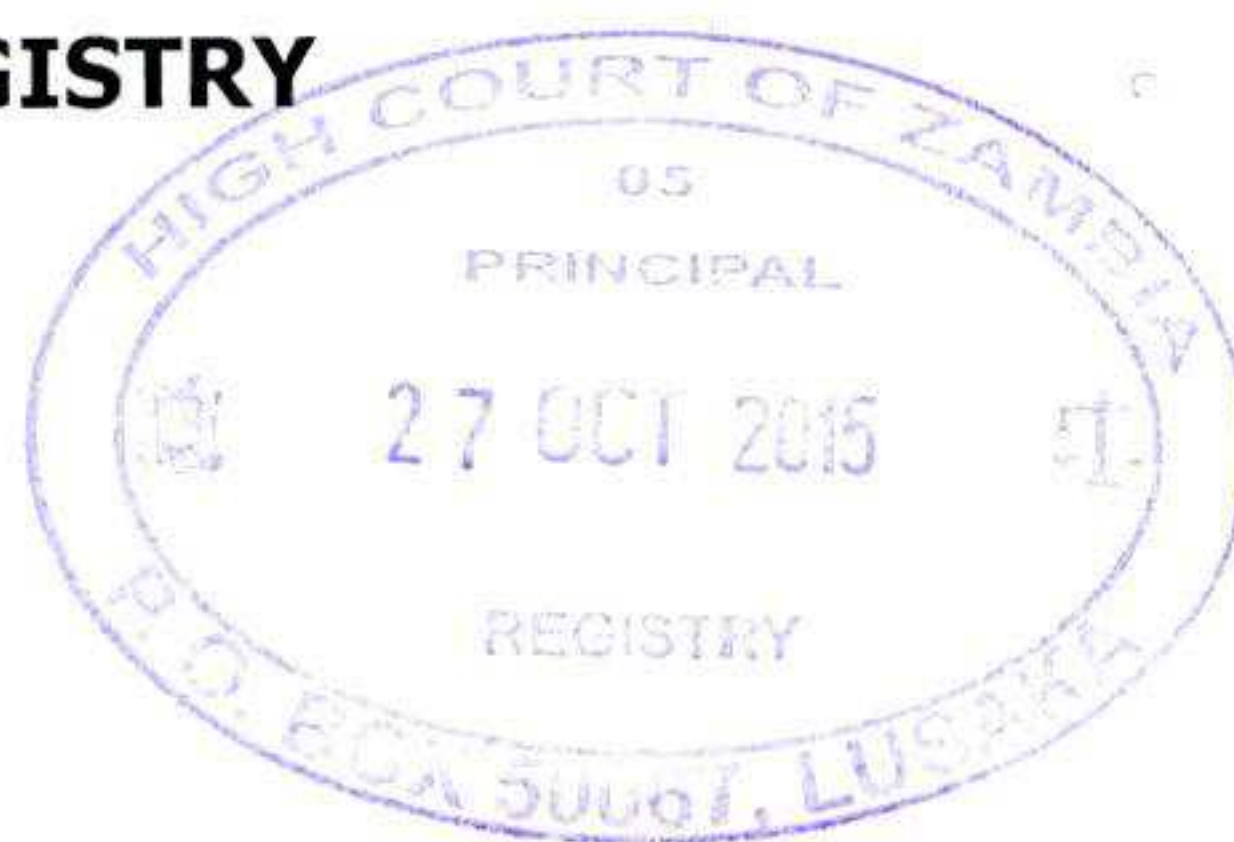


IN THE HIGH COURT FOR ZAMBIA

2010/HP/1225

AT THE LUSAKA PRINCIPAL REGISTRY

(Civil Jurisdiction)



BETWEEN :

OPA KAPIJIMPANGA (Male)

PLAINTIFF

AND

**KILOLO NG'AMBI (Sued in his capacity as
Chief Kapijimpanga)**

1ST DEFENDANT

ATTORNEY GENERAL

2ND DEFENDANT

JAMES LWAISHA

3RD DEFENDANT

Before the Honourable Mrs Justice J.K. Kabuka in Open Court at Lusaka the 8th day of October, 2015.

FOR THE PLAINTIFF : Mr. E. Silwamba, SC,
: Mr. L. Linyama, Messrs Eric Silwamba & Co.

FOR THE 1ST DEFENDANT : Mr. E.C. Mwansa,
: Mr. J.B. Tembo, Messrs Mwansa Phiri and
Partners.

FOR THE 2ND DEFENDANT : Mrs. M. Siansima, Principal State Advocate.

FOR THE 3RD DEFENDANT : Dr. J. Mulwila, Messrs Ituna Partners

JUDGMENT

Case and Legislation referred to:

1. Mpengula v Litana and Others, Appeal No. 47 of 2006.

The constitution of Zambia Cap.1 Article 127.

The Chiefs Act Cap. 287 S. 3 (2)

On the 11th day of November, 2010, the Plaintiff issued a Writ of Summons from the High Court Principal Registry at Lusaka, seeking declarations which may be stated as follows:-

- 1. That the traditional procedure for installing the 1st Defendant as Chief Kapijimpanga was not followed and the installation is null and void *ab initio*.**
- 2. The Plaintiff as next in the lineage of descendants of Inamusale is the rightful heir to the throne of Chief Kapijimpanga.**
- 3. Chief Mujimanzovu acted *ultra vires* the customary practice when, without authority to do so, he installed the 1st Defendant as current Chief Kapijimpanga.**
- 4. That under African Customary Law, the 1st Defendant is not entitled to be recognized as chief pursuant to the provisions of the Chiefs Act Cap 287 of the Laws of Zambia.**
- 5. Alternatively, a mandatory order that the entrenched traditional process of installing a chief of the Kaonde Speaking People in Kapijimpanga Chieftom be effected and the process initiated *de novo*.**
- 6. Any further relief that the Court may deem fit.**
- 7. Costs.**

The Writ was accompanied by a Statement of Claim in which the Plaintiff contends he is a descendant of Inamusale whilst the 1st Defendant is a

descendant of Mukunta, both of whom were descendants of Kafitwe, a niece to the first Mpanga. Their lineage being matrilineal, both the Plaintiff and 1st Defendant qualify and are eligible to ascend to the Kapijimpanga throne.

The Plaintiff further contented, the process of choosing and installing a new chief is always through consensus of the contending families; who submit a person chosen, to the 'King maker' known as Sandangombe. After Sandangombe makes the final decision, he instructs his men to "catch" the chosen person.

After the last Chief Kapijimpanga died in December, 2008. Sandangombe on the 24th September, 2010, instructed his men to catch the Plaintiff, Opa Kapijimpanga. This process was however interrupted by the family of the 1st Defendant Kilolo Ngambi. The following day 25th September, 2010 Chief Mujimanzovu of the Kaonde speaking people of Mujimanzovu Chiefdom; without any authority, but pursuant to an agreement with other persons indemnifying him from any court proceedings, installed the 1st Defendant as the new Chief Kapijimpanga.

The 1st Defendant filed a Defence and Counter-Claim denying the Plaintiff's claims. He averred, Inamusale of whom the Plaintiff is a descendant was a maid given to Kafitwe and was not a member of the Kapijimpanga Royal Family. He also averred, the process of selecting a successor to the throne in Kaonde custom is initiated by the incumbent chief, who gives the instruments of power to his sister. He also confides in her which one of his nephews, he has chosen to succeed him.

Immediately after the burial, the Kapijimpanga Royal Family meets and chooses a caretaker to take charge of the Chiefdom. The caretaker is assisted by any of the sub-chiefs, usually the most senior, known as the "Mwepu wa mfumu. "When the period of mourning is over, the Royal Family meets to confirm the

nomination of the successor. A date for installation of the new chief is set and guests who include other chiefs, Government Officials and the people are invited. At the installation ceremony, the invited chiefs form a Council of Chiefs which then selects a Chairman from amongst themselves, to take charge of the installation ceremony.

On the actual day, candidates from eligible families are all invited to present their *family trees*, showing how they qualify to succeed to the throne. Thereafter, the Council of Chiefs through the Chairman announces the successful candidate, who is then, "caught" and later installed as chief by the Kapijimpanga Royal Electoral College. This Electoral College consists of the Council of Chiefs, the elders of Bena Kyulu and the Royal Family.

It was the 1st Defendant's position, this procedure was complied with when installing him as Chief Kapijimpanga. The installation ceremony was conducted from 25th – 26th September, 2010 and official minutes were taken by the Solwezi District Council Secretary. The Plaintiff however, did not give his family tree. He further averred, Sandangombe is one of the seven (7) sub-chiefs under Chief Kapijimpanga. He is thus, neither a 'King maker' as claimed by the Plaintiff nor does he have any role to play in the installation of Chief Kapijimpanga.

The 2nd Defendant also filed a Defence in which his only admission was that, the 1st Defendant is a descendant of Kafitwe, the matrilineal lineage and is accordingly eligible to ascend to the throne. That Chief Kapijimpanga IV passed away in December, 2008 but to date, no recommendation through the office of the Provincial Permanent Secretary for recognition of a chosen new chief, has been received from the Royal Family and Electoral College. In the alternative, the 2nd Defendant pleaded that no reasonable cause of action had been disclosed against him and the Plaintiff's claim against him be accordingly dismissed.

The 3rd Defendant who intervened in these proceedings in his Defence, asserted, both the Plaintiff and 2nd Defendant are not in the line of lineage of Nomba Shakabilwa. This person was the 1st wife of Kapiji Kasongo Kamuyange (alias Kapoba) the first Mujimanzovu. Hence, they are ineligible to ascend to the Kapijimpanga throne. That Kapiji Kasongo Kamuyange ceded part of his chiefdom to his son Mpanga. The Electoral College that picked Jingamba as successor to Mpanga consisted of chiefs: Mushima Mubamba, Musakantanda of Congo DR and Chief Sailunga who represented Chief Mwachiyamvwa. The 3rd Defendant averred, it is the tribal cousins known as "benanzovu" who catch the candidate to be installed as Chief Mpanga. Thereafter, he is taken to a shelter known as Kamboro for initiation as chief. The 3rd Defendant further averred, Kafitwe was not a niece of Chief Mpanga the first, but a mere slave to Chief Kapiji Kasongo (Mujimanzovu). Sandangombe had a son with Kafitwe named Njamba. Njamba ousted Chief Mpanga and in 1919, his father Sandangombe installed him as Chief Mpanga. This is how the line of succession to the Mpanga Chiefdom was diverted and Njamba changed the title to Kapijimpanga.

Following the death of Ostralia Katuka, Chief Kapijimpanga IV in 2008, Fwefulo Kapiji (Headman Kalaba) was appointed caretaker. The 3rd Defendant accordingly denied his family ever engaged Sandangombe regarding the choice of candidate for the Kapijimpanga Chieftaincy. The 3rd Defendant Counter Claimed that, the line of succession was disturbed by Njamba in 1916. That the Chief Mpanga throne being matrilineal, the 3rd Defendant traces his lineage as descendant of Nomba Shakabilwa, the mother of Chief Mpanga the first. As great grandnephew he is the rightful person to succeed to the throne of Chief Mpanga which is currently referred to as Kapijimpanga.

In reply to the Defence and Counter-Claims of the Defendants, the Plaintiff maintained he is the rightful heir to the Kapijimpanga throne. That he is a

descendant of Inamusale who was a 1st born daughter to Kifitwe and niece of Mpanga I. Inamusale was mother of Mfikilunabenyi Kanenga, who was mother to Litashi Masele, mother of the Plaintiff. The Plaintiff also maintained, Sandangombe is the 'king maker.' That at the disputed installation of the 1st Defendant however, Chief Mujimanzovu who presided over the process usurped the mandate of the Royal Electoral College and installed the 1st Defendant as Chief Kapijimpanga.

In his reply to the 3rd Defendant's Defence and Counter-Claim, the Plaintiff denied Kifitwe was a slave and re-iterated his position, that Chief Mpanga the first, had a sister named Kyembe, who had a daughter called Kifitwe. Amongst Kifitwe's daughters were Mukunta and Inamusale through whom the 1st Defendant and Plaintiff respectively, trace their descent. Further, that the line of Mpanga was separated from Mujimanzovu Chieftainship when Sandangombe Kyanamo installed Njamba as the first Chief Kapijimpanga and has continued to be the installer or 'king maker' of Chief Kapijimpanga. Hence, according to the Plaintiff, there has not been in existence, the Mpanga throne since 1919 when Njamba established the Kapijimpanga Chieftainship, separate from that of Mujimanzovu.

At the trial of the matter, the Plaintiff gave evidence on his own behalf and also called two (2) witnesses.

The Plaintiff's first witness, **PW1**, was **STEVEN MWEKESHA**, also known as Sub-chief Induna SANDANGOMBE, 92, a retired Local Court Justice. His testimony was that, amongst his duties was the responsibility of installing chief Kapijimpanga. He said he had installed one chief previously, the late OSTRALIA IKATUKA. According to PW1 the procedure for installing Chief Kapijimpanga is that:

1. A meeting for family members, group leaders, Chiefs and Indunas is first called to choose the next chief.
2. Invitations are then extended to other chiefs in the same area to attend.
3. PW1 then, issues instructions to have the chosen person "apprehended" or 'caught' after which he is confined in a shelter, called "KAVOTO" until the following day, when he is released. There is always peace and celebrations at this juncture.
4. Other invited chiefs then, induct the new chief on how to look after his people.

It was also his evidence, that this process was followed by Chief Mujimanzovu when installing the third Chief Kapijimpanga, late OSTRALIA KATUKA. At the meeting that was called to choose a successor to the late chief, only one name was put forward. It was that of the Plaintiff, OPA DAVY KAPIJIMPANGA. He was the only person who was captured and placed in the "KAVOTO."

Later, however, there were other persons, whose names had been floated outside the meeting for choosing a chief. These persons were each claiming to be the new Chief Kapijimpanga and included the 1st Defendant, KILOLO NGAMBI. Chief Mujimanzovu gave instructions for the capture of all these persons who were equally placed in the "Kavoto." Each time a person is captured, there is a gunshot fired and PW1 recalled hearing nine (9) gunshots which was unprecedented. PW1 personally, directed the Plaintiff's capture and placing in the "Kavoto" for the 2010 installation. According to PW1 the Plaintiff was the one who was chosen by the people and properly installed as chief; and is entitled to ascend to the throne of the Kapijimpanga Chieftaincy. However, the capture of many people thereafter, led to confusion and fights erupted. Early the next

morning, the Plaintiff was chased like a dog from the "Kavoto," by State Police Officers.

When he was cross-examined by Counsel for the 1st Defendant, PW1 said "Lukano" amongst the Kaonde Speaking People means "Bungle" or "Bracelet." He said if a sub-chief gives a person a "Lukano," it means this person is the new chief. There is only one "Lukano" for a chieftaincy, which is passed on when a chief dies. The "Lukano" is kept by two (2) people – either the Kwivi Kankono or the Queen Mother. That the owner of the "Lukano" has no authority to decide who to give the "Lukano;" and the decision to choose a new chief is for the people themselves to decide. He also denied the existence of any "Mwepu wa mfumu" in Kikaonde. PW1 however, admitted, that the Royal Family did not agree on who should be chief in 2010 and did not call him for a meeting. According to him, this was the cause of the confusion. He also said the Kaonde Chieftaincy is matrilineal, whereas the current chief (1st Defendant) is from the patrilineal side. He further said the 2nd and 3rd Chiefs were both matrilineal.

PW2 was **RICHARD MILAMBO SEVERINO KACHIMBE**, 81, a senior sub-chief of Milambo Village, Chief Kapijimpanga, in Solwezi. He said as chief Induna his duty is to help the Chief. He did witness the installation of Chief Ostralia Katuka in 1978. This was before he became sub-chief later the same year. It was his evidence that, after a chief dies, the role of Indunas is to scrutinize the names proposed by the Royal Family for a new chief. They sit together and choose a person fit to be installed as chief. Their meeting is chaired by Sandangombe. After the person is chosen, they look at the family he comes from to ensure it is not the same family that is producing the chiefs. Thereafter, Sandangombe gives an instruction for the selected person to be captured and he is taken to a "Kamboro." Some elderly people are then sent there to teach him

how to look after the people he is going to lead. Headmen, Chiefs and Indunas are all involved. The following morning, the person is taken out of the "Kamboro" and made to sit on the Chief's stool.

In cross-examination, PW2 admitted he was not present at the installation of Ostralia Katuka as Chief Kapijimpanga. That, this late chief had taken away his position of sub-chief. He confirmed the Kaonde throne of Chief Kapijimpanga is matrilineal and that only nephews are entitled to succeed. A young brother to the late chief can also succeed as well as a grandchild from the mother's side. He also said according to Kaonde tradition, the Chief's Indunas have the right to reject a candidate. He also said he was not present when the 1st Defendant was installed as chief.

In cross-examination by Counsel for the 3rd Defendant, PW2 initially said he was still an Induna and senior sub-chief Milambo. Further questioned however, he admitted, he was 'dethroned' in 1997 by late Chief Ostralia Katuka. That it is his elder brother who is the current senior sub-chief Milambo.

PW3, was the Plaintiff, **OPA RUPIAH DAVIS KAPIJIMPANGA**, 63, of 296 Long Ridge, Chilanga, a Development Consultant with the Canadian Agency for International Development (SIDA). His testimony was that, following the death of Ostralia Katuka his family had requested him to be a candidate in the succession to the Kapijimpanga Chieftaincy and they took his name to SANDANGOMBE. According to PW3, there were three key families that were eligible namely, the Mukunta, Luoma and Inamusale families. PW3 was from the Inamusale family. All these three families shared one key ancestor known as Kafitwe.

After PW3 was selected, an announcement was made that installation would take place in the week of 24th – 25th November, 2010. He was also aware that the "King maker" was Sandangombe, both as a person and as an institution. PW3 told the Court, that the Kapijimpanga Chieftaincy traces its origins from one Jingamba (Njamba) a son of Sandangombe. Njamba conquered Mujimanzovu and took away the bungle from Mujimanzovu so that he could establish his own chiefdom. Thereafter, Njamba went to fight Chief Kalilele, and defeated him in order for him to establish the Eastern borders. PW3 traced his descent by narrating that from Kafitwe the mother to Inamusale. One of the children of Inamusale was Fikilabenyi, who was mother of Litashi Masele- the Plaintiff's mother. He pointed out, that the lineage is matrilineal and the female children are key. It was his evidence, both himself and the 1st Defendant descend from Kafitwe with the 1st Defendant coming from the Mukunta family. PW3 observed, that all the past chiefs had come from the Mukunta lineage. On the disputed installation of 24th September, 2010 it was his evidence, on that day Kandabila caught him, on the instruction of SANDANGOMBE and placed him in a Kamboro where he was expected to remain the whole night.

At sunrise, he heard jubilation which was shortly followed by commotion. A nephew of PW3 and someone else quickly went and removed PW3 from the Kamboro. They took him to another one located near the arena. This was followed by an announcement by Chief Mujimanzovu that he did not want anyone in the Kamboro occupied by the Plaintiff. The chief ordered the Plaintiff to be removed, failure to which he threatened police would be involved to assist in removing him.

Later, the same chief asked members of the Royal Family to sit according to their respective families, after which they were further asked to pick three

representatives each. It is these representatives who constituted the Electoral College. However, there were difficulties in agreeing on a single candidate. That is when Chief Mujimanzovu said as their father, he would make the choice. Before making the decision however, he asked Dr. Ludwig Sondashi whom he described as one of the best lawyers in the land, to draft an agreement which would indemnify him from any legal proceedings arising from this installation. The crowd responded with murmurs of disapproval as according to PW3, one chief cannot appoint another person, as chief. The document prepared by Dr. Sondashi was signed by representatives of each of the 6 Royal Families. After noting that the families had failed to come up with a single candidate, Chief Mujimanzovu declared the 1st Defendant as the new Chief Kapijimpanga. PW3 maintained his claim, that the traditional process of installing a new chief was not followed as the 1st Defendant was not caught but was just appointed.

When he was cross-examined, PW3 confirmed that doc. 3 shows he was the son of Daju Kapijimpanga. He also admitted, that it is his father who had married in the family of Inamusale. He confirmed, the late chief did not nominate him and that he was never given a "Lukano" and also admitted, the 1st Defendant is a matrilineal nephew of the late Chief Katuka. When he was referred to paragraph 3 of doc. 3, he admitted the complaint there, was that the Mukunta Family has dominated the Kapijimpanga Chieftaincy. He said although historically there is a relationship between chief Mujimanzovu and sub-chief Sandangombe. Yet Senior Chief Mujimanzovu is not part of the family tree.

The Plaintiff admitted, his sister is married to Sandangombe and he was 'caught' on instructions of Sandangombe at 18:00 hours. After being caught he was not declared chief, as the process which had been started was disturbed by Senior Chief Mujimanzovu. He also admitted, representatives of his family signed the

agreement prepared by Dr. Sondashi. He further confirmed, he did not give his family tree when he was called upon to do so at the installation ceremony. That in 1978 there was consensus between members of the royal families to choose Ostralia Katuka as Chief Kapijimpanga, but this was not the case in 2010.

When he was referred to doc. 1 – 6 Plaintiff's Bundles. PW3 confirmed:

1. according to the family tree, the first Kapijimpanga was Mpanga in 1919.
2. the second was Jingambo Njamba who became chief in 1937.
3. the third chief was Kilolo in 1977 and;
4. the fourth was Ostralia Katuka who was installed in 1978 –and died in 2008.
5. There is another fifth Chief, but this was an installation of the 1st Defendant, from a flawed process, which is the reason for the present action.

When he was challenged that Kafitwe through whom he claims eligibility was in fact a slave, PW3's response was that, the allegation was a mere fabrication by his family's competitors. He denied there were nine (9) candidates for the throne in 2010 and claimed he was the only one who was placed in the Kamboro. PW3 insisted, that in the selection process of a new Chief Kapijimpanga, the Sandangombe plays a key role as a neutral intermediary. If left on their own, the Royal family members may have one family providing chiefs in perpetuity. When the Royal Family fails to agree on a single candidate, the role of the "king maker" is to make the decision. He also confirmed, the significance of a gunshot is that it announces, the final choice, when a chief has been selected.

The selected person is thereafter placed in a Kamboro overnight and the process is completed the following day. He insisted, Sandangombe is a neutral person at the center of installation. That he is neutral as he is not a member of the Royal family himself. When it was put to him that in this case Sandangombe had an

interest and it is this interest that made him fail to constitute a committee to choose the next chief. The Plaintiff said he had no comment. The Plaintiff however, admitted, that Sandangombe is his brother-in-law. He further admitted, the minutes taken at the 1978 installation ceremony did not reflect that Sandangombe was present. PW3 confirmed, Chief Mujimanzovu always presides at the installation ceremony of Chief Kapijimpanga. In this case the minutes reflect that, he was the master of ceremonies.

Defence evidence came from 6 witnesses DWs 1 – 6. The 1st Defendant testified as DW3 and his witnesses were DWs 4 and DW5.

In his evidence, the 1st Defendant, **DW3, KILOLO NG'AMBI**, 36, of Kapijimpanga Palace in Solwezi told the Court that he is a Medical Doctor by profession with a Master's Degree in Public Health. He also said he is the current Chief Kapijimpanga. Regarding the claims by the Plaintiff and 3rd Defendant questioning his succession to the Kapijimpanga throne, DW3's evidence was that, he is eligible to ascend to the throne and the process to install him as Chief Kapijimpanga was properly followed.

On his eligibility, DW3's testified, there is only one lineage to the Kapijimpanga Chieftaincy. He said the father of the Kapijimpanga Chieftaincy is Kapiji Kasongo whose father was Mujimanzovu. Mujimanzovu was married to a matriarch called Lwankokoloto, otherwise known as 'Shaka.' Muzimanzovu was the biological father of both, Kafitwe through whom DW3 said he traced his lineage, and the first Chief Mpanga. The Lukano used to establish the Kapijimpanga Chieftaincy came from Kapiji Kasongo and the first installation was done by him. The Lukano which Kapiji Kasongo gave Kapijimpanga is a bracelet made of copper wire which they used to mine.

Coming to the process of succession, DW3's testimony was that, as reigning chief, he has the responsibility of identifying his successor. He will look at the Royal Family tree and the ones who qualify in order of importance and priority i.e. nephews, grandsons, or young brothers of the chief. Upon due assessment on the suitability of these individuals, there are two options for installing a successor, one is direct, the other involves the participation of the Royal Family members. A direct installation was first done by Kapiji Kasongo who gave his son Mpanga the Chieftaincy; or the second Chief Njamba, who gave the Chieftaincy directly to his nephew Kilolo.

In the succession which involves Royal Family members, the reigning chief calls a meeting of everyone from the Kapiji Kasongo lineage or Lwankokoloto and from their grandmother Kafitwe. The Chief then informs them of his decision. He also confides in other individuals outside the Royal Family members. These do not include Headmen as that would be putting the life of the chosen individual at risk. After the death of the chief, the Royal Family will meet just before installation to agree on whether to confirm the individual chosen or not. The other issues discussed are: setting an installation date, as well as logistics for the ceremony such as food, accommodation etc. The actual installation is a three day affair. On the first day, invited guests are expected to arrive. On the second day, an installation meeting is held and it is at this meeting where the proclamation of the successor is made and the catching takes place thereafter. It is the father of the chieftaincy who after getting the name from the Royal Electoral College, appoints and declares the successor.

In his installation as chief, invited guests arrived on 24th September, 2010. He was 'caught' on the 25th upon which his name was proclaimed amidst ululations from the people. He was even airlifted by the traditional cousins or "banungwe". The counseling was done in the night.

The following morning, the atmosphere was tense. When he tried to find out why, he was told it was because the Plaintiff had also been 'caught' to succeed the late chief. There was unprecedented commotion, leading to some invited guests departing. Police had to be involved to restore order.

By the next morning, the situation was calm. When DW3 was summoned to the main arena, there were different families all part of the Royal Family who had their own respective candidates as follows:

- (i) Robert Maluta
- (ii) Jack Kaisala
- (iii) Saimon Kyanguba
- (iv) Ephraim Mateyo
- (v) Opa Kapijimpanga (Plaintiff)
- (vi) Kilolo Ng'ambi (1st Defendant).

Each candidate was asked to present his family tree and upon doing so people would shout them down. This is also what happened to the Plaintiff. DW3 did present his, together with supporting documents showing how he traced his lineage to the first Chief Mpanga. He narrated how Njamba took over and established the Kapijimpanga Chieftaincy. Njamba's nephew Kilolo became 3rd chief. Kilolo had a sister Musale, who had three (3) daughters: Kyungunengu; Nyaluwena and Kibeka. Kilolo was succeeded by his nephew Ostralia Katuka, who was born of Wibinyola, a daughter of Kibeka. Wibinyola had three daughters one of whom was Elisa. Elisa's last born daughter Gladys had eleven children of whom the 1st Defendant is number seven. This makes Ostralia Katuka the 1st Defendant's maternal uncle.

According to the 1st Defendant, the Plaintiff's family tree is of his own creation to try and attach himself to the Royal Family. That Inamusale through whom he

wishes to claim lineage was just a worker in the chiefdom, from the Bayeka Clan. 'ina' in Bayeka means 'mother of' and 'Musale' means a 'female child'. Thus, Inamusale meant a single orphaned child. At the most, the Plaintiff comes from the patrilineal side of the Royal family.

Regarding the 3rd Defendant's claim, the 1st Defendant equally trashed it as self-constructed. That the maternal grandmother the 3rd Defendant is referring to is actually the name of the 1st Mujimanzovu whose real name was Womba Shakabilwa. Hence, this family tree is better explained by the Mujimanzovu Chieftaincy.

In cross-examination, the 1st Defendant maintained his evidence, that Inamusale was a 'loyal' worker in the chiefdom. He insisted, the 1st Chief Mpanga was installed by his father Kapiji Kasongo. Njamba a direct nephew of Mpanga went and got the instruments of power from Mpanga by conquest and moved on to establish his own chiefdom Kapijimpanga. The 1st Defendant admitted, he was caught in the afternoon and placed in the Kamboro in the evening when procedurally the catching is supposed to be done in the morning. That the other six candidates were caught in the morning. He said the Electoral College that elected him was actually the late chief. He also admitted, that on 25th September, 2010, the Royal Family failed to select a chief. He further admitted, it is normal tradition that once aggrieved with the candidate who is caught, the Royal Families will place their own proposed person in the 'tumboros.' DW3 further confirmed, he had not been recognized by Government but had taken over office since traditionally, he was installed as chief. He further said the source of this tradition is oral, from a history book known as Witch Bound Africa and the 1978 Installation Minutes.

DW4 was 69 year old **MOSES ABISA**, a businessman of Solwezi. He told the Court that he is "Mwepu wa mfumu" which means the Chief's right hand man. He said this is the role he played with the late Chief Ostralia Katuka and for the last three years of his reign, actually acted as caretaker, when the chief was very ill.

DW4 said in the Kaonde tradition, the Chieftaincy runs down and not upwards. This means you first look at the eligible persons, most closely related to the late chief or the one before. There were nine people put forward as candidates to succeed the late chief Ostralia Katuka but this number came down to seven. Amongst the seven, the 1st Defendant Kilolo Ng'ambi was the one most closely related to the late chief. His mother, Elizabeth was a biological sister of Ostralia Katuka making the 1st Defendant a direct nephew of the late Chief Kapijimpanga. That the 1st Defendant is from the Mukunta family. The first born in this family is Luano. As Luano means beating a drum to herald the birth of the first child, Luano could not have been born after Inamusale, as claimed by the Plaintiff. For that reason, DW4's position was that, the family tree presented by the Plaintiff was incorrect. That he had been Mwepu wa mfumu for 25 years and such a family tree had never been presented before. According to DW4, 'Ina' means 'mother' and 'namusale' – lost girl child. In this case, 'Inamusale' means 'maid to Jingamba's (NJamba's) mother'. He testified, there had only been five Chiefs Kapijimpanga: 1. Mpanga; (2) Njamba/Jingamba; (3) Kilolo; (4) Katuka; and (5) Kilolo Ng'ambi.

DW4 further said, the Electoral College consists of the late chief, his confidants who include other chiefs, some members of his family and the senior chiefs. Sandangombe is a Headman who was upgraded to a sub chief. Hence, the chief could not have confided in Sandangombe who has no powers to choose a chief, as that is the role of the Royal family. The role of Chief Mujimanzovu is that he

chairs the meeting of the Royal Family at which the chief is selected. After this is done, the Council of Chiefs meet to discuss this name. The chair, Chief Mujimanzovu then announces the new chief.

In this case, the name of the 1st Defendant was announced after 15:00 hours, the day after the chiefs had arrived and met. Confusion however, started on the date of arrival of the invited guests. That night, DW4 heard a gunshot and came to learn, it was the Inamusale family that had caught the Plaintiff, Opa Kapijimpanga, as their candidate. By midnight, the confusion had heightened.

Later the following morning, the chiefs convened in the main arena where the installation ceremony was to take place. To calm the situation, an order was made directing the release of all persons who had been caught and placed in 'tumboros'. The chiefs then told members of the Royal Family to meet and come up with one name, as per tradition. The Royal Family members failed to agree on two occasions. On the 3rd occasion, they were given people who could assist take notes, including veteran Lawyer, Dr. Ludwig Sondashi. Subsequently, it was reported the families had resolved to take the name of the person proposed by Senior Chief Mujimanzovu. This was followed by an announcement that the 1st Defendant, Kilolo Ng'ambi was the successor to the Kapijimpanga throne. The announcement was made by Senior Chief Mujimanzovu.

When he was cross-examined, DW4 said it is actually the Royal Family that should sit and choose a successor. In this case only the Mukunta Family should have sat as the family closest to the late chief. The six families did not agree on a single candidate. This is how they resolved to allow Senior Chief Mujimanzovu to appoint the successor to the Kapijimpanga throne. According to the minutes however, all six families qualified to ascend to the throne. What happened was unprecedented and the steps taken were to normalize the situation.

Further cross – examined by Learned Counsel for the 3rd Defendant Dr. Mulwila, DW4's evidence was that, it is not the role of Chief Mujimanzovu to select Chief Kapijimpanga. That the minutes of the 1978 installation show the role played by Chief Mujimanzovu at the installation of Ostralia Katuka as chief. This role was that of Master of Ceremony, only.

DW5 was Senior Chief Mujimanzovu who gave his full names as **KAPIJI KASONGO KAMUYANGE MUJIMANZOVU**, 58, of Onkapito Mwananzovu, Solwezi. His testimony was in substance, that the relationship of the Mujimanzovu to Kapijimpanga Chieftaincy originally, was that of father and son, respectively. It was to honour his first born son and for his loyalty, that the father gave his son the chieftaincy. That according to tradition, on installation day, the Royal Family members in consultation with other persons bring the name of the chosen chief to the chairperson who is Chief Mujimanzovu, whose duty it was to announce this name. The traditional clan cousins then whisk this person to a 'Kamboro' – which act is traditionally referred to as 'catching.' He said that 'catching' is done during the day and not at any other time.

In the 2010 installation, there were six contestants involving six families which was not normal. As chair he requested each of the six families to nominate three members who then constituted a committee which he directed to go out of the arena. In consultation with the Electoral College, they were to come up with one name. They however failed to agree on one name three times. That is when they came to him as their father, to appoint one person from the six candidates. He asked the families to put their request in writing, which they did with the assistance of Dr. Ludwig Sondashi, a lawyer.

This request was read out in the main arena after which representatives of the families were asked to indicate their approval by appending their signatures and

they all did. It was on this authority that DW5 proceeded to announce the name of KILOLO NG'AMBI.

The 1st Defendant was thereafter caught and stayed in the 'kamboro' overnight, as per tradition. The following day, 26th September, 2010, the new chief was brought to the main arena and was installed as chief by having the Lukano (bungle) dressed on his arm. The other instruments of power were also handed over to him. DW5 then announced that the 1st Defendant, KILOLO NG'AMBI, was the new Chief Kapijimpanga and there was jubilation. That is how the installation ceremony ended.

In cross-examination, DW5 admitted, there had been no involvement of lawyers, in past installations. He said that the only families that constitute the Royal Family for the Kapijimpanga throne are the Kafitwe and Mpanga (Kazumba) descendants. He said he only appointed the 1st Defendant chief, with the permission of the Royal Families represented by the eighteen (18) man committee members.

DW5 further said, the Kaonde custom does not provide for what should happen when there is a stale mate in the selection of a chief. As Senior Chief, he stepped in to restore order. This had been done in the past in the transition of power from Mpanga to Njamba after Njamba rebelled. Chief Mujimanzovu gave the chieftaincy to Njamba. In the present democratic dispensation of governance however, he wanted the people to participate.

On the role of Sandangombe in the installation process, DW5 said Sandangombe is just a Senior Headman in the Kapijimpanga Chiefdom, who has no significant role to play.

DW5 clarified, that although traditionally, a sitting chief, amongst others. the Royal Family and Electoral College had the liberty to choose someone else. The six candidates who entered the arena represented six families and all entered their tumboros on the 24th September, 2010 at night. These included the: 1. Inamusale (Opa Kapijimpanga); 2. Ina Makambo (Mpanga); 3. Kazumba (Mpanga); 4. Kafitwe (Kilolo Ngambi); 5. Kambini; and 6. Luona.

He said the Royal Families are Kafitwe and Kazumba although the Kazumba family comes from Mpanga, which is the male side.

DW6, JAMES CHILESHE, is the Director in charge of chiefs' affairs in the Ministry of Chiefs and Traditional Affairs. The substance of his evidence was that there is no recognized Chief Kapijimpanga to date.

In cross- examination, it was his evidence the attempt by the family of the 1st Defendant to seek recognition of their chief was not in accordance with the normal procedure. He also admitted, that choosing of a chief is the preserve of Royal family members. That Government recognition is for purposes of facilitating payment of entitlement to the holder of the throne.

Finally, the 3rd Defendant's evidence came from himself and he also called one witness. The 3rd Defendant testified as **DW1**. He gave his full names as **JAMES KALELA LWAISHA**, aged 42 and a farmer of Mitele Area. His testimony was that, he claims entitlement to ascend to the Kapijimpanga throne through Nomba Shakabilwa, 1st wife to Kapiji Kasongo Kamuyange (alias Kapoba) Mujimanzovu. This couple had five children: Mpanga (M); Inamakando (F); Kalenga (F); Kibumba (F); and Jipenda (M). Inamakando had a daughter Kikwaba, who had a daughter Mwanji Katungu, who also had a daughter Zemba. Zemba was the mother to Munkulunda whose daughter Kyalumingu was mother to Elena. Elena's daughter Dorothy is the mother to DW1, the 3rd Defendant.

DW1 said succession to the Kapijimpanga throne is matrilineal, as the Kaonde are by tradition matrilineal. After the death of a chief, a pathologist who is engaged to embalm the body also gathers all the late chief's properties including the instruments of power. These are then, handed over to the late chief's close nuclear family. A meeting is held about a month later, by the Royal Family. They agree on a name for the successor and appoint a committee to deal with the succession issues. A day before the installation, the 'King maker' comes and the name of the chosen successor is given to him. The king maker verifies the qualification/eligibility of this person with the official register from the D.C.'s office before proceeding further.

In the event of having more than one candidate, each one of them is requested to show how he qualifies to be chief. The candidates are in the process also assessed in their leadership qualities after which the Electoral College endorses one candidate. The chosen candidate is then caught and placed in a Kamboro. The rest of DW1's evidence on how the chief is finally installed and given the instruments of power was as narrated by the Plaintiff. DW1 went further to testify, that if the Lukano fits the arm of the new chief, this is taken as a sign of acceptance of the person by the ancestral spirits.

In cross-examination, DW1 said Sandangombe has no role to play in the installation of Chief Kapijimpanga to the throne. He admitted, that no member of his family has held the throne since 1916 to date. He denied, such a situation is contrary to tradition and this is the reason he has pursued the matter as the Chieftaincy has only been held by one family.

DW2 was JUSTINA LWAISHA, 37, a businesswoman of Solwezi and young sister to the 3rd Defendant. The substance of her evidence was that, the procedure in installing the 1st Defendant as Chief Kapijimpanga was flawed. According to her,

the 1st Defendant did not get the guns to go in the bush and kill an animal. She just saw him with a leaf in his mouth.

In cross-examination, by Counsel for the Plaintiff, DW2 said she was present on 24.9.2010 but was not part of the Electoral College. That Sandangombe's role is to announce the name of the person chosen as chief elect after they have sat together with other members of the Electoral College. It was her evidence, that there was no Sandangombe in the installation of the 1st Defendant as chief. She confirmed, there was also a lot of confusion in this installation, as the Retainers were running away and even burnt the shelters they had built. That the 3rd Defendant's name did not appear as one of the 6 candidates. She however insisted, he comes from the Royal Family and is the one who should be the new Chief Kapijimpanga.

This is all the evidence I heard in the matter following which Learned Counsel for the Plaintiff, 1st and 3rd Defendants, filed written submissions which I have considered and for which I am indebted.

After considering all of the evidence led before me, I find, the following material facts were not in dispute. The Kapijimpanga throne has been held by four Chiefs: Kapijimpanga the first was Mpanga; Njamba also known as Jing'amba was the second; Kilolo third; and Ostralia Katuka was the fourth. The selection and installation of the 1st Defendant as the fifth chief Kapijimpanga, is disputed and now subject of the present action.

It was also common cause, that installation of Mpanga was done by the father, Chief Mujimanzovu Kapiji Kasongo Kamuyange, who adorned him with a Lukano or bracelet, as the instrument of power. I accept submissions of Learned Counsel for the 1st Defendant in this regard, that the installation of Mpanga by his father was filial.

It was also common cause, Mpanga's reign ended when Njamba usurped power from him. Njamba was also installed as Chief Kapijimpanga by his own father Sandangombe. From the evidence led, this was the only time he acted as 'king maker', and I so find. The third chief Kapijimpanga, Kilolo, was a nephew of Njamba while Ostralia Katuka the fourth Kapijimpanga, was also a nephew of Kilolo. It was further common cause, that the 1st Defendant, Kilolo Ng'ambi is a nephew of late chief Ostralia Katuka. Evidence also established, that the Kapijimpanga Chieftaincy evolved from filial into a matrilineal one, making nephews, brothers and grandsons of a Chief from his female relatives, eligible to succeed him. This is the current position.

According to common cause evidence, the tradition is that, the installation process covers a period of three days. On the first day, invited guests arrive. The second day, a meeting by the Royal Family members chaired by a neutral person is held to come up with the name of a successor. The selected candidate's name is announced in the morning, and he is immediately 'caught' and confined in a shelter known as a 'Kamboro' for overnight induction on the conduct, role and duties of a chief. Installation finally takes place on the third day.

It was not an issue in dispute, that in all previous installation ceremonies there was only one person selected as successor. Even in the 1978 installation where about four other persons had declared interest, Royal Family Members managed to agree on one name, that of Ostralia Katuka, as the person to succeed the Kapijimpanga throne.

The 2010 succession however, initially had nine candidates which was unprecedented. Later, the list came down to six. The Royal Family members failed to agree on one candidate. Confusion and unrest ensued with sparks of

violence. Police had to be involved to restore order. Senior Chief Mujimanzovu stepped in. He directed that three persons representing each of the 6 candidates from the Royal Family members, withdraw from the crowd to meet, with the sole purpose of agreeing on one name. This was done, but after meeting thrice, they failed to agree.

Acting on a memorandum drawn by veteran Lawyer Dr. Ludwig Sondashi, which was signed by three representatives of each of the 6 candidates indemnifying Senior Chief Mujimanzovu from any subsequent court action. Senior Chief Mujimanzovu proceeded to appoint and install the 1st Defendant as the current successor to the Kapijimpanga throne, and he was adorned with the instrument of power, the Lukano.

The main issue in dispute, is whether the 1st Defendant was properly installed as the new Chief Kapijimpanga. Other issues are on the eligibility of each of the candidates to ascend to the Kapijimpanga throne. I will first deal with the first issue and depending on my findings proceed to consider the other.

Installation of the 1st Defendant as Chief Kapijimpanga

The common cause evidence has established, that proper installation of a Chief Kapijimpanga is preceded by selection of the successor by the Electoral College consisting of Royal family members. It was only the 1st Defendant DW3 who alluded to a direct selection by an electoral college consisting solely, of the incumbent chief. His own witness DW4 however, conceded that, it is the preserve of the royal family members to select a new chief. I accordingly find, that the responsibility of selecting a chief is that of royal family members. They are the king makers and not Sandangombe.

The electoral college constituted by the Royal family members must reach consensus on one name at a meeting held specially for that purpose. On the further common cause evidence, the Royal Family members failed to agree on a name for the fifth chief Kapijimpanga. I find this stalemate is what triggered the confusion admitted by the Plaintiff as well as the 1st Defendant and their witnesses. This was also the evidence of the 3rd Defendant's witness DW2. I find, it was on account of this stale mate, that the tradition that had evolved over time could not address the problem that had now arisen which was novel.

I accordingly further find, the solution could not be left to one person. That all stake holders as subjects of the chieftom needed to be afforded an opportunity to participate in coming up with the solution for themselves, which would be broadly accepted. This would also promote the culture, wishes and spirit of unity, in the Chieftaincy as envisaged in Article 127 of the Zambian Constitution of Zambia which provides that:

“(1) Subject to the provision of this Constitution, the institution of Chief shall exist in any area of Zambia in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.”

(2) In any community where the issue of a Chief has not been resolved, the issue shall be resolved by the community concerned using a method prescribed by an Act of Parliament.”

I find in the present circumstances, the solution should not only address the present difficulty but should also set a precedent for resolving any such eventuality in the future. It cannot be denied, that society is pragmatic and tradition evolves from formulating new solutions to meet new challenges for which tradition does not provide an answer on account of the fact that such

challenges had never been encountered in the past. Even assuming that they were, the solution could have related to a different set of facts, in a totally different period in time; and probably affected a less exposed society. There were also no fringe benefits attaching to the position of Chief previously, which have now made it more competitive within the families eligible to ascent to the throne.

It is for the stated reasons, that I find in appointing and installing the 1st Defendant, Senior Chief Mujimanzovu acted in contravention of the established Kaonde tradition and customs for selecting a successor to the Kapijimpanga throne which is the preserve of the Royal family, electoral college. I am fortified in my finding by the case of **Mpengula v Litana and Others (1)** when in dismissing the appeal, the Supreme Court observed, the appellant had ascended to the Mushili throne without following Lamba traditions and customs and held:

"The appellant was not appointed in accordance with the Lamba custom."

When tradition is not followed, Section 3(2) of the Chiefs Act is very clear as states that:

- (2) "No person shall be recognized under this section as the holder of chief's office unless**
(a) The President is satisfied that such person is entitled to hold office under African customary law...."

In the event, I find it does not assist the 1st Defendant in the present case to argue, that this is how the Chieftaincy was originally bestowed on Mpanga a century ago. That situation addressed establishing of a new Chieftaincy and as already observed, over a period of almost 100 years, tradition has evolved from

the patriarchal of father to son position to make the Kapijimpanga Chieftaincy matrilineal, in accord, with the Kaonde customs.

Eligibility to succeed to the Kapijimpanga throne

The Plaintiff and 2nd Defendant did not deny that the 1st Defendant is an eligible candidate for the Kapijimpanga Chieftaincy. It is only the Intervener, the 3rd Defendant who claimed that both the Plaintiff and 1st Defendant trace their eligibility through Kafitwe who was allegedly, a slave in the Royal household. As such, that they are both in fact ineligible.

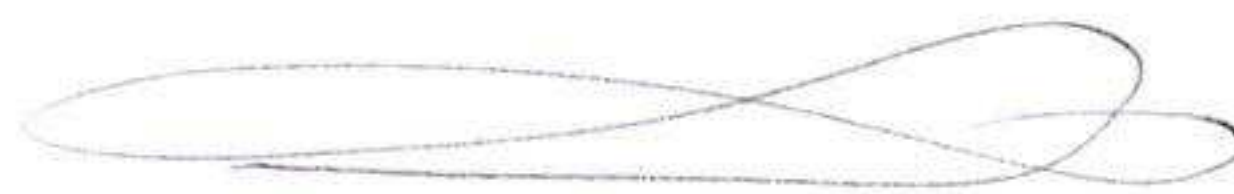
The 3rd Defendant, however, did not challenge evidence that the 1st Defendant is a nephew of Kapijimpanga IV, Ostralia Katuka. The installation minutes of 1978, show no issue was raised on either the eligibility of Ostralia Katuka to ascend to the Kapijimpanga throne nor his uncle before him Kilolo, Kapijimpanga III. On this evidence, I reject the proposition of the 3rd Defendant and find that, the 1st Defendant, qualifies or is eligible to ascend to the Kapijimpanga throne, according to his family tree. I further find, the criteria for eligibility is well defined by tradition, that it is the matrilineal nephews, brothers and maternal grandsons in the Royal Family, who qualify. Where there is more than one candidate, tradition again has an entrenched 'sieving' process. Each candidate is required to orally present his family tree and identify his lineage to the Electoral College, which has the sole preserve of selecting a Chief. That this Electoral College consists of members of the Royal Family.

Having nullified the selection of the 1st Defendant as one that was marred by wrangles, confusion and circumstances generally, not conducive for the selection and installation of any person as successor to the throne; and following which a solution was arbitrarily imposed. I direct that a fresh selection and installation be undertaken on the following terms:

1. Stake holders in the chieftaincy such as Indunas and Other group leaders; as interested parties and subjects of the Chiefdom without whom there would be no chief, be fairly represented in coming up with a formular, criteria or solution which will assist in resolving any stale mate in the selection process for the Kapijimpanga throne. After this is done;
2. All eligible candidates, to be accorded an opportunity to offer themselves as possible successors.
3. The candidates be assessed on presentation of their family trees, supported by official registers of their matrilineal lineage; any other recognised Books of historical literature such as Witch Bound Africa; and the 1978 minutes.
4. The whole process be concluded within 90 days of the date of this judgment.
5. In default of taking all the required necessary steps, any of the parties is hereby granted liberty to apply.

Having nullified the installation process of the 1st Defendant for non compliance with the established customs and traditions for ascendency to the Kapijimpanga throne. I find an appropriate order on costs in the circumstances, is for each party to bear own costs of the action and I so order.

Leave to appeal is granted.



J. K. K A B U K A
JUDGE