

IN THE COURT OF APPEAL OF ZAMBIA CAZ/08/35/2018
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

OGGIE MUYUNI MUDENDA

APPLICANT

AND

**ANDERSON M. JANZA
WELD NGANDU
OBERT CHEELO
SHAIN MWEEMBA
PATSON HAMUSALE
MOSCOW SIMUPANDE
ELINA SIMWEEMBA
FEMMY CHAAMBWA
NCHIMUNYA LYCENT
KAYAAMA STEVEN
MUZYAMBA EUNICE
CHOONGO VYNESS
MUNTANGA SIAMUZWE
MUZYAMBA VERONICA
CHAAMBWA JACKSON
KAJILA KWENDA KENNY
HAJONGOLA CHRISTOPHER**



**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT
7TH RESPONDENT
8TH RESPONDENT
9TH RESPONDENT
10TH RESPONDENT
11TH RESPONDENT
12TH RESPONDENT
13TH RESPONDENT
14TH RESPONDENT
15TH RESPONDENT
16TH RESPONDENT
17TH RESPONDENT**

Coram: Makungu, Chishimba and Ngulube JJA
On the 24th day of January, 2023 and 9th day of May, 2023.

For the applicant: In Person

*For the 1st and 7th respondent: Mr. B. Ngalasa and Mr. Lawrence Chanda both
of NCO Advocates*

For the 2nd, 3rd, 4th, 5th, 6th, 8th, 9th, 15th, 16th and 17th respondents: In Person

JUDGMENT

Makungu, JA delivered the Judgment of the Court.

Case referred to:

1. *Attorney General v. Times Newspaper Limited* (1973) 3 ALL ER 54
2. *Lipimile and Another v. Mpulungu Harbour Management Limited* SCZ No. 22 of 2008

3. *Savenda Management Services Limited v. Stanbic Bank Zambia Limited & Gregory Chifire* SCZ Selected Judgment No. 47 of 2018
4. *Republic v. Liberty Press Limited & Others* (1968) GLR 123
5. *Oggie Muyuni Mudenda v. Dickson Muyeeku Kamaala* CAZ Appeal no. 006/2019

Legislation Referred to:

1. *The Chiefs Act, Cap 287 of the Laws of Zambia*
2. *The Rules of the Supreme Court of England, 1965 (White Book) 1999 Edition.*

1.0 INTRODUCTION

1.1 This is an application for committal of the respondents to prison for contempt of court, pursuant to **Order 52 Rule 2 of the Rules of the Supreme Court (RSC), 1999 Edition** as read together with **section (12) (a) (b) (c) of the Chief's Act, cap 287 of the Laws of Zambia**. An ex-parte order for leave to commence contempt proceedings was granted to the applicant on 19th August, 2022. It is alleged as follows;

1. That the respondents have continued to disobey this court's decision that the applicant herein is the rightful heir to the throne of Chief Hamaundu of Pemba District by doing the activities mentioned in the affidavit verifying the facts.

2. That, just after the announcement of the Presidential and Parliamentary General Elections in 2021, the respondents went to the local radio station and

announced false information that there will be an inauguration of the new Chief Hamaundu Royal Establishment. (The recorded announcement is on the phone of the applicant) and can be availed to the court upon request of this court.

2.0 THE APPLICANT'S EVIDENCE

2.1 The application is supported by an affidavit sworn by Oggie Muyuni Mudenda, Chief Hamaundu of the Hamaundu Royal Establishment. He deposed that on 18th November, 2019, this court delivered a judgment declaring him as the rightful heir to the throne of Chief Hamaundu of Pemba District.

2.2 That the respondents have decided to go against the said decision by conducting dark corner meetings. That on 10th November, 2020 the 2nd respondent announced at a certain funeral that the chieftdom has no chief, hence there was need to wait for a Chief's representative. On 17th February, 2021, the 3rd respondent repeated the same words at another funeral within the chieftdom and the 3rd respondent has been publicly announcing that they have managed to select Anderson M. Janza, the 1st respondent as Chief, and the said 1st respondent has directed his secretary to write and

circulate invitation letters for his installation. This information was even announced on the local radio station known as Radio Chikuni.

2.3 That in April, 2020 Albert Bubala circulated an invitation letter to the installation of the 1st respondent as new chief, which is totally illegal. The 3rd respondent wrote a letter dated 10th July, 2020 titled "conflict resolution meeting" inviting the Provincial Minister for a meeting.

2.4 That the actions of the respondents have brought division and confusion in the Hamaundu Chieftdom. That the applicant has since informed the police of the respondents' misdeeds but the police have not made a move to stop the respondents' actions.

2.5 He went on to state that the respondents have reached an extent of writing letters to the Provincial Chairperson of the House of Chiefs. The letter is authored by the 17th respondent Hajongola Christopher suggesting that the applicant's ascension to the throne was politically influenced by the previous regime and that the applicant caused the death of Chief Dickson Muyeeeka Kamaala. That these allegations are serious and need immediate intervention by the court. The

letters are dated 1st April, 2022 and 8th April, 2022 respectively.

2.6 That in response to the above-mentioned letters, the applicant wrote two letters addressed to the 3rd and 8th respondents respectively and another one addressed to Edson Nachimwenda the Provincial Chiefs and Traditional Affairs Officer, informing them about the consequences of their actions.

2.7 That recently the respondents have been communicating with the current Permanent Secretary, provincial administration of Southern Province, who seems to have been advising them wrongly. This is evidenced by the letter dated 14th July, 2022 addressed to said Permanent Secretary authored by the 6th respondent and the minutes of the meeting held by the respondents dated 8th July, 2022.

2.8 That as a result of the respondents' actions the peace in the chieftdom is being threatened.

2.9 The applicant filed skeleton arguments dated 10th August, 2022, in which he relied on **section 12 of the Chiefs Act** which provides for punishment for anyone who impersonates

a chief, conspires, undermines, obstructs or interferes with the lawful authority of a chief.

2.10 On the basis of this provision, it was submitted that this court is empowered to punish a party for contempt of court. This is premised on the duty of preventing any attempt to interfere with the administration of justice according to the case of **Attorney General v. Times Newspaper Limited**.¹

2.11 The applicant contends that the actions of the respondents amount to contempt of Court punishable through committal proceedings under **Order 52 Rule 2 of the Rules of the Supreme Court** as well as **section 166 of the Penal Code**. The case of **Lipimile and Another v. Mpulungu Harbour Management Limited**² was cited in support of the submission that disobedience to an order of the court is contemptuous.

2.12 During the hearing of the matter, the applicant repeated the contents of his affidavit, and further stated that after the last sitting of the Court, he reconciled with the 1st respondent Anderson M. Janza and his wife Elina Simweemba – the 7th respondent. The matter against the two was therefore withdrawn.

2.13 He further stated that Femmy Chambwa (8th respondent) and Kajila Kwenda Kenny (16th respondent) also apologised to him and he believes that they are not in the group of influencers.

2.14 Further that, Shain Mweemba (4th respondent) and Obert Cheelo (3rd respondent) also apologized to him but he did not forgive them because they kept repeating their acts of disrespect. The two were also signatories to exhibit 'OMM7' a letter dated 1st April, 2022 to the Provincial Chairperson.

2.15 He went on to state that the ring leaders who are influencing the people and destroying the peace are Patson Hamusale (5th respondent), Moscow Simupande (6th respondent), Hajongola Christopher (17th respondent) and Weld Ng'andu (2nd respondent).

2.17 Under cross examination by Weld Ng'andu (2nd respondent), the applicant stated that the 2nd respondent celebrated that the issue pertaining to the chieftdom should be resolved in court.

2.18 Under cross examination by Patson Hamusale (5th respondent), he stated that there was no contempt case which was resolved at Monze Subordinate Court. That the case at Monze Subordinate Court was about Weld Ng'andu

undermining lawful authority. He further stated that Patson the 5th respondent, is the ring leader of the group influencing the people to disregard this court's judgment.

2.19 Under cross examination by Moscow Simupande (6th respondent), he stated that the 6th respondent was also a ring leader of the group of influencers.

2.20 The 8th respondent, Femmy Chaambwa had no meaningful questions to ask concerning the matter at hand.

2.21 Under cross examination by Nchimunya Lycent, (9th respondent), the applicant stated that the 9th respondent was present in the meeting as evidenced by exhibit MM7, the minutes of the group meetings where his name appears as number 7 on page 2 and number 8 on page 4 of the list of names of the people who attended the meeting.

2.22 Under cross examination by Kajila Kwenda Kenny (16th respondent) the applicant stated that the 16th respondent attended the meeting, signed the exhibit **'MM7'** and even gave his National Registration Card (NRC) to the secretary Hajongola Christopher on 1st April, 2022.

2.23 When cross examined by the said Hajongola Christopher (17th respondent) the applicant stated that, the 17th respondent

was part of the group influencing people to rise against him. That even the damage done to his vehicle was as a result of his influence.

2.24 In re-examination, he stated that Weld Ng'andu, Patson Hamusale, Moscow Hamusale and Hanjongola Christopher are the ring leaders causing anarchy in the chiefdom.

2.25 The 3rd respondent (Cheelo Obert), 4th respondent (Shain Mweemba) and 15th respondent (Jackson Chaambwa) did not cross examine the applicant.

3.0 THE RESPONDENTS' EVIDENCE

3.1 The 3rd respondent Obert Cheelo, 4th respondent Shain Mweemba, the 9th respondent Lycent Nchimunya and the 15th respondent Jackson Chambwa, asked the applicant and the court for forgiveness for their wrongful actions.

3.2 The 2nd respondent, Weld Ng'andu testified that on 13th September, 2021 during the funeral of the late Chief Hamaundu he announced that they had not selected a chief in Hamaundu Chiefdom.

3.3 After that announcement, he was apprehended by the chief's retainers and taken to the chief's house where he was beaten

by the chief. The following day, he was taken into police custody where he spent some days before being released on police bond. He further stated that after the death of Dickson Kamala (Chief Hamaundu), they never sat down to select a new chief. That he did not know that the applicant had been appointed and inaugurated as Chief Hamaundu.

3.4 In cross examination, he admitted that he was close to his late uncle Dickson Kamala. He further conceded that he was aware that government officials took the instruments of power (flag and date stamp) from Dickson Kamala while he was alive and gave them to the applicant as the incumbent chief. He stated that he did not know about the judgment of the court declaring the applicant as Chief. That he was aware of the court case between the Badenda and Bakonko clan which the late Dickson told him he had won.

3.5 The 5th respondent Patson Hamusale, who is also the Chairman of the Mudenda clan, kept changing his statements; initially, he asked for forgiveness from the court and the Chief, stating that he would respect the applicant as the rightful chief. Later, he said he wanted to know how the applicant was chosen. He admitted having taken part of the meetings where they were plotting against the chief.

According to him, the confusion came about as a result of a letter from the house of chiefs asking them to select the next chief. That he did what he did because he did not know that a chief had already been selected.

3.6 In cross examination, he denied having convened meetings with the late Dickson Kamaala after the judgment of this court was pronounced. He conceded to having co-authored a letter with Weld Ng'andu to the effect that the applicant caused the death of Dickson Kamaala.

3.7 The 6th respondent Moscow Simupande, admitted that he was wrong for attending the meeting of 1st April, 2022. That he was aware of the judgment of this court declaring the applicant as chief and he asked for forgiveness from the chief and this Court.

3.8 In cross examination, he denied being aware of the court case or that the applicant had been declared as the rightful heir to the throne.

3.9 The 8th respondent Femmy Chaambwa, testified that she did not know that there was a judgment of this Court declaring the applicant as chief and that is why she does not consider him as chief.

3.10 In cross examination, she conceded that the judgment of this court was explained to her. She conceded that the gold medal, spear and bell, which are instruments of power for Chief Hamaundu have been hidden awaiting the selection of a new chief. However, she denied having hidden them. She conceded that she was aware that the applicant was inaugurated as Chief Hamaundu.

3.11 The 16th respondent Kajila Kwenda Kenny, denied committing any contemptuous actions against the applicant.

3.12 In cross examination he stated that he moved to Pemba on 9th October, 2022. When asked how his name and NRC were written in the exhibited minutes of the meeting of the respondents, he denied being part of the meeting and knowing the Secretary Mr. Hajongola (17th respondent) stating that, he met him for the first time in court. He admitted that Patson Hamusale was his uncle but he could not recall ever giving him his NRC.

3.13 In re-examination, he stated that he went to the meeting not to oppose the applicant but because duty called.

3.14 The 17th respondent Hajongola Christopher, asked for forgiveness from the Court and the chief for writing on issues

pertaining to the Badenda clan. He claimed that Anderson Moonga Janza is the one who requested him to be the secretary at their first meeting held on 1st April, 2022. That as secretary, he only took note of what they were saying; he did not say anything. That his intention was not to undermine the authority of the applicant.

3.15 With regard to the name Kenny Kajila Kwenda on exhibit ‘**OMM7**’, he stated that he was just given the names by the group led by Anderson Moonga Janza, whom he did not know personally. That he met him for the first time in court. He further stated that some people whose names appear on the list of attendees actually attended the meeting while others did not and they were only communicated to via phone and even their consent was obtained via phone.

3.16 He stated that among the people who attended the meeting were Femmy Chaambwa (8th respondent), Ellina Simweemba (who was the 7th respondent), Moscow Simupande (6th respondent), Anderson Janza (who was the 1st respondent), Weld Ngandu (2nd respondent) and Patson Hamusale (5th respondent).

3.17 In cross examination, he admitted that he was aware that there was a chief but he was working on Anderson Janza's (1st respondent) instructions.

4.0 OUR ANALYSIS AND DECISION

4.1 During the hearing of the matter, the applicant informed us that he had pardoned the 1st respondent Anderson M. Janza and his wife Elina Simweemba, the 7th respondent after a reconciliation was effected, and the applicant also abandoned the case against the 10th to 14th respondents. We therefore granted his application for dismissal of the case against the aforementioned respondents.

4.2 The power of the court to punish for contempt is inherent. In Zambia the power of the courts to punish for civil contempt is derived from **Order 52 of the Rules of the Supreme Court of England (White Book)**. Its main purpose has been aptly put in the explanatory note to **Order 52 under rule 1 sub-rule 2 of the White Book** thus:

"The term 'contempt of Court' is of ancient origin having been used in England certainly since the thirteenth century and probably earlier. It is based not on any exaggerated notion of the dignity of

individuals be they judges, witnesses or others but on the duty of preventing any attempt to interfere with the administration of justice."

4.3 In the case of **Savenda Management Services Limited v. Stanbic Bank (Z) Limited & Gregory Chifire**,³ the Supreme Court of Zambia endorsed the view taken by the Ghanaian Courts on the justification of this power in the case of **Republic v. Liberty Press Limited and others**,⁴ thus:

"The important position of the judiciary in any democratic set-up must be fully appreciated. Performing, as they are called upon to do, the sacred duty of holding the scales between the executive power of the State and the subject and protecting the fundamental liberties of the individual, the Courts must not only enjoy the respect and confidence of the people among whom they operate, but also must have the means to protect that respect and confidence in order to maintain their authority. For this reason any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere in any way with the course of justice

becomes an offence not only against the Court but against the entire community which the Courts serve."

4.4 In the case of **The Attorney General v. Times News Paper**,¹ Lord Diplock stated that:

"In any civilised society it is a function of government to maintain courts of law to which its citizens can have access for the impartial decision of disputes as to their legal rights and obligations towards one another individually and towards the state as representing society as a whole. The provision of such a system for the administration of justice by courts of law and the maintenance of public confidence in it are essential if citizens are to live together in peaceful association with one another. 'Contempt of court' is a generic term descriptive of conduct in relation to particular proceedings in a court of law which tends to undermine that system or to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of court may thus take many forms."

4.5 In the present case, the applicant's complaint is that the respondents have disregarded the judgment of this court dated 18th November, 2019 in the case of **Oggie Muyuni Mudenda v. Dickson Muyeeke Kamaala**⁵ which declared him as the rightful heir to the throne of Chief Hamaundu. The respondents, despite being aware of the said judgment have chosen to disrespect this Court's decision and have been conducting meetings with a view to dethroning him and to selecting a new Chief Hamaundu.

4.6 These actions are likely to cause an uprising against the incumbent chief and make the public lose confidence in the courts of law. Lord Diplock in the case of **The Attorney General v. Times News Paper**¹ discussed three requirements for the proper administration of justice. He stated that:

"The due administration of justice requires first that all citizens should have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; secondly, that they should be able to rely on obtaining in the courts the arbitrament of a tribunal which is free from bias against any party

and whose decision will be based on those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in courts of law; and thirdly that, once the dispute has been submitted to a court of law, they should be able to rely on there being no usurpation by any other person of the function of that court to decide it according to law. Conduct which is calculated to prejudice any of these three requirements or to undermine the public confidence that they will be observed is contempt of court....”

4.7 In our view, the respondents’ actions were calculated to prejudice the second and third requirements as outlined above and to undermine public confidence in the Zambian Judicial System.

4.8 The **Savenda Management Services Limited v. Stanbic Bank (Z) Limited & Gregory Chifire³** case guided that the burden of proof for contempt of court is proof beyond reasonable doubt that the alleged contemnor committed the act and that it was contemptuous. There must also be *mens rea* on the part of the contemnor. This is the case because the proceedings are quasi criminal in nature though civil.

4.9 Hence, before making a finding of contempt, the court needs to satisfy itself of these two elements.

4.10 **Section 12 of the Chiefs Act** which the applicant relied on creates a criminal offence for acts done against the office of the chief per se and is inapplicable to this civil matter of contempt of court.

4.11 The factual basis upon which the respondents have been cited for contempt are as follows; Exhibit '**OMM7**', which contains the minutes of the meeting held on 1st April, 2022 with the agenda to dethrone Chief Hamaundu. The minutes show the names of the respondents that attended the meeting and endorsed their signatures and National Registration Card numbers (NRC) on the said exhibit; Although some of the respondents denied having been present at the meeting, exhibit '**OMM7**' clearly shows their names, National Registration Card (NRC) numbers and their signatures, a sign that they were physically present at that meeting as there is no explanation of who might have forged their signatures.

4.12 There are letters such as exhibit '**OMM8**', written to the government officials and some traditional leaders informing them that the applicant is a self-imposed Chief and not a member of the Badenda Clan and that he should be removed.

4.13 We take note of the announcement made by the 2nd respondent Weld Ngandu at the funeral of the late Chief Dickson Kamaala and other gatherings that, there is no chief in Hamaundu Chiefdom. There were other announcements made by the respondents on radio to the effect that the applicant is a self-imposed Chief who should be removed.

4.14 There is on record a letter dated 14th April, 2020 authored by Albert Lubala inviting Paramount Chief Monze to go and install the 1st respondent as chief. We find and hold that all the above mentioned actions generally caused confusion in the chiefdom and undermined the authority of the applicant as the incumbent Chief Hamaundu.

4.15 We also find that the respondents who have keen interest in Chiefs' affairs committed these actions with the full knowledge that there was already a chief installed on the throne of Chief Hamaundu following a judgment of this Court. We do not accept the explanation by some of the respondents that they were not aware that the applicant is currently Chief Hamaundu because the agenda of their meetings and even their letters were aimed at dethroning Chief Hamaundu (the applicant). This in our view shows that they had the intention to commit contempt of court

4.16 Further, it is our position that, all these statements and actions attributed to the respondents were aimed at fueling discontent in the chieftdom and demeaning the Court. We therefore hold the remaining nine (9) respondents in contempt.

5.0 PENALTIES AGAINST THE CONTEMNORS

5.1 We have considered the migratory statements made before us by the contemnors. In considering the punishment to mete out to the contemnors, we are alive to the principle that if there is some likelihood that may influence the Court to refrain from inflicting any punishment, then the court has the discretion to show leniency on the contemnor.

5.2 In *casu*, we take note that Obert Cheelo the 3rd contemnor, Shain Mweemba the 4th contemnor, Nchimunya Lycent the 9th contemnor and Chaambwa Jackson the 15th contemnor were remorseful during trial and they have continued to show remorse. Therefore, we shall be lenient with them. Each one of them is fined K5000 payable within 7 days and in default 3 months imprisonment.

5.3 We further note that the 3rd and 4th respondents according to the applicant's evidence are bent on disrespecting this

Court's judgment as they apologized to the applicant before and he forgave them but they repeated their wrongful actions. We exercise our discretion to fine each of them K5,000 to be paid within 7 days and in default 3 months simple imprisonment.

5.4 The 5th respondent Patson Hamusale and 17th respondent Hajongola Christopher, despite being ring leaders, also showed remorse and asked for forgiveness during and after the proceedings. Since they are ring leaders, they cannot go scot-free. We therefore sentence both of them to a term of 3 months simple imprisonment forthwith. They shall be kept in near their homes.

5.3 Coming to the remaining four contemnors, we are guided by the **Savenda Management Services Limited v. Stanbic Bank (Z) Limited & Gregory Chifire**,³ case that the lack of remorse or repentance on the part of the contemnor displayed during the proceedings and the lack of an effort to retract the statement or purge the contempt are aggravating factors which call for a stiffer punishment or a custodial sentence.


5.4 We observed that the 2nd, 8th and 16th contemnors namely Weld N'gandu, Fenny Chaambwa and Kajila Kwenda Kenny were not at all remorseful during the trial. However, they

asked for forgiveness after they were held in contempt. We find the 2nd, 8th and 16th contemnors were ring leaders. We therefore sentence each one of them to three (3) months simple imprisonment commencing today. They shall serve their prison terms in the prisons near their residences.

4.6 As for the 6th respondent Moscow Simpande, we find that he has purged his contempt and we hereby discharge him.


.....
C.K. MAKUNGU
COURT OF APPEAL JUDGE


.....
F.M. CHISHIMBA
COURT OF APPEAL JUDGE


.....
P.C.M. NGULUBE
COURT OF APPEAL JUDGE