the parties would be able to pay damages for losses caused by refusal for granting of the interim relief.

Balance of Convenience

Where, therefore, there is a serious issue to be tried and damages are an inadequate remedy, interim relief depends, whatever the outcome, on balancing the convenience or inconvenience or justice or injustice from rejecting or accepting the interim relief. Certain considerations come to bear on this balancing act.

Should the status quo be maintained?

One such consideration is that the applicant, in all such an application wants the status quo, the interim relief must be such that, pending the final outcome, parties must be exactly where they were before the intervening or supervening act. Courts usually lean that way but only if the prior situation does not result in injustice or inconvenience.

In this matter, one status quo would be that there is no chief, acting or otherwise, for the locality. This scenario favours retaining the appellant as acting chief until a chief is appointed who complies with section 4 of the Chiefs Act. This scenario was, however, not the status quo. If it was, it was already passed. It is not right in suggesting that those who recommended him to the president, and not the president, have the power to remove a chief. Those who recommended never appointed the first respondent to act as chief. They, if anything, only recommended the chief for the President to appoint. It is the President, not they, who can, as an appointing power, remove, under section ... of the General Interpretation Act, dismiss an acting chief. This the President did in 2013.

It is true that it is long that the people of Mankhambira have had to live with no chief, since 2013. It is just as bad that the people of Mankhambira must have an acting chief who has not been proved to have their support. There is evidence that the President dismissed the acting chief for the reasons envisaged in sections 11 and 12 of the Chiefs Act. Even if there was not such evidence, there is a presumption, though rebuttable, that people in authority, especially government, acts regularly. The presumption is not rebutted.

It is quite clear, however, that although from one presidential inquiry, the appellant was the option of the royal families and, therefore, could succeed to the throne. It is not established that he has the support of the people who he is going to rule. The status quo is one where there is no chief in place. The appellant's successful appeal would not alter this position unless and until the first respondent is shown to have the support of the people, not the support of village headmen. Even if we take the respondent's contention that the court below only ordered the recommendation of the second respondent as chief, the bottom line is that no recommendation can be made to the President without confirming the support of the second respondent of the

support of the people he is going to rule. The status quo sought, therefore, is one where we exactly are; no person can be declared chief until the second requirement is met.

The relative strength of the parties' cases

The second consideration, if considerations of the status quo do not resolve the matter, is the relative strength of the parties' cases. At this stage all bases on untested evidence, tested evidence is possible only by trial. On the other hand, where whether to or not to grant interim relief is not easily resolved by the prior considerations, it is inevitable that it may be resolved by considering the relative strength of the parties' cases. In doing so, it is not that courts are suggesting that it is just to do so; it is that, cognisant that the decision is based on affidavits shorn of a hearing, the risk of injustice or inconvenience reduces if interim relief followed the direction of the more, on balance, likely outcome and one where there is less injustice or inconvenience.

In this matter, based on what was said earlier, the relative strength of the cases is problematic. Even accepting that the appellant is entitled at customary law to be chief, there is nothing or very little suggesting he mustered the support of a majority of the people he was going to rule. The support needed is not of the village headmen, but the support of the people he is going to rule. Conversely, even assuming that the second respondent was entitled at customary law to be chief, the first respondent, on whose was the onus of the proof, never established that the respondent had or had not the support of the people. This means that, even if the appeal succeeds, the situation will be that it may still have to be established that the one who the president will appoint will be one who has the support of a majority of the people who that person will rule. Both of these scenarios are not achieved in this case whatever the outcome of the appeal. It must be, therefore, that the matter is not easily resolved by considering the relative strength of the parties' cases.

Is refusing or accepting the interim relief that one party receives the full relief

One underlying risks with interim reliefs is that they, in some cases, not all, can be the ultimate remedy a party is looking for. Where this is the case, it is in situations where this is the case that courts, because it is the only just thing to do, must take that course even though it has this effect. In a majority of cases it is a matter of the court determining whether, on the facts of the particular case, the situation falls under this consideration and courts will act one way where this is not the case. In this particular case, refusing or accepting the stay of execution does not result in granting the full remedy sought in the action. If this court accepts the interim relief, namely the stay of execution, the remedy is not exhausted. If the appellant succeeds, the president, if the two conditions are satisfied, may still appoint the appellant as chief. On the other hand, if the respondent succeeds, the president, once again, if the two conditions are met, will appoint the respondent. The sum total of all this is that these proceedings are an unnecessary delay in a process which, if expedited, in order to comply with the two conditions of

appointment, should have been concluded by now, allowing the people of Mankhambira to have a successor to their predecessor chief.

It may be useful to stress a process that meets the two aspects of section 4 of the Chiefs Act based on different customary practices. The process is actually practiced for the Wasamabo constituency and Group Village Headman Mwaungulu. The first stage requires satisfying the requirement that the pretender is entitled to be chief at customary law. Where, like some Ngoni chieftaincies, entitlement is hereditary and unitary, succession is determined by birth or descent, the process is straightforward. Where, for example, succession bases on being the (first) child of the predecessor, the requirement is fulfilled by identification. There is now human right criticism to succession being based on the masculine gender. The support requirement entails putting the candidate over to the people for their acclamation.

There are other systems of identifying the successor, a clan's appointing authority, the nchemberes or the wider royal family, are examples. Even here, the person selected by that process must be exposed to the people for acclamation. Consequently, if the person selected lacks the support of the people, the institutional authority has to continue until an appropriate candidate is found. The Wasambo and Group Village Headman Mwaungulu practices are more open. Any person entitled at customary law to be chief or village headman puts their name to a vote by all subjects. The successor is the one with a majority or most votes. In this respect, in relation to the Mankhambira chieftaincy, the process entails that all these candidates can be put to a vote of their subjects. This customary law practice is analogous to Chihara, at customary law.

The widows' freedom and choice in Chihara in the customary law of the north, more especially in Karonga and Nkhatabay, illustrate the model envisaged in Section 4 of the Chiefs Act. The lower court in *Kamphoni v Kamphoni* (2012) Matrimonial Cause No 7 (HC) (PR) (unreported) and *Kishindo v Kishindo* (2013) Matrimonial Cause No 397 (HC) (PR) (unreported) has stressed the dominant principles, liberty, equality, autonomy, fairness (justice), respect (dignity), self determination and solidarity, which underpin our customary law. In Chihara, at the demise of the husband, based on the principle that death does not necessarily terminate marriage at customary law, the widow has a choice to stay in the husband's village and matrimonial home with or without the children or suitor; find a suitor within the husband's wider family; or leave the village and matrimonial home to remarry or live with her wider family in her village. The symbolism is illustrative and impressive.

First, any possible suitor, ranging from the husband's brothers, nephews, et cetera, are eligible and are required by law to lay a stick in the bwalo representing their stake to a suitor for the widow. The choice is the widows and is demonstrated by what the widow will do with the sticks. In the second stage, three things can happen, all depending on the widows' choice. The widow might want a possible suitor. In that case she chooses the stick of the possible suitor. At customary law, polygamy, in the sense of polygyny is permissible. There is no evidence of the

practice of polyandry, though on strict scrutiny, it was possible. The suitor, therefore, whose stick was chosen, was either obligated or could choose to marry the widow. On the other extreme, the widow would want to leave the matrimonial home and the village to either remarry or live with parents and wider family. In that case, the woman created one big bundle of all the sticks, took them from the bwalo and entered the matrimonial home with them. If she exited with them and put them back at the 'bwalo,' this effectively was a divorce. The woman was free to leave the matrimonial home and village and remarry or live with parents. On the other hand, if she never exited with the bundle, the widow would have chosen to remain in the matrimonial home and village without a suitor and that her children and the whole clan were responsible to maintain her. It must be, therefore, that where a pretender chief has been identified, there must be a way in which the populous declares their support for the choice. This seems to be the spirit in Section 4 of the Chiefs Act.

Quick Disposal of the Appeal

Finally, whatever the order, courts must consider whether the matter cannot, to avoid injustice or convenience from interim reliefs, be disposed of by a quick and speedy resolution of the main issue. In some cases, therefore, a court may grant the interim relief sought and ameliorate injustice or inconvenience by ordering a quick disposal. In some case, therefore, the just and convenient thing may be to refuse relief and avoid inconvenience and injustice by contracting further elongation of the main proceedings. The appeal is hollow if one follows the recent decisions from this court stressing the importance of establishing the two aspects the basis of the president's recognition for appointment as chief.

The problem, to my mind, is that the outcome of the appeal will not resolve the problem at hand. The identifying institutions will have to go and set up a cogent process to identify the successor and ensure that the subjects approve that choice. Only then will the President be in a position to appoint Chief Mankhambira. There is no use, therefore, in staying the judgment of the court below given that it is uncertain that the appellant, although eligible, will have the support of the people he has to rule. The best course here is to discharge the stay of execution and order the quickest disposal of the appeal so that the process of appointing a successor chief is done hastily and immediately.

The interim stay of execution in this case, is therefore discharged with costs to the respondents. To expedite the appeal, the following orders are made. The appellant must, if he has not done so, file skeleton arguments in the court below not later than 24 October 2016. The respondents must file their skeleton arguments in the court below not later than 7 November 2016. The Appellant must file the record of appeal with the court below by 21 November 2016. The Registrar of the Court below must file the record of appeal (with skeleton arguments) with this court by 28 November 2016. The Registrar of this Court must set the case down for the January 2017 session. These orders have no implications on the process, which may occur

simultaneously, of providing a successor to the Mankhambira chieftaincy for the President to appoint.

Made this 10th Day of October 2016

D.F. Mwaungulu, JA

JUSTICE OF APPEAL