

**REPUBLIC OF MALAWI**  
**MALAWI JUDICIARY**  
**IN THE HIGH COURT OF MALAWI**  
**MZUZU DISTRICT REGISTRY**  
**MISCELLANEOUS CIVIL CAUSE NO. 58 OF 2013\_**

**BETWEEN**

**HARRY MATEKENYA MNKHWAKWATA.....**  
**PLAINTIFF**

-and-

**MR. CHIBWANA and 2 OTHERS.....**  
**DEFENDANTS**

**Coram : Honorable Mr. Justice D.T.K. Madise**

Mr. Kadzipatike/G.K Nyirenda Counsel for the Plaintiff

Mr. V. Gondwe/T. Tembo Counsel for the Defendants

Mr. A.M. Mhone Official Interpreters

Mrs. F. Silavwe Court Reporter

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**Madise, J**

**JUDGMENT**

## **1.0 Introduction**

**1.1** On 8 October 2013 the Plaintiff in this matter filed originating summons seeking several declarations from the Court against the three Defendants' decision to stop him from continuing to act as T/A Mankhambira. The Defendants have opposed the affidavits in support of the summons. We will now reproduce the declarations sought in the originating summons.

## **1.2 Declarations**

- 1) A declaration that the Defendants' act dismissing or dethroning the Plaintiff from the position of Acting T/A Mankhambira is unfair and unlawful when he is the rightful heir and entitled to hold the position, having been presented for appointment to the government by, among others, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and by reason of which, the Defendants are therefore stopped from, and cannot be heard anywhere, alleging that the Plaintiff is not entitled to hold the position.
- 2) A declaration that the Defendants have no competence under the Chiefs Act to remove the Plaintiff from the position of Acting T/A Mankhambira as section 11 of the Chiefs Act confers such competence on the President of the Republic and who must exercise the powers in writing.
- 3) A declaration that the Defendants' decision to remove/dismiss the Plaintiff from his position as Acting T/A Mankhambira is unlawful and unfair having been made without according the Plaintiff an opportunity to put up his side of the story.
- 4) An order of permanent injunction restraining the Defendants, by themselves, their agents, servants or whosoever, from dismissing or removing the Plaintiff from the position of Acting T/A Mankhambira.
- 5) An order for costs
- 6) Any such order as the court deems appropriate in the circumstances.

## **2.0 Affidavit Evidence**

**2.1** According to the evidence presented before me in the affidavits of Henry Mnkhwakwata and Levison Longwe in support of the summons and the affidavits of Baddin Banda, Vutani Kondowe and Japhet Kamanga In opposition, the issue here is not only about the Plaintiff's appointment and removal but rather who at custom is entitled to inherit the chieftainship of Mankhambira. The dispute started when the Plaintiff was stopped from performing the functions of Acting T/A Mankhambira by the Defendants. The Plaintiff told the Court he acted from 2007 to 10 September 2013.

**2.2** According to the letter from the District Commissioner Nkhatabay office, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had written the District Commissioner's office removing the Plaintiff from office, a thing District Commissioner NkhataBay had no objection to. According to the letter it was the 1<sup>st</sup> and 2<sup>nd</sup> Defendant that had recommended the Plaintiff to be Acting T/A and therefore had power to remove him.

**2.3** The District Commissioner's office instructed the Plaintiff to cease performing the functions of Acting T/A Mankhambira and he was ordered to submit any government properties in his possession to the 1<sup>st</sup> Defendant by 11 September 2013.

**2.4** In opposition, it is alleged by Mr. Baddin Banda that there are three royal families from the Mankhambira chieftainship namely Chakwanika, Chibwana and Chigowo royal family. That according to tradition the heir to the throne is always a nephew of the deceased chief and not his son. In this matter it is alleged the Plaintiff is a son who was not entitled to ascend to the throne.

**2.5** Mr. Banda further told the Court that out of the three royal families some families have ruled more than others citing the Chakwanika as having only ruled once. He stated that it was unfair and there was need to balance the times each family ruled. Bitter disputes arose as to who was to be crowned

chief and this prompted the Late President Dr. Bingu Mutharika to institute a commission of inquiry comprised of Chief Mwaulambia, Chief Karonga, Chief M'mbelwa and Chief M'bwana to investigate and report back as to who was the right heir to the throne.

### **3.0 The Commissions of Inquiry**

**3.1** Two commissions of inquiry were constituted by late President Bingu Mutharika. The first was comprised of Chief Mwaulambia, Chief Karonga, Chief M'belwa and Chief M'bwana. In its report dated 16 February 2012 the commission stated the rotation of heirs to the throne should continue and that at that point in time it was the turn of Chakwanika family to rule followed by the Chibwana and then Chigowo.

**3.2** In response District Commissioner Nkhata Bay received a letter dated 9 March 2012 where the name of Baddin Banda was submitted by the Chakwanika royal family as the rightful heir to the throne.

**3.3** This followed a request from the Secretary for Local Government dated 20 February 2012 asking the royal family of Chakwanika to submit a name. To the surprise of everyone the President appointed a second commission of inquiry. No reasons were given as to why the first commission's report was dismissed. This displayed a serious lack of judgment and focus on the part of the appointing authority.

**3.4** The second commission of inquiry comprised of Chief Mpherembe, Chief Mwirang'ombe and Chief Katumbi. According to its report dated 4 April 2012 the commission found that the Mankhambira chieftanship was not rotational and that the three royal families all sat together and chose an heir to the throne. The commission further found that Mr. Vutani Kondowe was chosen the heir but the Chanika family withdrew their support. The second commission based its decision on the strength of section 4(2) (b) Chiefs Act

and recommended the name of Vutani Kondowe who was popular and not Baddin Banda.

**3.5** Vutani Kondowe similarly in his affidavit disputed the Plaintiff's assertions as well as the statements made by Baddin Banda. He disputed that the Mankhambira royal family was rotational as claimed by Baddin Banda and the first commission of inquiry.

#### **4.0 The Issues**

There are two main issues for determination before me.

- 1) Whether the Plaintiff is the rightful heir to the throne.
- 2) Whether the Mankhambira chieftainship is rotational or not.

#### **5.0 The Law**

##### **5.1 Burden and Standard of Proof**

**5.1.1** The burden and standard of proof in civil matters is this: He/she who alleges must prove and the standard required by the civil law is on a balance of probabilities. The principle is that he who invokes the aid of the law should be the first to prove his case as in the nature of things, a negative is more difficult to establish than a positive. Where at the end of the trial the probabilities are evenly balanced, then the party bearing the burden of proof has failed to discharge his duty. Whichever story is more probable than NOT must carry the day.

##### **5.2 Section 3(1) Chiefs Act**

*There are hereby established the several offices of Paramount Chief, Senior Chief, Chief and Sub-Chief set out in the second, third and fourth columns respectively of the Schedule.*

##### **5.3 Section 4(1) (2) Chiefs Act**

*(1) The President may be 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; and*
- c) In the case of the office of Senior Chief, is a chief and is recognized by all chiefs in his district as being entitled under customary law prevailing in that district to be appointed Senior Chief.*

*(3) The appointment of any person to the office of Senior Chief under subsection (1) shall not affect the status of the substantive office of Chief or in any way confer on that person additional jurisdiction to the jurisdiction which he had before being appointed Senior Chief.*

#### **5.4 Section 11(1) (2) Chiefs Act**

*(1) The President may by writing under his hand remove any person from the office of Paramount Chief, Senior Chief, Chief or Sub-Chief if after due inquiry he is satisfied that-*

- a) The person has ceased to be entitled under customary law to hold such office;*
- b) The person has lost the confidence of the majority of the people residing in his area; or*
- c) Such removal is necessary in the interests of peace, order and good government.*

*(2) Where the President deems it expedient to cause inquiry to be made into the question of the removal of any person from the*

*office of paramount Chief, Senior Chief, Chief or Sub-Chief, he may by writing under his hand suspend such person from the performance of the functions of his office.*

#### **5.5 Section 12 Chiefs Act**

*The President may appoint persons to inquire into any question relating to the appointment to or removal from the office of Paramount Chief, Senior Chief, Chief or Sub-Chief of any person and to report and make recommendations thereon to the President.*

#### **6.0 The Finding**

**6.1** The State President late Dr. Bingu Mutharika appointed two commissions of inquiry. Why he appointed two commissions remains a mystery. The first commission found that the Mankhambira chieftainship is on a rotational basis among the three royal families namely Chibwana, Chakwanika and Chigowo. That at the time the inquiry took place the commission found that the Chakwanika royal family had only ruled once and it was their time to submit a name. The name of Baddin Banda was submitted.

**6.2** There was another inquiry which was set up. No reasons were given as to why the first commission's recommendations were not taken on board. The second commission of inquiry had totally different findings. They found that there was no rotation among the families and that all the families would meet and choose one person regardless of which family/clan he came from.

**6.3** This meant that one family was entitled to rule as many times as long as the candidate enjoyed the support of the majority of the people. The second commission recommended Vutani Kondowe as chief. This added to the confusion which even confused the President and in the end no one was appointed up to this very day.

**6.4** First and far most I find that the President was within the ambit of the law when he appointed the first commission of inquiry.

#### Section 12 Chiefs Act

*The President may appoint persons to inquire into any question relating to the appointment to or removal from the office of Paramount Chief, Senior Chief, Chief or Sub-Chief of any person and to report and make recommendations thereon to the President.*

**6.5** I have carefully searched the evidence and the law presented before me. In my considered opinion I'm of the view that there was no justification for the President to disregard the findings of the first commission of inquiry. I have read the report of the first commission and I find it more probable than not. In my considered view, the first commission which was constituted by the President made the correct findings. I equally find that the chieftainship in issue is rotational among the listed royal families and that each royal family must enjoy the chair in equal times to achieve fairness. The fact remains. It is the family whose turn it is to submit a name of a successor to the throne.

**6.6** In that regard the Plaintiff in this matter cannot be an heir as the last chief was his father. He is not a nephew as per custom. This matter was well settled by my elder brother Mzikamanda J as he was then called in Group Village Headman Kakhongwe Mankhambira vs. Stanley Chibwana Civil cause No. 132 of 19999 (unreported)

**6.7** If this was allowed, his family alone will benefit to the disadvantage of the other royal families. I'm in total agreement that since the Chakwanika family only ruled once, it is their time to rule and the name that was



proposed of Baddin Banda should be submitted to the President for formal appointment. This is the custom and practice of the Mankhambira throne and I so find.

**6.8** In the mean time and within 14 days, the District Commissioner NkhataBay shall necessitate his interim appointment as Acting Chief pending presidential appointment. The second commission of inquiry was without legal basis as no reasons were given as to why the first inquiry was dismissed. The findings of the second commission of inquiry were therefore *null and void ab initio*.

## **7.0 Conclusion**

**7.1** The originating summons must fail. The Plaintiff has failed to show evidence to the satisfaction of the Court on a scale of probabilities that he was entitled as heir to the throne. He was appointed Acting Chief because he had no interest in the chieftaincy. He was and he is not a candidate.

**7.2** As an uninterested and independent person he was the best person to be appointed Acting Chief in a caretaker position until an heir was indentified. He was not appointed by the President and he could not be removed by the President. His appointment was a mere convenience and on an adhoc basis.

**7.3** He cannot be a chief after his father as this is not the custom in the area. I therefore refuse to grant the reliefs sought in the originating summons. I dismiss the summons with costs. The rightful heir to the throne of Chief Mankhambira is Baddin Banda from the Chakwanika royal family and after him it will be the Chibwana then Chigowo.

**I so order.**

**Pronounced** in Open Court at Mzuzu in the Republic on 25 January, 2016.

Dingiswayo Madise  
**JUDGE**