

**IN THE HIGH COURT FOR ZAMBIA
AT THE NDOLA DISTRICT REGISTRY
(CIVIL JURISDICTION)**

2012/HN/235

BETWEEN:

ABRAHAM MUWOWO ALIAS TEMWANANI

1ST PLAINTIFF

**WINSTON MUWOWO (Suing as in his capacity
PLAINTIFF
as Chairman of the Uyombe Royal
Establishment Committee)**

2ND

AND

**TED CHISAVYA MUWOWO ALIAS
CHIEF DANGOLIPYA MUYOMBE**

DEFENDANT

**BEFORE THE HONOURABLE MRS. JUSTICE P. C. M. NGULUBE IN OPEN
COURT.**

For the Plaintiff: Mr. Derrick Mulenga, Messrs Derrick Mulenga and
Company

For the Defendant: Mr. Siame, Messrs Legal Resources Chambers

J U D G M E N T

CASES REFERRED TO:

- 1. KENNETH MPENGULA AND REVEREND HUDSON LITANA AND
OTHERS APPEAL NO 47/2005.**
- 2. SIMON KALABA CHISHA, SENIOR CHIEF MILAMBO, BENSON
KASONGO SHAPI AND PHILLIMON MBOLA Appeal Number 192 of
2007.**
- 3. NKONGOLO FARM LIMITED V ZAMBIA NATIONAL COMMERCIAL
BANK LIMITED AND OTHERS (2005) ZR 78 (SC).**
- 4. SABLE HAND ZAMBIA LIMITED VS ZAMBIA REVENUE AUTHORITY
(2005) ZR 109 (SC).**

OTHER WORKS REFERRED TO:

- 1. Halsbury's Laws of England, Volume 36.**

2. G. C. Bond, *Politics of Change in Zambia, University of Chicago Press, 1976.*

By Writ of Summons issued on the 18th of September, 2012, the Plaintiffs seek a Declaration that the Installation of Ted Chisavya Muwowo as Chief Muyombe is null and void for being in violation of the Uyombe custom and traditions having been fraudulently installed, an Order declaring the 1st Plaintiff as the rightful heir to the throne of Chief Muyombe, with costs to be borne by the Defendant.

In their Statement of Claim, the Plaintiffs state that the 1st Plaintiff is and was at all material times a member of the Uyombe Royal Clan otherwise from the Chipanga family branch, one of the three chiefly branches, the other two being Njera and Chapyoka. The 2nd Plaintiff is a member of Uyombe Royal Clan being a member of the Njera family branch. He is a village headman and the chairman of the Uyombe Royal Establishment Committee. The Defendant is a member of the Uyombe Royal Clan otherwise from Njera family branch. The Plaintiffs further state that the last Chief Muyombe of the Bayombe people of Mafinga District in the Muchinga Province of the Republic of Zambia was Eliwell Lameck Chinkunku Alias Musungambumba who reigned for thirty-two years, having been installed as such from 1979 to 2011.

The Plaintiffs further state that the Chieftainship succession is supposed to rotate in accordance with the long standing custom among the three chiefly branches of Njera, Chipanga and Chapyoka. The Plaintiffs state that the First Chief Muyombe was Vikankanimba, the founder of the Bayombe Chiefdom, who was succeeded by his son Mughanga. There were a number of other Chiefs on the throne in succession and the last Chief Muyombe was Eliwell Lameck Chinkunku Muyombe, alias Musungambumba, having been on the throne, reigning from 1979 to 2011. The said Musungambumba was on the throne for thirty-two years and was from the Njera family branch.

The Plaintiffs therefore contend that the succession should have rotated to the Royal family branch of Chipanga but the Defendant manipulated it and fraudulently caused himself to be installed as Chief Muyombe when he is from the Njera family branch. The Plaintiffs contend that at the demise of the late Eliwell Lameck Chinkuku Chief Muyombe Musungambumba, the Electoral College of the Uyombe Royal Establishment Committee called a number of meetings for the three royal family branches to discuss the succession. The Plaintiffs contend that the Njera Royal family branch avoided the said meetings and only attended a few. On the 11th of January, 2012, the First Plaintiff, being the adult male of the Chipanga family branch, the next in the line of succession was chosen and declared as a person who qualified to be installed as Chief Muyombe the Fourteenth.

The 2nd Plaintiff informed the Government institutions such as the Council Secretary, the Provincial Minister and Permanent Secretary with regard to the crowning of the First Plaintiff as Chief Muyombe the fourteenth of the Bayombe People of Mafinga District.

The Plaintiffs further state that they were surprised when they learnt that the President of the Republic of Zambia had recognized the Defendant as Chief Muyombe of the Bayombe People of Mafinga District. The Plaintiffs therefore state that they have suffered damage and claim that the installation of Ted Chisavya Muwowo as Chief Muyombe be declared null and void for being in violation of the Uyombe custom and tradition having been fraudulently installed, an order declaring that the First Plaintiff is the rightful heir to the throne of Chief Muyombe, with costs to the Plaintiffs.

In his Defence, the Defendant denies any manipulation on his part. He states that the Uyombe Chieftainship succession rotates among the six sons of Musenga, namely Njera, Mitanga, Chimbilima, Chipanga, Kwanda and Chapyoka contrary to the Plaintiffs' assertions. The Defendant further states that since the last Chief Muyombe was from the Royal family of Njera, the

next person in line has to come from the Royal family of Chimbilima then next in line will be Mitanga, then Chipanga, then Kwanda and finally Chapyoka. The Defendant contends that he was validly elected as Chief Muyombe at a meeting that was held on the 5th of May, 2011 and as such, subsequent meetings for the Uyombe Chieftaincy were illegal.

The Defendant was then recognized as Chief by the Republican President under the Chiefs (Recognition) (No 8) Order, 2012.

This Court was supposed to sit with two assessors but at the hearing of the matter, the Learned Counsel for the Defendant, Mr. Siame raised a preliminary issue that it had come to the Defendant's attention that one of the assessors, Mr. John Siwale was an interested party who had an interest in the outcome of the proceedings. Mr. Siame contended that Mr. Siwale had been seen holding meetings with the Plaintiffs in relation to these proceedings on several occasions. He argued that justice should not only be done but must be seen to be done. He therefore sought the guidance of the Court on the matter.

In response, Mr. Mulenga on behalf of the Plaintiffs stated that the allegations raised attacked the integrity of the assessors and that if one of the assessors would not sit based on the allegations raised by the Defendant then the other assessor would not sit either.

Upon hearing the Defendant's Advocates and the Plaintiffs' Advocates, this Court decided to do away with the assessors and resolved to sit alone. However, the Court undertook to make consultations that would assist it in rendering a well reasoned judgment which ultimately would be a Judgment of the Court.

In support of their case, the Plaintiffs called five witnesses.

PW1, ABRAHAM MUWOWO TEMWANANI, aged 63 years of Muyombe Village, Chief Muyombe, Mafinga District gave sworn evidence that he was a member of the Uyombe Clan, from the Chipanga Royal Branch. His father was Allan Kontya Muwowo whose father was the late Lazaro Muwowo, the son of the late Mugona Muwowo of the Chipanga Royal Branch. The father of the founder of this Royal family branch was Chipanga. PW1 stated that the Bayombe people are Patrilineal.

PW1 state that he knew the Defendant as his father/uncle within the family. The last Chief Muyombe was Eliwell Lameck Chinkunku Muwowo Musungambumba who died on the 7th of January, 2011. After his death, the Banangwa Council sat to look for a successor PW1 testified that in the Muyombe Chieftainship, there are four royal branches, out of which three are termed as Chiefly branches where a Chief is appointed from. PW1 stated that the Chieftainship rotates among the three chiefly branches.

The four Royal branches are Njera, Chipanga, Chapyoka and Kaswanga. The Banangwa Council is a group of selected members who hail from the four royal branches. There are sixteen members in the Banangwa Council, with four from each family branch. When they sit, sixteen people comprise the Council. PW1 emphasized that the three Chiefly family branches are Njera, Chipanga and Chapyoka. Kaswanga or Vumbo are not part of the Chiefly family branches that are eligible to ascend to the throne because Kaswanga allowed a nephew to take over as Chief against tradition. Musenga fought Polomombo who was on the throne being a nephew to Kaswanga and he was dethroned and killed. The Chieftainship at the time should have been with Musenga. He then became Chief and introduced the royal branches. Musenga had three wives who bore him sons from which the royal branches were created.

Njera was a son who was born from the wife Nyambeye. Chipanga was a son who was born from Nyaupigu and Chapyoka was son who was born from Nya

Munthali. Although the Kaswanga branch participate in the selection of a chief, they cannot ascend to the throne.

After Musenga died, his son Njera ascended to the throne. He was Nyambeye's son. After Njera died, the chieftaincy went to Chapyoka and after his death, the chieftaincy went to Chisusu who was Chipanga. Thereafter, the chieftaincy rotated back to the Njera branch and the chief was Kolelawaka. He was on the throne for six months and died. The Banangwa then gave the Njera family group another chance and Funtukeni took over as Chief. He was of the Njera branch. After his death, the chieftaincy was given to the Chipanga family group and Vwalamawoko took over as Chief. He was on the throne from 1915 to 1927 and when he died, the chieftaincy went to the Chapyoka branch, with John Punyila Muwowo taking over as chief. Thereafter, the chieftaincy was passed on to the Njera branch and Eliwell Lameck Chinkuku Musungambumba Muwowo took over as chief.

PW1 therefore testified that the reigning Chief should be from the Chipanga branch who have already selected a Chief. Since Musenga's death, the Njera branch has been on the throne four times while the Chipanga and Chapyoka family branches have been on the throne twice each. Eliwell Lameck Chinkuku Musungambumba Muwowo was on the throne from 1981 to 2011, for thirty years. Before Musungambumba's reign, the Chief was John Punyila Muwowo who was from the Chapyoka branch. He reigned from 1927 to 1939.

PW1 testified that the Defendant is from the Njera branch. Njera had two brothers, Mitanga and Chimbilima. These were Nyambeye's sons with Musenga. If one hails from Mitanga or Chimbilima then he is still Njera. The Defendant's grandfather was Chimbilima who is of the Njera family branch. PW1 contended that the Defendant is from the Njera Royal branch and as such, his taking over from the last Chief Eliwell Lameck Musungambumba Muwowo was done in bad faith.

PW1 referred to a document on page 37 of the Bundle of Documents which indicates that the Defendant hails from the Njera family branch. When the Defendant was selected as chief, the members who were present were not from the Banangwa Council so they did not have power to choose a chief. PW1 testified that when Eliwell Musungambumba died, he was in Lundazi. When he arrived at Muyombe, he was told that he would be Chief. Certain traditional rituals were carried out. Thereafter, he was crowned chief, hailing from the Chipanga Royal family.

PW1 was referred to page 5 of the Bundle of Documents on which was a diagram which explained the succession from the family branches. After he was crowned Chief, PW1 was taken to the District Commissioner's office. The Council Secretary and the House of Chiefs were also informed. However, PW1 learnt that the Defendant had already been gazetted as Chief Muyombe.

PW1 therefore prayed that the Court looks at the violation of the traditions regarding the installation and recognition of the Defendant as Chief Muyombe. He also prayed that the Court declares him as Chief Muyombe Number Fourteen as he is the rightful heir to the throne. He further prayed that the Defendant meets the costs of the proceedings.

In cross-examination, PW1 stated that the Banangwa Council have the role of ascertaining which Royal branch is eligible to reign on the throne at each particular time. They also ensure that customs and traditions are adhered to in the Chieftom. When a Chief dies, the Banangwa Council sits to appoint a caretaker until a substantive Chief ascends to the throne. The royal branch which is eligible then propose a name. On the 6th of March, 2011, the Chipanga branch chose PW1 as their candidate for ascending to the throne of Chief Muyombe. However, tradition was not followed and due to manipulation, the Defendant was gazetted as Chief Muyombe.

PW1 stated that he was crowned Chief by headman Zumbe Luonde of the Banangwa Council. PW1 stated that the Defendant is his father traditionally and that Musenga was Vikankanimba's son. Musenga had five sons these being Njera, Mitanga, Chimbilima, Chipanga and Nkwanda.

In re-examination, PW1 stated that he is the Defendant's nephew because he is a son of the Defendant's brother. PW1 further stated that the royal clan consists of six branches but only the adult male members of Chapyoka, Njera and Chipanga branches are eligible for the chieftaincy. It rotates among these three chiefly branches of Chapyoka, Njera and Chipanga.

PW1 stated that he was not recognized by the President because government officials did not submit his name for the same. However, the Defendant was not selected by the Banangwa Council so his selection was wrong.

PW2, WINSTON MUWOWO, aged 62 years of Chikoya Village, Chief Muyombe , Mafinga District, testified that he is the current Chairperson of the Banangwa Council. He is also village headman and had been as such from 2004 to 2012 when he was removed from the position. The Defendant removed him after he was gazetted as Chief Muyombe.

PW2 testified that he is one of the Royal Banangwa who hails from the Njera branch and that the Defendant is also from the Njera branch. PW2 testified that the last Chief Muyombe was Eliwell Lameck Chinkuku Musungambumba Muwowo who died on the 7th of January, 2011. PW2 stated that he joined the Banangwa Council in 2000 and at the time of Musungambumba's death, he was the vice secretary of the Council. The Chairperson at the time was Overton Muwowo. The other members of the Council are all Muwowo since they are members, of the royal family. After Musungambumba's death, the

Banangwa Council appointed an acting Chief, Overton Muwowo who was a caretaker.

However, as the Banangwa Council deliberated to select a chief, they were told that the Government had prohibited any other meetings until further notice. PW2 later heard that a chief had been selected and installed, this being the Defendant. He stated that the Banangwa Council are the ones who install Chief Muyombe. He was appointed Chairperson of the Banangwa Council on the 22nd of June, 2012. He was aware that there were three family branches that floated candidates. The Njera branch floated Dangolipya as their candidate. The Chipanga branch floated Abraham Muwowo while the Kaswanga branch floated Austin Chilola Muwowo. The Njera royal family branch held a meeting at which they selected the Defendant Dangolipya.

The Provincial Minister, Malozo Sichone visited Muyombe and instructed the party officials to sit down and select a chief. Only two family branches met, the Chipanga and Kaswanga family branches. The Njera branch did not attend the meeting. However, the Council selected Abraham Muwowo Temwanani as Chief and that their selection could not be challenged by anyone because they followed tradition and customs.

The District Commissioner was informed of the selection by the Banangwa Council but he was not available and did not travel to Muyombe. At a meeting that was held on the 27th of August, 2012, it was discovered that none of the Banangwa Committee members selected Dangolipya.

PW2 was referred to page 33 of the Defendant's Bundle of Documents, minutes of a meeting for the selection of a new Chief at Muyombe Movement for Multiparty Democracy Office, which was chaired by one Patson Mbambara. However, this was the wrong way of selecting the chief. The wrong criteria was utilized in arriving at the new chief. The qualities that should have been considered are royalty and not educational qualifications.

PW2 emphasized that contrary to what the Defendant contends, Chimbilima is not a family branch. As such, Dangolipya who is Njera does not qualify to be chief. He therefore prayed that the Court removes Dangolipya from the Chieftaincy.

In cross-examination, PW2 stated that the Banangwa Council selects the chief based on the rotation of the family branches. PW2 explained that the Banangwa Council can be appointed even where there is no Chief. After the Chief is selected he is then installed by the Kambalas. It is not the responsibility of government officials to be present for the selection of a chief.

In re-examination, PW2 stated that Mitanga and Chimbilima are not family branches as they are part of the Njera family branch.

PW3, GIDEON ROBERT MUWOWO, aged 67 years of Mitanga Village, Chief Muyombe testified that he is the Defendant's elder brother and that the Defendant hails from the Njera family branch. In 2007, PW3 chaired the Banangwa Royal Committee. Their role is to install chiefs and assist the chief in the chieftaincy. When the chief dies the Council chooses one to replace him. They decide where the chief will hail from regarding the branches and depending on the rotation. The three royal branches from which the chief is selected are Njera, Chipanga and Chapyoka.

PW3 stated that the Defendant was not properly selected as chief because he was from the Njera family branch which was not in line for the selection of the chief according to the rotation. PW3 stated that Patson Mbambara who was involved in the selection of the Defendant as chief is not even royalty or connected to the chieftaincy.

In cross-examination, PW3 stated that the Banangwa Committee comprises of members of the royal family who could be Njera, Chipanga, Chapyoka or

Kaswanga. Abraham Muwowo, the Defendant was not selected by the Banangwa Committee. Although Musenga had many sons, only the first sons from the three wives are recognized and constitute the three family branches. These are Njera, Chipanga and Chapyoka.

In re-examination, PW3 stated that Mitanga and Chimbilima are from the Njera family branch. He explained that Kolelawaka and Funtukeni were both from the Njera branch but they reigned in succession because Kolelawaka died early, only after six months of ascending to the throne. He was therefore replaced with someone from the Njera family branch.

PW4, ROBSON MUWOWO, aged 76 years, of Mayowa Village testified that he is a member of the Banangwa Committee. He is also the chairperson of the Chipanga family branch who chose the Plaintiff to succeed Musungambumba after his death. PW4 was however surprised to learn that the Defendant had been selected as Chief. This is because the last chief, Eliwell Muwowo was the Defendant's elder brother. He was on the throne for thirty-two years. PW4 testified that the Defendant is Chimbilima's grandson, while the Plaintiff is Chipanga's grandson. The person who ascends to the throne is from a branch which is eligible.

PW5 AUSTINE TOZYANI MUWOWO, aged 59 years of Chabazamba Village testified that the Plaintiff is his elder brother and the Defendant is his father within the family. He testified that the First Plaintiff is from the Chipanga branch while the Defendant is from the Njera branch. Musungambumba, the late chief was also from the Njera family branch. When he died in January, 2011, it was agreed that the next chief would be from the Chipanga branch.

However, Bishop Muwowo the Defendant's father stated that no chief would be selected until he as the eldest would decide. As they waited, PW5 heard drums beating that a chief had been installed in Muyombe. The chief should have come from the Chipanga branch. When the Banangwa Committee sat,

none of them knew how the Defendant was selected. There was confusion in the selection of the chief because people who were not members of the royal family were involved in the selection contrary to tradition.

In cross-examination, PW5 stated that Mitanga and Chimbilima are part of the Njera branch. Kolelawaka was from the Njera branch and was succeeded by Funtukeni.

In re-examination, PW5 stated that Njera was the eldest son of Nyambeye and that Mitanga, Chimbilima and Kamuzonde were younger brother in the Njera branch. Chipanga was the eldest son of Nalomba Nyaupigu.

This was the close of the case for the Plaintiffs.

The Defendant opened his case by testifying as, **DW1, TEDDY CHISAVYA MUWOWO**, also known as Dangolipya Chief Muyombe, aged 53 years of Muyombe Village. He testified that he knows the Plaintiff Abraham Muwowo who is his nephew. The succession system in Chief Muyombe's Chiefdom is from the father's side, it is Patrilineal. The great grandfather is Musenga who is the origin of the chieftaincy.

DW1 stated that he is Bishop Jacob Muwowo's son and that his grandfather was Samsaluya who was the son of Chimbilima a son of Musenga's. Musenga was the son of Vikankanimba the founder and first Chief Muyombe. DW1 testified that succession in the Muyombe Chiefdom is from the six sons of Musenga and that when Musenga died, he was succeeded by his first son Njera.

After Eliwell Musungambumba's death, the next chief was supposed to be from the Chimbilima line of the family. Overton Muwowo was appointed as a caretaker and John Muwowo took over as chair of the Royal Council. There were disputes in the royal family on who would be eligible to take over from

Musungambumba. Other members of the royal family stated that they would follow the tradition of the three family branches. However, the correct position would be to adhere to the succession using the six sons of Musenga. The Banangwa Committee asked for nominations and people from the Mitanga, Chimbilima and Njera branches nominated the Defendant. The Chipanga and Nkwanda families nominated the First Plaintiff Abraham Muwowo. The Chapyoka branch nominated Wesley Punyila Muwowo,

The Kambalas were represented during the selection and Bwana Masangani, was involved in the installation of the Defendant. Also present at the meeting were the District Commissioner, the Council Secretary, the Zambia Police and the Office of the President from Isoka. Elections were conducted which saw the Defendant scoring 13 votes and being installed as Chief Muyombe. The meeting was chaired by Headman Masangani who is also known as Patson Mbambara. On the 7th of May, 2011, the Defendant was crowned as Chief Muyombe in the presence of government officials.

DW1 stated that he hails from the Chimbilima branch of the family and that his grandfather was Funtukeni. Abraham Muwowo, the First Plaintiff is from the Chipanga branch, from the fourth son of Musenga. DW1 stated that Chapyoka was born from one of Polomombo's wives where Nyambeye and Nyaupigu were the two original wives of Musenga.

The three branches are for the identification of the mothers and are not for succession. DW1 stated that Winston Muwowo lied when he testified that he was the chair of the Banangwa Committee. John Muwowo is the Chairperson of the Banangwa Committee, Winston Muwowo is the Vice Secretary of the Committee.

DW1 testified that he was recognized as Chief by a Statutory Instrument which was gazetted as Statutory Instrument Number 52 of 2012. DW1 stated that he was crowned chief by Headman Masangani and that in arriving at

this, the correct procedure was followed. DW1 therefore prayed that the Court dismisses this action.

In cross-examination, the Defendant stated that he was not happy with the Plaintiff's decision to commence this action. He admitted that he hailed from the Njera family branch and that the last Chief Eliwell Muwowo was also Njera.

Since there were wrangles to succeed him, they decided to go to elections to select the next chief as opposed to being guided by the family tree. The Defendant stated that the Royal Clan consists of six branches and that the Chimbilima family is under the Njera branch. Since Njera is a broad branch, the rotation moves among the six sons of Musenga. The Kambalas are involved in the selection and installation of a Chief.

DW2, JOHN MUWOWO, aged 70 years, of Musenga Village, Chief Muyombe also known as Bwana Chaila testified that the Plaintiffs' and the Defendant were his relatives. He stated that he assumed the chairmanship of the Banangwa Council in 2010. His duties include setting of disputes in the Chiefdom, DW2 stated that succession to the throne of Chief Muyombe is through the sons of Musenga who were six, these being Njera, Mitanga, Chimbilima, Chipanga, Nkwanda and Chapyoka.

DW2 stated that the late Chief Funtukeni was from the Chimbilima group, Kolelawaka was from Mitanga, Chisusu was from Nkwanda and Punyila was from Chapyoka. DW2 stated that the Defendant is from the Chimbilima family, the 1st Plaintiff is from the Chipanga family while the 2nd Plaintiff is from the Njera family. After the death of Eliwell Muwowo there were too many succession wrangles. Eventually, the Defendant was selected and installed as Chief Muyombe.

DW3, PATSON MBAMBARA, aged 62 years of Masangano Village, Muyombe testified that he was the group village headman of the Kambalas in Muyombe. He stated that when a chief dies, he has the duty of installing the new chief with five other members of the Kambala Committee. The royal family sits to choose a chief at the Royal Establishment and DW3 stated that he is only involved in the installation of the Chief. He was not present when the Defendant was chosen to be Chief. A number of names that were proposed for chief were presented at the meeting that was held on the 5th of May, 2011. DW3 chaired the meeting which was also attended by government officials. Four names were presented and because of this a vote was held. The Defendant got 13 votes and was subsequently installed as Chief Muyombe. DW3 installed the Defendant as Chief Muyombe.

This was the close of the case for the Defendant.

The Learned Counsel for the Plaintiffs, Mr. Derrick Mulenga filed written submissions in which he stated that the Plaintiffs contend that there is a long standing custom and tradition on the succession to the throne of Chief Muyombe.

The Plaintiffs' position is that the first Chief Muyombe was Vikankanimba who was succeeded by Mughanga, who in turn was succeeded by Kaswanga. However, the Patrilineal line of succession was broken when Kaswanga was succeeded by his nephew Polomombo. Musenga the surviving son of Vikakanimba refused to allow this and waged war against Polomombo who he dethroned and killed. Musenga ascended to the throne and established the succession to the throne through royal branches also known as chiefly family branches. These were Njera, Chipanga and Chapyoka. The Kaswanga branch were barred from ascending to the throne because they allowed Polomombo who was ineligible to become Chief.

Mr. Mulenga therefore submitted that succession to the throne rotates among the three chiefly family branches. The rotation has been in existence since 1800. Mr. Mulenga further submitted that since the Defendant is a member of the Njera family branch, he cannot succeed the late Chief Muyombe Musungambumba who was also Njera and was an elder brother to the Defendant. Mr. Mulenga submitted that respecting the custom and tradition in Chieftainship succession is cardinal as was demonstrated in the case of **KENNETH MPENGULA AND REVEREND HUDSON LITANA AND OTHERS APPEAL NO 47/2005**. In this case, it was argued that the Appellant was not properly appointed and installed as Chief Mushili because the Bena Mushishi Royal Clan's customs and tradition were not followed.

The Supreme Court upheld the decision of the High Court in nullifying the appointment of Kenneth Mpengula as Senior Chief Mushili because customary procedures were not adhered to. Mr. Mulenga further cited the case of **SIMON KALABA CHISHA, SENIOR CHIEF MILAMBO, BENSON KASONGO SHAPI AND PHILLIMON MBOLA Appeal Number 192 of 2007** where the Supreme Court held that –

- 1. The succession to the throne of Chief Chimese is matrilineal and follows the family tree by seniority.**
- 2. The Electoral College is the Chimese Royal family that meets to choose the chief.**
- 3. The Seniority principle was set aside and there was an election which even Senior Chief Milambo admitted was wrong. There was total disregard of the Aushi tradition and custom.**

Mr. Mulenga submitted that in the present case, succession to the throne of Chief Muyombe follows the family tree and rotation among the three chiefly family branches of Njera, Chapyoka and Chipanga. Further, the Electoral College is the Banangwa Royal Committee and that election of a chief is not an acceptable mode of selecting a successor to the throne of Chief

Muyombe. There was therefore no reason from departing from the well established custom and tradition of succession by conducting elections.

Mr. Mulenga further submitted that the election of Chief Muyombe in May 2011 was marred by irregularities and wrong considerations. Mr. Mulenga therefore prayed that the selection and subsequent installation of the Defendant as Chief Muyombe be declared null and void for being in violation of the Uyombe custom and tradition as the Defendant was fraudulently installed. The Plaintiffs also seeks an order declaring the First Plaintiff as the rightful heir to the throne of Chief Muyombe with costs to the Plaintiff.

The Learned Counsel for the Defendant Mr. Siame filed written submissions in which he stated that the Plaintiffs pray that the Court declares the installation of the Defendant as Chief Muyombe null and void for being in violation of the Uyombe custom and tradition having been fraudulently installed. Mr. Siame submitted that where fraud is alleged, it must be precisely alleged. He cited the case of **NKONGOLO FARM LIMITED V ZAMBIA NATIONAL COMMERCIAL BANK LIMITED AND OTHERS (2005) ZR 78 (SC)** where it was stated that –

“were a party relies on any misrepresentation or fraud... he must supply the necessary particulars of the allegation in the pleadings. Fraud must be precisely alleged and strictly proved. There is no presumption of fraud...”

Mr. Siame further cited the case of **SABLE HAND ZAMBIA LIMITED VS ZAMBIA REVENUE AUTHORITY (2005) ZR 109 (SC)** where it was stated that –

“where fraud is an issue in the proceedings, then a party wishing to rely on it must ensure that it is clearly and distinctly alleged. The party alleging fraud must equally

lead evidence so that the allegation is clearly and distinctly proved.”

Mr. Siame referred to Volume 36 of the Halsbury’s Laws of England where it states that –

“...where a party relies on misrepresentation, fraud, breach of trust, willful default or undue influence by another party he must supply the necessary particulars of the allegation in his pleading.”

Mr. Siame therefore prayed that the Court finds that fraud, though contained in the Plaintiff’s Statement of Claim was not precisely alleged nor was it strictly proved. He accordingly contended that it cannot be said that the Defendant was fraudulently installed.

Mr. Siame also submitted that it is not in dispute that the Defendant is a Muwowo who is eligible to succeed to the throne of Chief Muyombe. It is not in dispute that his predecessor was his grandfather. Nothing under customary law would bar the Defendant from taking over as Chief Muyombe when it is his turn to do so. The Learned Counsel for the Defendant qualifies under African Customary Law to hold the office of Chief and that he was validly elected as Chief in accordance with the wishes of the people.

Mr. Siame submitted that the Uyombe Chieftainship rotates among six royal family branches which are the Njera, Mitanga, Chimbilima, Nkwanda and Chapyoka family branches. He argued that the next in line for succession to the throne is that the Chief should have from the Chimbilima Royal family branch. The Learned Counsel for the Defendant submitted that people may hold an election for purposes of choosing a Chief. Since there was confusion in the Uyombe Chieftainship upon the death of Musungambumba, the Uyombe people agreed to hold an election. When this was called, the Defendant emerged as winner with thirteen votes. Government officials were present at

the meeting present at the meeting who recognized the Defendant as Chief and his name was then presented to the President for recognition.

Mr. Siame submitted that the First Plaintiff is not the proper person to ascend to the throne of Chief Muyombe and urged the Court to find this as an established fact from the evidence on record.

From the evidence on record and upon examination of the pleadings, it is clear that the Plaintiffs seek a declaration that the installation of the Defendant as Chief Muyombe is null and void for being in violation of the Uyombe custom and tradition, having been fraudulently installed. The Plaintiffs also seek an order declaring the First Plaintiff as the rightful heir to the throne of Chief Muyombe.

What this Court must determine therefore is whether or not the Defendant was validly installed as Chief Muyombe and whether the said installation was in accordance with the procedure relating to custom and tradition of the Uyombe Chieftdom.

In deciding this matter, this Court, which did not sit with assessors read and consulted widely. One of the pieces of literature that was referred to is the book

***“The Politics of Change in a Zambian Community
Published by the University of Chicago Press, London,
1976.”***

The Author, George C. bond, writes at page 22 in reference to the Uyombe Chieftdom that

***“The Chief is the head of the Chieftdom, holds his post for
life and is a member of the Royal clan. The Royal clan
consists of six branches but only the adult male members***

of the Chapyoka, Njera and Chipanga branches are eligible for the Chieftainship. The Chieftainship is supposed to rotate among the three branches, a chief's son or another member of his branch are not supposed to succeed him."

On page 6 of his Book Professor Bond further states that -

"Musenga is the younger son of the founder Vikankanimba. He married Nyambeye and Nyaupingu. He also took the four pregnant wives of his classificatory grandson Polomombo.

Nyambeye bore Njela, Mitanga and Chimbilima. These descendants form the Njera branch.

Nyaupigu bore Chipanga and Nkwanda and the two form the Chipanga branch. The descendants of the four wives of Polomombo form the Chapyoka branch of the family. A royal branch carried the name of the eldest son of each wife."

From the explanation highlighted above, there are three royal branches which rotate with regard to ascending to the throne of Chief Muyombe. The issues that this Court is called to adjudicate upon are to ascertain

1. Who qualifies to ascend to the throne of Chief Muyombe;
2. Whether the Defendant was properly appointed to be the next Chief Muyombe and whether he met the requisite qualifications?

On the evidence before me, I find that the parties agree that the first Chief in the Uyombe Chieftainship was Vikankanimba. He was succeeded by Mughanga who was succeeded by Mwene Kaswanga and then Polomombo ascended to the throne but was dethroned by Musenga because he was a nephew and Musenga then ascended to the throne as the Fifth Chief Muyombe. The

parties also agree that succession to the throne is through the patrilineal tradition of chieftainship, only through sons.

The point of departure is on who is eligible to ascend to the throne of Chief Muyombe, the six sons of Musenga or the three family branches. According to George C. Bond in ***“The Politics of Change in a Zambian Community”***, Mughanga and Musenga were the sons of the Lineage founder Vikakanimba. The eldest sons, Mughanga took two wives and bore Vumbo, Kaswanga and Chilola. The descendants of Mughanga bear the name Kaswanga. Musenga the youngest son of the founder married two wives, Nyambeye and Nyaupigu. He also took the four pregnant wives of his classificatory grandson, Polomombo. Nyambeye bore the sons Njera, Mitanga and Chimbilima. The descendants of Njera, Chimbilima form the Njera branch.

Bond further states that Nyaupigu bore Chipanga and Nkwanda, who collectively form the Chipanga branch. The four wives taken from Polomombo are counted as one person and their descendants form the Chapyoka branch. Bond stated that a royal branch carries the name of the eldest son of each wife.

The evidence of PW1 is that there are four royal branches in the Uyombe Chiefdom. These are Njera, Chipanga, Chapyoka and Kaswanga. PW1 further testified that the chieftaincy rotates among the three chiefly branches of Njera, Chipanga and Chapyoka.

PW2 testified that he is a member of the Banangwa Council who hails from the Njera family branch. He contended that contrary to the Defendant's testimony Chimbilima is not a royal family branch as it is part of the Njera family branch. The wrong procedures were utilized in selecting the Defendant as Chief Muyombe.

PW3 testified that the Defendant was not properly selected as Chief because he was from the Njera family branch. The Banangwa Royal Committee selects chiefs in the Uyombe Chiefdom having regard to the three royal branches from which the chief is selected these being Njera, Chipanga and Chapyoka. PW4 testified that the Defendant is Chimbilima's grandson and is therefore from the Njera family branch which the late Chief Eliwell Musungambumba hailed from.

However, the Defendant stated in his Defence that after Musungambumba's death, the next Chief was supposed to be from the Chimbilima line of the family. Due to disputes on who was to ascend to the throne, elections were held and the Defendant was selected as Chief Muyombe when elections were conducted.

According to the writer and historian C. Bond, at page 22

“The royal clan consists of six branches but only the adult male members of Chapyoka, Njera and Chipanga are eligible for chieftainship.”

Bond further states that the chieftainship is supposed to rotate among the three chiefly branches. The other branches, Kaswanga and Vumbo participate in the selection of a new chief but their members may not themselves hold the post.

I therefore accept PW2 and PW3's evidence that the Uyombe chieftainship rotates among the three chiefly branches of Chapyoka, Njera and Chipanga. I further accept that a royal branch carries the name of the eldest son of each wife. The Njera branch consists of Njera, Mitanga and Chimbilima.

The Defendant stated in his testimony and in his pleadings that he is from the Chimbilima family branch which is part of the Njera branch. It is agreed that the Chieftaincy in the Uyombe chiefdom is by rotation. It is further

agreed that the late Chief Eliwell Musungambumba Muwowo was from the Njera branch of the family.

The Defendant states in his testimony that he was selected as chief after an election was held on the 5th of May, 2011 which was also attended by government officials.

From the evidence before me, I find that the selection of Chief Muyombe should have been done in adherence to the traditions and customs of the Bayombe people. Much as the Defendant may be royalty, the customs and traditions were ignored as the Banangwa Council were not even involved in the selection and yet it is their duty to participate in the selection of Chief Muyombe.

I am of the firm view that opening the process of the selection of chief through an election is in conflict with the customs and traditions of the Uyombe Chieftainship as a person may win the election and become chief but may not be the one who is eligible to ascend to the throne as chief. This situation is certainly undesirable. On the evidence before me, I am satisfied and I find that the Uyombe Chieftainship rotates among the three royal branches of Njera, Chapyoka and Chipanga. I am also satisfied that the Defendant is from the Chimbilima family which is a sub branch of the Njera family branch. Since the Defendant is from the Njera branch, it follows therefore that he cannot succeed the late Chief Eliwell Musungambumba Muwowo who was also from the Njera family branch.

The Defendant was selected as chief after an election was held contrary to the practices, customs and traditions of the Uyombe people. The Defendant is therefore not entitled to the throne of the Chief Muyombe as the Njera Royal branch is not eligible to be on the throne this time round. He was not even selected by the Banangwa Council as per custom and tradition. From the evidence, it is clear that there was a departure in the selection of the

Defendant. Firstly, the rotation principle was set aside and that was why all the family branches nominated candidates. Secondly, there was an election which was wrong. Even if the Defendant is a Muwowo, he is not eligible to ascend to the throne of Chief Muyombe as the Njera family branch which he belongs to is not the one that is next in line according to the rotation system of the Uyombe Chiefdom. He therefore does not qualify to be Chief Muyombe.

This action therefore succeeds. I therefore declare that the selection of the Defendant as Chief Muyombe Null and Void as it was in violation of the Uyombe customs and traditions. However, it is not for this Court to decide that the Plaintiff be installed as Chief Muyombe in place of the Defendant. The Bayombe Royal Traditional Council or Electoral College shall sit to select and install a Chief as Chief Muyombe in accordance with the well known and established practices, customs and traditions of the Bayombe people.

Each party to bear its own costs.

Delivered this 10th day of January, 2014.

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P. C. M NGULUBE
JUDGE