IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL APPEAL NUMBER 30 OF 2015

BETWEEN:

SENIOR GROUP VILLAGE HEADMAN KAWALIKA.....APPELLANT

-AND-

CHIKADAKUDZA GUMA MTALIMANJA..... RESPONDENT

Coram: Hon Justice Dr. C.J.Kachale, *Judge*
Kubwalo*, of Counsel for the **Appellant*
***Zapinga*, of Counsel for the Respondent**
***Jere (Mrs.)*, Court Reporter**
***Choso (Mrs.)*, Court Clerk and Interpreter**

JUDGMENT

Introduction

On 18th March 2015 the First Grade Magistrate court at Chilobwe rendered its decision in a civil action by which Senior Group Village Headman Kawalika was purportedly deposed from his throne. The action had been commenced in that subordinate court by Chikadakupadza Guma Mtalimanja. In these proceedings Senior GVH Kawalika has appealed against that decision on two grounds: firstly that the First Grade Magistrate court lacked jurisdiction in terms of section 39 (2) (f) of the Courts Act to handle a chieftaincy dispute; secondly that the lower court erred in law by failing to draw negative inferences against the complainant who omitted to call crucial witnesses to support his claim.

Preliminary determination of the threshold question of jurisdiction

Without delving into a discussion of the substantive aspects of the present appeal, it would be more prudent to address the threshold question about jurisdiction which has been raised as the first ground appeal. In that vein it is

quite pertinent to observe that the terms of section 39(2) (f) of the Courts Act are quite unequivocal: it provides that no subordinate court has any power to try any civil case involving the title to any duty, right or office. In this instance the substance of the dispute before the subordinate court was whether the appellant was entitled to the office of Senior Group Village Headman i.e. the question touched upon the right of the appellant to a traditional office recognized under the Chiefs Act (cap 22:03).

Quite clearly therefore, it was not competent for the magistrate court to entertain and adjudicate over that dispute. As was decided in **Kachingwe-v-Magalasi**, Civil Appeal No. 23B of 2009 (unreported) under section 39(2) (f) courts of magistrates lack the jurisdiction to decide questions of chieftaincy (at any level). The result of that conclusion therefore means that the entire proceedings were a complete nullity; as has been emphasized elsewhere, we preside over courts of law. The extent of our authority to hear cases and the nature of remedies which we may lawfully impose is defined by the law. In this instance the magistrate of such a senior grade must be assumed to be familiar with matters of jurisdiction; in purporting to resolve matters which lie beyond his authorized limits he has acted erroneously and such error cannot be saved by this appeal.

This court therefore concludes that the issue of jurisdiction must be resolved in favour of the appellant. There are sound reasons why lawmakers prescribe jurisdictional limits; sometimes the reason has to do with the technical competencies of the presiding officers. Some legal issues and factual disputes may be so complex as to require a level of legal training that is commensurate with such complexity to ensure that judicial outcomes are well argued and acceptable to the disputants. Other times policy considerations may drive the question of jurisdiction: whatever the rationale, however, once the law has prescribed the limits our courts must be the first to uphold those boundaries in order to reflect fidelity to our noble oath of office, which includes our commitment to determine matters based only on prescriptions of the law and the evidence. Where the law prescribes limits as to our mandate, it is incumbent on us as judicial officers to respect the same; that reinforces the foundational tenet of the rule of law i.e. even the courts are not constituted and certainly do not

operate outside the specific confines of the law. In that regard, we must lead by example.

In so far as the substantive issues are concerned it is useful to observe that in a number of decisions this court has observed that according to the relevant provisions of the Chiefs Act appointment of Village Headmen (including elevation to the office of Sub-Traditional Authority) is different from the appointment of a Chief (Traditional Authority). Thus in **Paul Mtandika-v-Benjamin Tenthani and others**, Civil Cause No. 733 of 2014 (unreported) it was highlighted that section 5 of cap 22:03 required the recommendation of the Traditional Authority before the President could appoint anyone as Sub-Chief. In addition it was observed that any such Presidential appointment had to comply with the terms of section 89 of the Constitution in that it had to be executed in writing with the appropriate seal.

Likewise in another case from the Mzuzu High Court Registry this court ruled specifically that under section 9 of the Chiefs Act the mandate to appoint village headman vests in Traditional Authorities; further that in exercising that mandate they are not necessarily governed by the same considerations as obtain when the President has to appoint a Chief under section 4(2) (a) and (b), see **Khumbira Phiri (GVH Kandani)-v-Moses Phiri (VH Andrea and Traditional Authority Chindi**, Civil Cause No. 5 of 2014 (unreported). These decisions would seem to agree with such precedents as **Emily Wanjani-v-Agnes Nakoma and Tradition Authority Juma**, Civil Cause No. 2369 of 2004 (unreported) cited by the respondent in argument.

In the opinion of this court these decisions make it abundantly clear that Traditional Authorities have been given power under the law to appoint as many village headmen as they deem necessary to help them perform their functions. In the case of a dispute, therefore, the primary question becomes whether any person claiming to act as a village headman (or any grade of that office) assumes that role with the blessing of the appropriate appointing authority i.e. the relevant Traditional Authority for the area.

Conclusion

Before closing it is imperative for this court to address an issue emanating from the argument of counsel for the respondent; he has requested the court to take cognizance of the subsisting dispute and somehow render orders that can help manage the same until proper adjudication of the case. The short response to that must be as follows: the law does not permit courts to offer gratuitous

opinions or decisions; unless and until the court has been properly seized of a matter presented in one of the recognized modes of commencing an action, it would be wholly irregular to begin to issue orders or directions to any purported disputants. Therefore, that invitation by counsel for the respondent is respectfully declined; let him lodge the necessary court process if he needs the intervention of this office into the alleged dispute.

As regards the present proceedings this court upholds the appeal; the decision of the magistrate dated 18th March 2015 is accordingly set aside for lacking legal mandate. Any orders premised on that unlawful decision are automatically vacated and quashed for being unfounded.

The appellant is awarded costs of the appeal.

Made in open court this 10th day of March 2016 at Lilongwe.

***C.J.Kachale*, PhD**

JUDGE