



**JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY**

CIVIL CAUSE NO. 211 OF 2018

BETWEEN

MARGRET DOUGLAS (Village Headperson Namakango) CLAIMANT

AND

ALI SALIM 1ST DEFENDANT

SEWELA MATAKA 2ND DEFENDANT

HERBET KASITOMU 3RD DEFENDANT

LABANA MALINGALILE 4TH DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Chimbe, of Counsel, for the Claimant

Mr. Master, of Counsel, for the Defendants

Mrs. Doreen Nkangala, Court Clerk

RULING

Kenyatta Nyirenda, J.

This is my ruling on an inter-partes application by the Claimant for an order of an interlocutory injunction.

The background to the application is as follows. On 25th July 2018, the Claimant commenced an action by a writ of summons against the Defendants. Almost contemporaneously with the issuance of the writ of summons, the Claimant filed an ex-parte application for an order of interlocutory injunction restraining the Defendants, their agents or anyone from interfering in the administration of Village

Namakango, until the determination of the matter herein or until a further order of this Court.

The ex-parte application was supported by a sworn statement by the Claimant and it states as follows:

"BACKGROUND INFORMATION

3. *The first Chief Namakango was Alikango who was my grandfather. He originally from a place called Nsandaka in the District of Mangochi.*
4. *The Alikango and his family move from Nsandaka to a place called Namakango where we are currently residing.*
5. *At Nsandaka, Alikango was village headman Maoni, upon moving to Namakango he became village headman Namakango.*
6. *After they had settled at Namakango for several years, Alikango Kumkausya was abducted by unknown assailants and moved her to Ntcheu District.*
7. *Later, Alikango died and per customs, the nephew or niece of the deceased chief ascends to the throne. Tsoka Lankhuku a son of Kamkusya was installed as Village Headman Namakango.*
8. *Tsoka Lankhuku ruled for several years and eventually died. After his death, it was now a turn of Abiti Maziwire family to rule and Cup Can was appointed to ascend to the throne of Village Headman Namakango.*
9. *Within a short period, Cup Can died and Akusigala Abiti Sumaili, the sister of late Namakango refused that any of her grandsons be installed as Village Headman because she believed at that time the Chieftaincy position was causing death in her clan members.*
10. *After the death of Akusigala Abiti Sumaili's, the Akusigala Abiti Sumaili Uncle Bonomali was installed by elders as a care-taker Chief of Namakango Village.*
11. *Upon the death of Bonomali, Teni Suwedi ascended to the throne of Namakango Chieftaincy.*
12. *After Teni Suwedi had ruled for 2 years, he was diagnosed with cancer and he became chronically ill. Eventually, the sickness became serious and the he was incapacitated.*
13. *The elders of the village and clan members thought it necessary that another person be installed as village headman Namakango. It was then, with the consent of the sick Teni Suwedi I was installed to ascend to the throne of Namakango Chieftaincy.*

14. *The elders went to inform Senior Chief Mponda about what had transpired before I was installed as Village Headwoman Namakango.*
15. *When Senior Chief Mponda got the news, he sent his village men namely: Group Village Headman Issa Mponda, Group Village Headman Chisambo Nnopa and Village Headman Nsanyira to go to Teni Suwedi to confirm whether indeed it was his intention to handover the Chieftaincy to me.*
16. *Teni Suwedi confirmed to the village headmen who had been sent by Senior Chief Mponda his intentions of handing over his chieftaincy to me. Senior Chief accepted the handover. In 2015 I was installed as Village Headwoman Namakango.*
17. *Teni Suwedi died in May 2018. After his death, the defendants who were his assistants are now interfering in the administration of the chieftaincy by informing parallel administration structures in the village.*
18. *Additionally, the defendants are advising people around Namakango village to disobey my orders as village headwoman Namakango.*
19. *Further, the defendants are conspiring to dethrone me as village headwoman so that one of them be installed as Village Headman Namakango.*
20. *The matter has been reported to the Senior Chief Mponda and Mangochi District Commissioner's office who have called them on numerous occasions and advised them to stop but nothing changed.*

THERE IS A SERIOUS QUESTION TO BE TRIED

21. *I refer to paragraph 14, 16 and 17 of this sworn statement and state that I am the rightful person to the throne of Namakango chieftaincy in accordance with Section 9 of the Chiefs Act and as per Lomwe custom. Therefore my clan rights are at stake.*
22. *As per the Chiefs Act the Defendant had no any dethrone or interfere with the administration of Namakango chieftaincy. This is a case where custom which has been followed since time immemorial is at stake.*
23. *I refer to paragraph 18, 19 and 20 of this sworn statement and state that I have an arguable case of merits. Therefore on this matter, there is a serious question that this court ought to address.*

NO ALTERNATIVE REMEDY

24. *I have no other alternative remedy against the defendants as the defendant have disobeyed Senior Chief Mponda and Mangochi District Commissioners' advice.*
25. *I refer to paragraph 25 of this sworn statement and state that following that there is no authority that help me on this matter other than this court.*
26. *My right to exercise customary rights has been unlawfully deprived. No any other remedy can be adequate other than restraining the defendants from interfering with the administration of Namakango chieftaincy.*

DISCRETION OF THE COURT

27. *The action of the defendants' amount to arbitrary exercise of his powers. Am failing to exercise my powers as village headman due to the defendant action. Therefore this court must exercise it discretion in my favour."*

The ex-parte application came before me and I ordered an inter-partes hearing which was set for 3rd August 2018.

The Defendants are opposed to the application. They rely on a joint sworn statement by the 1st and 3rd Defendants [Hereinafter referred to as the "Defendants' sworn statement"]. The Defendants' sworn statement is in the following terms:

- "3. **THAT** *we have read the Sworn Statement of Margret Douglas and state that it constitutes in large measures a distortion of facts.*
4. **THAT** *the correct version respecting the within Chieftaincy and the issues herein is as hereunder.*
5. **THAT** *the founders of the village herein migrated from Mozambique sometime back.*
6. **THAT** *the group was led by Namakango, Mbelewele and Ndogolo. Namakango was an uncle to Mbelewele and Ndogolo who were brothers, with the former as the elder.*
7. **THAT** *the group at the time of migration was in the accompaniment of Kumkausya, who was the sister to the said two brothers and Che Mkatenda and Che Gone, who were children of Kumkausya.*
8. **THAT** *whilst on the way to the place presently known as Namakango Village, Kumkausya was abducted by unknown assailants and it was later discovered that she had been taken to Ntcheu District.*

9. **THAT** *when the group reached at a place then called Mbombwe (now Kamwana) Mbelewele died.*
10. **THAT** *the group continued with its journey until it finally settled at the place presently known as Namakango Village. However, Namakango did not settle as he proceeded to Nswanthaka where he died.*
11. **THAT** *the group that settled at Namakango led by Ndogolo created the village herein and called it Namakango in respect of his uncle Namakango.*
12. **THAT** *the first Village Headman for Namakango Village was Ndogolo.*
13. **THAT** *the said first Village Headman passed on around 1949.*
14. **THAT** *after the death of Ndogolo his nephew Tsoka La Nkhuku (son to Kunkausya) was installed Village Headman for the Village herein but he came from Ntcheu.*
15. **THAT** *the said Tsoka La Nkhuku was upon his death succeeded by his young brother Kapukeni (Cup Can) who just as Tsoka La Nkhuku had come from Ntcheu.*
16. **THAT** *after the demise of Cup Can (Kapukeni), several people discharged chieftaincy duties in the village herein on Caretaker basis, the last one whereof was M'dambo.*
17. **THAT** *the royal family for the village herein comprises of three families namely the Namakango family, Mbelewele family and Ndogolo family.*
18. **THAT** *in terms of the custom of the village herein, the Chieftaincy for the village herein rotates within the said three families and a chief is succeeded by his nephew from the family entitled to produce a person to ascend to the Chieftaincy herein.*
19. **THAT** *during the period of M'dambo, Traditional Authority Mponda directed that a Village Headman be installed in the village to replace the late Cup Can (Kapukeni).*
20. **THAT** *the said M'dambo consequently convened a royal family meeting comprising members of the three families contained in paragraph 17 hereof.*

21. ***THAT** the meeting appointed one Bonomali from the Mbelewele family to ascend to the chieftaincy herein.*
22. ***THAT** the said Bonomali was subsequently installed as Village Headman for the village herein and served in that capacity until his death about ten years later.*
23. ***THAT** after the death of Bonomali, the royal family convened a meeting which was attended by members of the within three families.*
24. ***THAT** the said meeting appointed Teni Suwedi who was from the Namakango Family to ascend to the Chieftaincy herein.*
25. ***THAT** few years after ascending to the Chieftaincy herein the said Teni Suwedi became constantly very ill.*
26. ***THAT** the said Teni Suwedi had problems in properly discharging his duties as Village Headman for the village herein due to his illness, hence a need developed for an appointment of persons to be assisting him. As such he appointed the 1st Defendant, Sayiko Ali and the Claimant respectively.*
27. ***THAT** the said Teni Suwedi passed on around April, 2018.*
28. ***THAT** before his burial a meeting was convened by Traditional Authority Mponda through Group Village Head Issa Mponda and was attended by all the three families as well as Group Village Head Chisambannopa and Village Heads Nsanyila and Chisambannopa 2.*
29. *THAT during the meeting the three families herein agreed to do the routine of appointing a Successor before the burial but the Group Village Head Issa Mponda advised the members present that appointment and installation of the Village Headman to succeed the deceased Village Headman would in terms of the directive of Senior Chief Mponda take place after 40 days.*
30. ***THAT** before the lapse of the 40 days herein, the Claimant together with other members of Namakango family started subjecting harassment on the families of Mbelewele and Ndogolo with all kinds of insults.*
31. ***THAT** in view of the matters stated in paragraph 30 hereof members of the victimized families herein complained before Traditional Authority Mponda who having received the complaint wrote a letter to Group Village Head Chisambannopa advising him to intervene in calming the situation. There is now shown and produced to me a copy of the letter marked "AH 1"*

32. **THAT** after the lapse of the 40 days period, Senior Chief Mponda invited all members of the royal family to a meeting on 18th June, 2018 respecting the succession of the chieftaincy herein, but while the members of the Mbelewele and Ndogolo families went to attend the meeting, the Namakango family to which the Claimant belongs and the Claimant herself did not attend the meeting consequently the Senior Chief adjourned the same to 28th June, 2018.
33. **THAT** on 28th June, 2018 all parties were present but the T/A was committed with the result that the meeting was again adjourned to 6th July, 2018.
34. **THAT** on the said 6th July, 2018 both parties were present but the T/A referred the matter to Group Village Head Chisambannopa.
35. **THAT** Group Village Head Chisambannopa set the 9th day of July, 2018 as the date of the meeting herein and all parties were invited. There is now shown and produced to us a copy of an invitation letter marked “AH 1”.
36. **THAT** the Claimant and other members of the Namakango family did not attend the hearing on this date with the result that the hearing was adjourned to 9th and 12th July, 2018 respectively but the Claimant and some members of his family always refused to attend the same.
37. **THAT** on 13th July, 2018, the Claimant and members of Namakango families showered insults on our families with the result that we again complained before the T/A who upon receipt of the complaint called all parties to a meeting slated for 19th July, 2018 only to hear that the Claimant has commenced this action.
38. **THAT** the foregoing clearly entails that the Claimant greatly suppressed material facts when he made the application for injunction herein. Most of her assertions are nothing but lies.

ARE THERE SERIOUS TRIABLE ISSUES IN THIS MATTER

39. **THAT** we verily believe that there are no serious issues in this matter as the custom governing Namakango Village is vivid that the chieftaincy ought to rotate within three families and that this is the turn of Ndogolo family. The Claimant is thus ineligible and is deliberately evading hearings organized by the custodian of custom in the area to wit, the T/A and Group Village Head Chisambannopa as she knows that she cannot succeed under custom.
40. **THAT** in terms of the custom prevalent in the village herein the successor to the village herein had to come from the Ndogolo family and the Claimant is not eligible to ascend to the chieftaincy herein.

41. ***THAT*** we thus verily believe that the Claimant's within application lacks merit and that the same should be dismissed with costs. ”

It is trite that in an application for an interlocutory injunction, all material facts must be laid before the Court and nothing may be suppressed. The court requires *uberrima fides* on the part of the applicant: see the judgment of Lord Cozens-Hardy, M.R. in **R v. The General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington, ex parte Princess Edmond de Polignac [1917] 1 KB 486**.

It has to be borne in mind that material facts are facts which if known to the court would have led the court to arrive at a conclusion or order different from the one it arrived at. Therefore, for the conclusion to be reached that the claimant suppressed or misrepresented facts, the alleged suppressed facts must be facts which if it were laid before the court the ex-parte injunction could not have been granted: see **Gloria Mchungula Amani v. Stanbic Bank Limited and Another, HC/PR Civil Cause No. 558 of 2007(unreported)**.

In the present case, there were some material facts which were either not disclosed to the Court or misrepresented. Two examples will suffice. The first example has to do with the rotation of the Namakango chieftainship amongst three families, that is, Namakango, Mbelewele and Ndogolo. The unchallenged facts are that (a) the Namakango family, to which the Claimant belongs, was the last to be enthroned, (b) upon the demise of the last chief, the chieftaincy ought to rotate to the Ndogolo family, and (c) thereafter the chieftaincy shall rotate to the Mbelewele family to which the 3rd Defendant belong.

The second example relates to the assertion by the Claimant in her sworn statement that she is the reigning Village Head Namakango. This is a palpable lie. The unchallenged evidence by the Defendants is such that a Village Head is yet to be appointed.

The Claimant offered no explanation for non-disclosure of these important material facts. In the circumstances, I do not see the consideration of the other grounds argued before me as being in anyway necessary any longer. I, accordingly, rest my decision on the sole ground that the Claimant suppressed material facts.

I, therefore, dismiss the application for an interlocutory injunction. Costs will be for the Defendants. It is so ordered.

Pronounced in Chambers this 17th September 2018 at Blantyre in the Republic of Malawi.

A handwritten signature in blue ink, appearing to read 'Ken', enclosed within a large, loopy oval shape.

Kenyatta Nyirenda
JUDGE