

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)

2017/HP/0463



**BETWEEN:**

**JULIUS MUYINDA**

**PLAINTIFF**

**VS**

**MATTHEWS SWETA**

**1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL**

**2<sup>ND</sup> DEFENDANT**

**ACKSON KASAPATU**

**3<sup>RD</sup> DEFENDANT**

**PHINAS MUTE MBU**

**4<sup>TH</sup> DEFENDANT**

**OBIE NTENDA**

**5<sup>TH</sup> DEFENDANT**

**CORAM:**

**HONORABLE JUSTICE MR. MWILA CHITABO, SC**

*For the Plaintiff:*

*Mr. M. Lisimba of Messrs Mambwe Siwila &  
Lisimba Advocates*

*Mr.H. Mulenga of Messrs Philsong &  
Partners*

*For the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants: Mr. A.  
Mbambara of Messrs A Mbambara Legal  
Practitioners*

*Ms. P. Chinyemba of Messrs A. Mbambara  
Advocates*

*For the 2<sup>nd</sup> Defendant: Ms. D. M. Mwewa Acting Senior State Advocate*

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**JUDGMENT**

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Cases Referred to:

1. *Ted Savaya Muwowo alias Chief Dangolipya Muyombe v Abraham Muwowo alias Temwani Winston Muwowo (suing in his capacity as Chairman of Uyombe Royal Establishment Committee SCZ/8/50/2014*
2. *Chief Chipepo (also known as Chilufya Mwamba) v Senior Chief Mwamba (also known as Paison Chilekwa Yamba Yamba) SCZ Judgment No. 25 of 2008*
3. *Collence Mulema Matebo Ben Kampelo (Suing as Chief Matebo) Appeal No. 48/2011*
4. *Matthew Namahalik Musokotwane v George Simukal and other Appeal No. 97 of 2015*
5. *Khalid Mohamed v The Attorney General (1982) ZR 49.*
6. *Charles Hector Sambundu and 8 Others v Lufwanyama Enterprises Limited and 3 Others 2012/HP/0916.*
7. *Kililo Ngambi v Opa Kapijimpanga (2018) Appeal No. 210/2015*
8. *Oggie Muyuni Mudenda v Dickson Muyeeka Kamaala Appeal No. 006/2019*

The Plaintiff commenced this action by way of writ of summons and made the following claims:

1. An Order that the Plaintiff is the right person selected and installed as Chief Chibwika
2. An Order that the installation of the Plaintiff was validly done as the three royal families (Mushidi, Kalwizhi and Wachikeka-Lunda by tribe) properly selected the Plaintiff,
3. An Order compelling the 2<sup>nd</sup> Defendant to recognize the Plaintiff as Chief Chibwika and to compel the 2<sup>nd</sup> Defendant to cause the installation of the Plaintiff to be gazetted as the law requires.

4. An Order of Interim Injunction restraining the 1<sup>st</sup> Defendant, his agents or servants whatsoever from interfering with duties of the Plaintiff as Chief Chibwika until final determination of the matter until further Order of the Court.
5. Any reliefs that the Court may deem fit.
6. Costs incidental hereto.

The statement of claim revealed that The Plaintiff was a member of the Lunda royal family who was appointed as a caretaker (Mwamba Ilunga) after his father, Chief Chibwika passed away in 2014. On 23<sup>rd</sup> May, 2015 the three royal families, namely Mushidi, Kalwizhi and Wachikeka, met to prepare for the selection the substantive Chief Chibwika. It was agreed that the selection will be done on the 20<sup>th</sup> and 21<sup>st</sup> of June, 2015 and on the agreed dates, the Plaintiff was selected and installed as Chief Chibwika. On 25<sup>th</sup> June, 2015 the royal families visited Senior Chief Kanongesha as per tradition to inform him about the installation. According to the claim, traditionally Senior Chief Kanongesha does not participate in the selection and installation of Chief Chibwika.

It further revealed that on or about 30<sup>th</sup> June, Senior Chief Kanongesha, the 1<sup>st</sup> Defendant herein called a meeting of selected village headmen for purposes of re-selecting another Chief Chibwika. In August, 2015 the Chief in Mwinilunga District met and resolved that the Plaintiff was duly selected and installed as Chief Chibwika IV- Kutona.

In March, 2017 the 1<sup>st</sup> Defendant wrote a letter alleging that since the demise of Chief Chibwika in 2014, the throne had remained vacant. It was alleged that since his installation the the 2<sup>nd</sup> Defendant had not gaetted his installation as required by law.

In their Defence the Defendants denied the allegations against them and contended that the selection and installation of the Plaintiff was in violation of the Lunda tradition. It was contended that the Plaintiff was not eligible to be Chief Chibwika because the Lunda tradition has a strictly matrilineal system and only those from the mother's side are eligible to become chief. That it was the aggrieved members of the royal families who went to complain and the meeting of 30<sup>th</sup> June was called to engage in a attempt to settle the chieftaincy problems.

It was further denied that the royal families were three but that they included Dinanga and Nyaluhana. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants raised a counter-claim claiming the following reliefs:

1. An Order nullifying the purported selection and installation of the Plaintiff as Chief Chibwika.
2. An Order declaring that the selection and installation of the Plaintiff offended the established Lunda tradition.
3. An Order that the Plaintiff being the son of Chief Chibwika does not qualify to ascend to the throne of Chief Chibwika as it offended Lunda tradition.
4. An order that the matter be referred back to the Lunda Kingdom for the selection of and installation process is

closely supervised by Senior Chief Kanongesha and the relevant government officials.

5. An Order discharging the interlocutory injunction granted in favour of the Plaintiff on 3<sup>rd</sup> May, 2017.
6. An Order that all eligible contestants be give an opportunity to contest the Chibwika throne.
7. An Order for costs against the Plaintiff.

At trial, the Plaintiff called 5 witnesses to support its case and the Defendants called 3 witnesses.

PW1 was Julius Muyinda, from Mushidi royal family and the Plaintiff herein. He testified that in August 2014 his biological father Chief Chibwika passed on and arrangements for the burial were made. After the burial the three royal families selected him as the caretaker Chief also known as Mwamba Ilunga. He was supposed to be care taker for a period of one year which was the mourning period. The 1<sup>st</sup> Defendant counselled him and gave him his blessings as he performed his duties as Mwamba Ilunga.

On 10<sup>th</sup> May 2015 he was approached by the brother to the 4<sup>th</sup> Defendant, Mr. Harry Chiyang'a, who informed him of the need to select a date for the installation of the Chief. He explained that the 3<sup>rd</sup> Defendant belongs to Wachikeka Royal family while Mr. Harry Chiyang'a and Paul Waishimoka belongs the Kalwizhi Royal family.

Paul Waishimoka objected to this suggestion stating that Harry Chiyang'a was not qualified to bring the subject matter as this

discussion was supposed to be between the three Royal families. Further, that the 3<sup>rd</sup> Defendant was not the actual headman to be in the discussion without the substantive headman Wachikeka. After these discussions, they agreed to 23<sup>rd</sup> May, 2015 as the date to set the date for the selection and installation of the substantive Chief Chibwika. At that time he was in possession of a letter from the Ministry of Chiefs' and Traditional Affairs and was addressed to him as the acting Chief Chibwika whose subject matter was the tour of Senior Chief Kanongesha to Chibwika Chiefdom to give direction and guidance on the selection of the substantive Chief Chibwika. He referred the Court to page 25 of the 1<sup>st</sup> Defendant's bundle of documents where the said letter was contained.

He took the letter to the three royal families and present was the 3<sup>rd</sup> Defendant representing the 4<sup>th</sup> Defendant, Harry Chiyanga and Paul Waishimoka. He told them he needed guidance from the three Royal families on how to respond to this letter.

On 23<sup>rd</sup> May, 2015 the three royal families met and the minutes of that meeting stated that they would not accept his highness Senior Chief Kanongesha giving guidance in the selection of Chief Chibwika.

All three families agreed to write back and tell him not to come to the Chiefdom for that purpose and this was highlighted on page 20 of the Plaintiff's bundle of documents.

The meeting also agreed to set 19<sup>th</sup> and 20<sup>th</sup> June, 2015 as the dates for the selection process of Chief Chibwika. A copy of the

minutes stating the selection dates were appearing on page 20C of the Plaintiff's bundle of documents.

PW1 was later approached by the Mushidi Royal family who informed him that they wanted to nominate him as a candidate to be the substantive Chief Chibwika. When it was agreed that he would be the candidate from the Mushidi Royal family, he was asked to hand over the instruments of power as an acting Chief to someone who would hold on to them until the selection. He handed over the instruments of power to the three royal families on 18<sup>th</sup> June, 2015.

On 19<sup>th</sup> June, 2015 different parties and the three royal families started arriving as earlier agreed. On 20<sup>th</sup> June, the agreed date for selection, the three families went in the arena and started their deliberations. He was not present during these deliberations. Later in the afternoon a number of elders from the three royal families and some people went to his house and informed him that he had been selected as the substantive Chief Chibwika. He was then lifted shoulder high and taken to the arena where the selection was done and gunshots were fired to signal that the selection had been done.

He was later taken to a private secluded place overnight as per procedure of selection of a Chief in Lunda traditions. He underwent the cleansing process as per Lunda tradition and the following morning he was taken to the public ceremony for the official ceremony of installation and confirmation. In full view of the public, the instruments of power were handed to him in the

presence of his Royal Highness Chief Nyakaseya who witnessed the whole ceremony and gave counsel as well.

A special white powder was smeared on his face and gunshots were fired again. Mass was conducted by Father Kennedy, a Catholic Priest from Lwamu Mission in Chief Kanongesha's area.

On 22<sup>nd</sup> June, 2015 he was escorted by the three royal families to the government administration offices at the Ministry of Chiefs and Traditional Affairs to confirm that he had been selected and installed as Chief Chibwika. Members of the royal families travelled to the palace of Senior Chief Kanongesha's in Order to inform him that the Plaintiff had been selected and installed so that a date could be set where he would be personally taken to the Chief for a formal introduction.

He referred the Court to pages 22 and 22a which was a document showing that there was a visit to Chief Kanongesha's palace and the same was signed by the Secretary General Kainda, Headman Wachikeka Headman Chilumbu among others.

They left the letter stating that Chief Chibwika had been installed and that they would bring him to you as soon as possible for the blessing of the Senior Chief Kanongesha.

He explained that as per tradition there was a co-existence of Chief Chibwika and Senior Chief Kanongesha. When a Chibwika was installed, they are taken for counsel to Chief Kanongesha.

Within the week, on 25<sup>th</sup> and 26<sup>th</sup> June, 2015 letters of invitation were sent out by the Kanongesha Royal establishment and to



some selected headmen inviting them to discuss the installation of chief Chibwika.

The word that was going round was that a new chief was going to be installed on 30<sup>th</sup> June, 2015. It was at this point that an injunction was sought from the High Court in Kabwe because the office of Chief Chibwika was no longer vacant following his installation. The matter before the Kabwe High Court under cause number **2015/HB/56** was subsequently dismissed on the ground that the Plaintiff in that matter, Gabriel Muyinda, had no locus standi.

In March, 2017, the 1<sup>st</sup> Defendant circulated letters of invitation to different departments from the Ministry of Chiefs and Traditional affairs. The said letter stated that since the demise of Chief Chibwika, the throne had remained vacant. The 1<sup>st</sup> Defendant was inviting them to go and participate in the selection and installation process. This letter was found on page 64 of the Plaintiff's bundle of documents.

He explained that there was an attempt to resolve the matter in August 2015. A meeting of traditional leaders in the Mwinilunga District was called by the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Defendant appointed Chief Sailunga to Chair the meeting of the five chiefs. He referred the Court to pages 12 to 32 where the minutes of this meeting to attempt to resolve the dispute were contained. The chiefs present were from Chibwika Royal Establishment, Wachikeka, Mushidi, Kanongesha Royal Establishment with a representative of the senior Chief Kanongehsa. The Church was also represented at this meeting as well as Government

representatives and other family members. At this meeting it was resolved as follows:

1. There were only three royal families that belong to Chibwika Royal Establishment which were Wachikeka, Kalwezhi and Mushidi Royal Families. The other two families namely Dinan'ga and Nyaluhang'a did not belong to the royal family and did not belong to the electoral college of the Chibwika Royal Family.
2. It was also established that being a son to a Chibwika Chief did not exclude one from ascending to the throne. The Plaintiff could not have been excluded because in Lunda tradition and culture had many examples of sons and daughters who had succeeded their fathers.
3. It was concluded that Julius Muyinda was duly selected and installed as Chief Chibwika IV in accordance with the tradition and culture.

He referred the Court to page 31 of the Plaintiff's bundle of documents where these resolutions were contained.

He went on to give examples of those chiefs who ascended to the throne through their patrilineal lineage. He gave an example of the current Chieftainess Ikelengi who was the daughter of the previous Chief. He explained that she first became Mwamba Ilun'ga the ascended to the throne.

He prayed that the Court grants the reliefs sought.

Under cross examination he confirmed that he is the son of the late Chief Chibwika and that children inherit the father's throne after death. He however conceded that his father did not inherit the throne from his father as he succeeded Chikunzu Lemba from Wachikeka royal family and there was no father son relationship. It was his evidence that Chief Kanyama succeeded his father but that he was not aware that Chief Kanyama married his own cousin. He told the Court that his father Francis Biscuit Muyinda was from Mushidi Royal family but denied that there was a rule providing for rotation when it came to succession to the throne.

He explained that the first Chibwika was Kafulezhi of Kalwizhi royal family. According to him, that he was not aware that the next Chibwika after Kafulezhi as Nbembi because to his knowledge Chinkunza Lemba succeeded Kafulezhi.

He confirmed that the Kalwizhi Royal family, Wachikeka royal family and Mushidi royal family have all in succession been chiefs in Chibwika Chiefdom. He conceded that by practice this was rotation amongst the royal families.

He stated that he did not agree that he was not supposed to succeed his father. He confirmed that when his father died he was appointed as Mwamba Ilunga who is basically a care taker chief pending the installation of the substantive chief. He explained that as Mwamba Ilunga he was given instruments of power for that Chiefdom. He stated that he was told that he was being appointed as Mwamba Ilunga only.

He was referred to page 10 of the Plaintiff's bundle of documents filed on 23<sup>rd</sup> May 2019 which contained the minutes of the meeting for his installation as Chief Chibwika held on 20<sup>th</sup> June, 2015. He conceded that from the minutes there was no one from the office of the District Commissioner nor from the Ministry of Chiefs and Traditional Affairs.

He further explained that Paul Waishimoka and Phenius Ntembu were the Chairperson and Secretary respectively for the selecting committee for Mwamba Ilunga and not Chibwika Royal Establishment. The Chairperson for the Chibwika Royal Establishment was Paul Kamusaki who is still serving in that capacity, while the Godfrey Kayinda was the Secretary of the Royal Establishment. He stated that the Committee that selects the substantive Chief is composed of the three royal families.

He denied authoring a document called Chibwika Royal Establishment Strategic Plan 2015 to 2019. When referred to pages 96 to 101 in the Defendants bundle of documents, he stated that he did not entirely agree with this document but stated that he provided a foreword to the document. He stated that it was not true that the Chibwika Royal Establishment was established by Chief Kanongeha.

The witness was referred to page 99 of the Defendant's bundle of documents and confirmed that there was a very strong bond between Kanongesha and Chibwika but denied that Senior Chief Kanongesha had a say in who becomes Chibwika. He conceded that page 6 of the supplementary bundle of documents states that the Kanongesha appoints someone to be a Chibwika. He

admitted that Senior Chief Kanongesha had a role to play in selecting his father as Chibwika. Page 6 of that bundle also refers to a letter written in 1979 written by the Plaintiff's father addressed to the Permanent Secretary Solwezi under the flying seal of the District Secretary Mwinilunga.

He was further referred to page 2 of the 1<sup>st</sup> Defendants Supplementary bundle of documents. He stated that according to that document Chief Chibwika and Chief Kanongesha's Chiefdoms co-exist and to his knowledge, Chief Chibwika ascended to the throne as Senior Chief Kanongesha when that seat fell vacant. He stated that one had to be a Chief Chibwika in order to ascend to the throne as Senior Chief Kangongesha but stated that the current Chief Kanongesha was never a Chibwika.

He further stated that the first Chibwika Kafulezhi and Chikunzu Lemba were two Chief Chibwikas who ascended to the throne of Senior Chief Kanongesha. He however maintained that Chief Kanongesha had no say in who became Chief Chibwika. He also confirmed that the Kanongesha was the head of the Lunda tribe.

According to him, the role of the Kanongesha is to receive the newly installed Chief Chibwika. He stated that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants came from the Wachikeka royal family and Kalwizhi royal family respectively. He explained that there were four Chiefdoms under Chief Kanongesha's authority namely; Nayakaseya Chiefdom, Mwilamba Chiefdom, Ikelengi Chiefdom and Chibwika Chiefdom.

and Traditional Affairs or other government officials from the District Commission's office at the time he was installed. He explained that on the date of his installation the government officials were not present because in the new amended Constitution a Chief is no longer recognized by the President or any other officers but invitations were sent to them.

With respect to the document on page 96 he confirmed having written the foreword of that documents but explained that he did not agree with what was written on page 98 of the document because that was not part of his foreword but an insertion to mislead the Court. He clarified that the document at page 98 is not part of his foreword because it was not a continuation of his foreword at page 96. He explained that page 98 is numbered in roman numerals as page (iv) whereas page 99 is numbered page 6.

He explained that the reason he said that the Senior Chief Kanongesha has no role to play in the installation of the Chief is because when the three royal families have done the selection and installation, it was for Senior Chief Kanongesha to merely be introduced to the newly installed chief in order to offer counsel and blessings so that they can work together in harmony. He explained that with respect to page 3 of the Defendant's bundle of documents, the then Chief Kanongesha acknowledged that the people's choice at that time who was his father and he was selected by the people and installed by the three royal families.

According to him, this was exactly the case currently where he had been selected as the preferred choice for the three royal

families. He stated that the letter at page 3 was not signed and the author of the letter was Acting District Secretary who is not an authority on Lunda traditional matters.

He confirmed that the letter dated 26<sup>th</sup> June, 2015 on page 22 informed Senior Chief Kanongesha that he had been installed as Chief Chibwika that he would be taken to him to you as soon as possible for his blessing. He said that this was co-authored by his secretary Godfrey Kayinda, headman Wachikeka. The person who delivered the letter took with them one goat and some cash

Under further re-examination he confirmed that the practice is that one had to become a Chief Chibwika before he could be appointed as Senior Chief Kanongesha. He however explained that the current Senior Chief Kanogesha went straight to become Chief Kanongesha and thereby breaking the practice and weakening the strong bond and relationship that existed before.

He clarified that he has no claim against the State because the Constitution now did not provide for recognition of a Chief by the State.

**PW2** was **Muke Christopher (Chief Nyakaseka Mudata II)** of Ikelengi District in the Chieftom of Mwakaseya. It was his evidence that on 21<sup>st</sup> June 2015 there was a message that was circulated regarding the selection of Chief Chibwika. He stated that he is the Mwachibwika Makwali (meaning he is traditionally the mother to Chibwika and his son is also Chibwika Makwali).

After the death of Chief Chibwika the three royal families namely; the Mushidi, Kalwezhi and Wachikeka selected the person who would be selected as Chief. These are the ones that select the person to be chief. After the selection was done it was at the ceremony that this person was to be revealed and installed as Chief.

He recalled that on 21<sup>st</sup> June 2015 the government sent a vehicle to him to pick him up for the installation ceremony of his son PW1 as Chief Chibwika.

This day was communicated to all the Chiefs and the Government.

It was for this reason that the Government sent a vehicle to ferry him to where the Plaintiff was being installed as Chief Chibwika. He explained that as chiefs they do not attend the selection meeting which is between the royal families but merely witness the installation ceremony.

He further testified that that on that material day the Chief was brought to him and he gave his blessing to the Plaintiff. After the blessings had been given, people continued celebrating. He confirmed that there were no other chiefs but there were some sub chiefs who are recognized by the government. Following the installation ceremony, they all went back to their various chiefdoms and there were a lot of issues raised by the 1<sup>st</sup> Defendant stating that the installation was wrong. According to him, traditionally when a Chief is selected by the family, no chief is allowed to change this as it is taboo.



He further testified that when these squabbles happened they gathered as chiefs and he stated that during installation government officials had to be present. He however stated that after installation was done he stood up and asked if there was anyone who was not happy with the installation but no one stood up. He stated that a priest from the Catholic Church and other church members were in attendance.

It was his testimony that later some members of the royal family from Kanongesha namely Waishimoka and one member of Ndinang'a came claiming that they should be installed and that they should remove the Plaintiff as Chief Chibwika.

He also testified that before ascending to the throne as Kanongesha, one needed to be Chief Chibwika. When the current Chief Kanongesha ascended to the throne, it was stated that there was no need for Kanongesha to first be Chief Chibwika as he himself was not a Chief Chibwika.

PW2 further testified that he recalled that following the issues brought about by the installation, there was a time they assembled at Mwinilunga Assembly Hall and they called royal families from Kanongesha and Chibwika Chiefdoms. The chiefs who were present were Chief Ntambu, Senior Chief Sailung'a, Chief Kakoma and himself. He stated that the evidence of this meeting was before Court and he referred the Court to pages 12 to 33 of the Plaintiff's bundle of document. He testified that based on the minutes it was concluded that the only the Plaintiff was Chief Chibwika who had been installed and they asked for peace

to prevail in the Chiefdom. He confirmed that his signature was appearing on page 32.

To his knowledge this evidence before Court on the outcome of the meeting was what was obtaining and they believed that the matter was fully concluded. He stated that there was sufficient communication of this meeting between Chief Nyakaseya and Senior Chief Kanongesha. He referred to page 43 of the Plaintiff's Bundle of Documents which was a letter dated 2<sup>nd</sup> June, 2016 prepared by himself and addressed to Senior Chief Kanongesha. He stated that when he wrote this letter he was in the presence of Chief Kanongesha and Kelly Kasesawhen they went to Chief Kanongesha's palace. He stated that the letter was meant to be neutral in the dispute since the matter was in Court.

He stated that in response, Chief Kanongesha then called his lawyer in his presence and asked him to speak to PW2 as he was at his palace. In the phone conversation the lawyer inquired if he attended the installation ceremony and his answer was in the affirmative. He was further asked what challenges he faced during the installation and he told the lawyer that there were no challenges as it was a peaceful event. Later he gave this letter to Senior Chief Kanongesha and he had not responded to his letter to date. He stated that according to tradition this matter was not one that should be resolved by the Courts of law.

Under cross examination, the witness told the Court that he became a Chief in 2006 and was recognized by the government in 2007. The owners of the royal family of Nyakaseya facilitated his installation and it was witnessed by Senior Chief Kanongesha. He

stated that the installation is done by the royal families and the Chief witnesses the installation. He stated that it was Senior Chief Kanongesha who installed him as chief and similarly he also installed Chief Kanongesha because Chiefs install each other. He told the Court that the installation was by the family and this was traditionally known as "Ukuswanika"

He explained that when selection has been done, a date for installation of the Chief is set. This installation needed to be witnessed by a senior chief or any other chief from the chieftom

He stated that whether he is a senior chief or not his duty is to bless the newly installed chief. He clarified that there was a difference between witnessing of the installation and the installation of the Chief itself. Chief Kanongesha witnessed his installation and blessed that installation. He stated that it was very important for this witnessing to happen because a witness was considered as someone very important. He clarified that he did not personally witness the installation of Chief Kanongesha but that his father witnessed it. He stated that his biological mother came from Kanongesha while his father came from Nyakaseya. He stated that he was chosen based on the fact that the parents felt he was capable of being installed other than other child. It was his evidence that it was previously the women who would take over the throne and in his case they found no one cable among the women and that was how they felt he was the right option. He confirmed that initially this throne was for women. He stated that he was not there when they were selecting the Chief Chibwika.

He stated that he was the only government recognized chief present at the installation and he was not aware why other chiefs were not present. It was his evidence that Senior Chief Kanongesha sent someone to the District Commission through a Mr. Ntanga who informed PW2 that the installation could proceed. He denied lying about speaking to Chief Kanongesha about his absence at the installation. According to him, he called Chief Kanongesha to find out if he would be in attendance and he told him that he would be attending another ceremony at Msele that very morning and said that he would bless the Chief later once he was taken to his palace. He also stated that Mr. Ntanga, Senior Chief Kanongesha's emissary told him to proceed with the ceremony.

He clarified that he attended the ceremony and did not install Chief Chibwika. He stated that they are not allowed to install a chief because this is for the royal family.

He maintained that he remained neutral in the dispute and did not take either party's side and agreed to be a witness for purposes of testifying on their tradition. He further stated that his evidence was also for the benefit of the subjects in the chieftom who had suffered as a result of the disputes.

He said that he was conversant with Chibwika history and confirmed that he knew the Plaintiff personally. He stated that he had heard of Dinanga and Nyaluhana but that these two were not from Chibwika Chieftom but were relatives from Kanongesha. He said he was not aware who the first, second and third Chief Chibwikas were but that he knew the fourth Chief

Chibwika Muyinda Biscuit Francis Katayi, the Plaintiff's father. According to him, the Plaintiff came from Kazhinga through his mother and Mushidi through his father.

He explained that inheritance in Chibwika was dependent on the selection. He conceded that in Chibwika there has never been a situation where a son inherits his father. With respect to the installation ceremony he attended, he reiterated that he was just called to bless the occasion and it was not his duty to take minutes and was not aware if there were minutes of the proceedings. He stated that there were police officers at the ceremony but he did not know if there were government officers present.

He confirmed that Senior Chief Kanongesha is the senior chief for Nyakaseya, Chibwika and Nyilamba. He maintained that the royal family was the one who installs the Chief Chibwika but Chief Kanongesha just comes to bless the installation. He denied knowing the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendants but stated that he knew Colonel Mukanda, PW4.

Under further cross examination by the State he stated that there was a selection process that was conducted on 23<sup>rd</sup> May, 2015. He stated that he did not know whether there is any evidence to show that there were government officers at the installation but stated that there was a GRZ vehicle there.

Under re-examination he told the Court that there was a requirement to have at least one chief present to witness the installation. If no chief was present the installation would not carry weight but would still be valid. He restated that there was a

neutral party in these proceedings and that he had said so in a letter he wrote to Chief Kanongesha. He stated that Nyaluhana and Dinanga were royal families from Kanongesha Chiefdom while mushidi, Kalwizhi and Wachikeka were the royal families from Chibwika Chiefdom

When asked by Mr. Mulenga on succession, he stated that while there was no evidence of a son succeeding his father in the Chibwika's royal family, this practice prevailed in other Lunda chiefdoms such as Chief Ikelengi London where the current Chief has inherited the father. He also stated that even he himself ascended to the throne on his father's side. He also said that Chief Kanyama also inherited his father's throne.

With respect to whether he witnessed Chief Kanongesha's installation, he explained that the Late Chief Nyakaseya is the one who did all the works during installation of his Senior Chief Kanongesha and that his response was with reference to the institution of the chief.

**PW3** was **Aston Kang'asa (Headman Wachikeka)** of Mwinilunga who testified that on 13<sup>th</sup> August 2014 Chief Chibwika passed away and was buried on 16<sup>th</sup> August 2014. On 18<sup>th</sup> August the royal families namely; Mushidi, Wachikeka and Kalwizhi sat to choose the interim Chief, also known as Mwamba Ilunga, while they awaited the installation of the substantive chief. The royal families sat and chose the Plaintiff to be Mwamba Ilunga as he was the one who had been moving with his father during the course of his reign. PW3 said he was from Wachikeka royal family. They then selected people from the Kalwizhi family to take

care of the whole process leading to the installation. They chose Paul Waishimoka to be the Chairperson, they chose Phenias Mutembo to be the secretary while Harry Chiyanga was chosen as treasurer. When the committee was selected they went to reveal the interim chief to the people. They waited for one year to elapse and on 23<sup>rd</sup> May, 2015 the three royal families sat to select a date to select the one who would be installed as the substantive Chief Chibwika. They settled for the 19<sup>th</sup> of June, 2015 as the date for selecting the one to be crowned as Chief. He confirmed this on page 19 of the Plaintiff's bundle of documents.

They sat and selected John Chidata as Chairman of the three families to oversee the process. He was asked if he had a candidate and he said he had none. Similarly, the Kalwizhi family said they did not have a candidate while Mushidi proposed the Plaintiff who was the Mwamba Illunga. They went to Mr. Chidata to inform him of the selection of the Plaintiff as the Candidate to be the substantive Chief.

On 18<sup>th</sup> June 2015, the Plaintiff surrendered all the instruments of power to the three royal families.

As regards the installation, on 21<sup>st</sup> June, 2015 the Chairman announced that they had selected the Plaintiff as the substantive Chief Chibwika to people who were gathered in the arena. When he was announced they smeared him with white powder and they later took him to a place called Katewo where a chief is taught how to look after his people and his family within the chiefdom.

He said he was amongst the people who took the Plaintiff to prepare him for installation where they were the whole night. In

the morning, the Plaintiff was bathed in accordance with Lunda tradition. Oil was applied on him and he was covered with a cloth and he was then lifted and taken to where the people were the people were and he was made to sit on a reed mat.

The completed all the processes for the installation of the substantive Chief and he was then given the instruments of power by one Bendau Wachikeka, his uncle. The ceremony ended with Chief Nyakaseya blessing Chief Chibwika.

The following day the three royal families took him to the Ministry of Chiefs and Traditional affairs to introduce the Plaintiff as the newly installed Chief Chibwika and thereafter went back to the palace. He was received with no problems by the people but what was worrying is that in his own family there were some people who were saying that this was not the Chief as they had not installed him. This complaint was coming from Wachikeka and Kalwizhi royal families. They stated that all these families were surprised by this complaint because it was that royal families that selected him.

Under cross examination, it was PW3's evidence that he was appointed as headman in September 2019. He stated that he was just an observer in the whole process as he was merely moving with the then headman Wachikeka. He lives in Mwinilunga and not Wachikeka and stated that during the installation he was in Mwinilunga and was moving to Chibwika. He confirmed that all this time he had been staying in Mwinilunga.

He confirmed that it was his uncle Bendau Wachikeka who was performing on behalf of the Wachikeka family. He confirmed that



the first Mwamba Ilung'a was appointed after the death of Chief Chibwika and was later taken to Senior Chief Kanongesha but he was not there when Mwamba Ilung'a was taken to Chief Kanongesha.

He also confirmed that taking the Mwamba Ilung'a to Chief Kanongesha was a very important step in the succession process. He confirmed that 18<sup>th</sup> June, 2015 Mwamba Ilung'a handed over the instruments of power to Paul Kamusaki. The Instruments were then given to a new Mwamba Ilung'a on 18<sup>th</sup> June, 2015. He explained that the other Mwamba Ilung'a was the Plaintiff's brother also from Mushidi royal family. Paul Kamusaki and the late Chief Chibwika were brothers sharing the same father and same mother. He confirmed that all these were from one royal family mushidi. He stated that the second Mwamba Ilung'a was not taken to Chief Kanongesha because he was just waiting to hand over the instruments of power to the Chief who was going to be installed.

He stated that the act of not taking the second Mwamba Ilung'a to Chief Kanongesha was not an abrogation of procedure under Lunda custom. According to him, the ceremony for selection of the chief was an organized event which all the three royal families were aware about. He explained that Paul Waishimoka came from Kalwizhi royal family and was the chairperson when selecting chief Chibwika according to the three royal families. Phenias is also from Kalwizhi royal family. When referred to page 261 of the Plaintiff's Bundle of Documents he confirmed that his name was not on the minutes of the selection of Chief Chibwika stating that the names recorded were those that stay within village of

headman Wachikeka. He confirmed that he was there but did not know why his name was not on the list and was not even aware that there was a list going round.

He stated that the committee that was initially selected to install the chief did not come on the day of the installation and a new team was selected. He stated that the three initial committee members did not show up as the actual selection procession was done by the three royal families. He confirmed that in the history of Chibwika family there was no history of a son inheriting the throne of the father apart from the Plaintiff.

He stated that he did not know Shadreck Mudata and disputed that he was the actual headman of Wachikeka. He explained that he was merely the brother to the late headman. He also confirmed that there was no government official at the installation ceremony.

He stated that the late Chief Chibwika Francis Biscuit Katayi Muyinda did not take over from Kafulezhi but from Chikunzu Lemba from Wachikeka royal family. Chikunzu Lemba succeeded Kafulezhi from Kalwezhi royal family. He told the Court that he had never heard of Ndembi as a Chibwika who had ruled for a short time.

He stated that on 20<sup>th</sup> June, 2015 they were electing the 4<sup>th</sup> Chibwika and not the 5<sup>th</sup> Chibwika. He stated that he was not part of the meeting that met on 20<sup>th</sup> June, 2015 whose minutes appear on page 16a of the Plaintiff's bundle of document in so far as it related to the election of the 5<sup>th</sup> Chief Chibwika.

He denied that historically there had been a rotation from one royal family to the next in terms of succession. He stated that the installation was done and concluded on 21<sup>st</sup> June, 2015 when Chief Nyakaseya blessed him.

Under reexamination by the learned Mr. Lisimba the witness clarified that the Plaintiff succeeded his father and his installation was done in accordance with Lunda custom. He confirmed that the Wachikeka was present at all the installation processes though it was not him as Wachikeka.

He confirmed that Paul Waishimoka was the Chairperson of the selection committee and he was chosen by the royal family.

**PW4** was **Colonel Jephon Kaputa Mukanda** a government officer working as the Director for Livestock and Fisheries under the Zambian National Service. He told the Court that his evidence in his personal capacity on behalf of the Kalwizhi family. He testified that around 2010 and 2011 the late Chibwika Francis Katayi Muyinda was sick coupled with old age. By then he was based in Eastern province as Regional Commanding Officer. He was called by the Kalwizhi, Wachikeka and Mushidi royal families for purposes of finding someone to help carry out the Chiefs works on his behalf. They choose the Plaintiff to be making follow ups on Government projects. The late Chibwika Francis Katayi died in 2014.

On 15<sup>th</sup> August, 2014 he transported the body of the Chief to the village and the late Bendau Mudata and Phenias welcomed the body from Solwezi before they reached Mwinilunga. The 4<sup>th</sup> Defendant told him that among their relatives in the three royal

families, there was no one else who would act as acting chief. He told PW4 that he should assist the Plaintiff to become the Mwamba Ilung'a. The Plaintiff was proposed by Joyce and 4<sup>th</sup> Defendant seconded.

On 18<sup>th</sup> August, 2014 the Plaintiff was unanimously chosen as acting Chief and in the morning Phenias Mutembo and Paul Waishimoka of Kalwizhi proceeded to bath him. He was then brought to where everyone was gathered and all the instruments of power were handed over to him and was smeared a special powder.

He referred the Court to page 44 to page 51 of the Plaintiff's bundle of documents which contained photos of the installation of the Mwamba Ilung'a. On 24<sup>th</sup> August, 2014 the three royal families and other senior headmen took the Plaintiff to the Boma for introduction to the office of the District Commissioner. In September, 2014 the Plaintiff was taken to Senior Chief Kanongesha for introduction and blessing but PW4 was not among the people who took him there.

In January, 2015 his uncle Paul Waishimoka went to Lusaka with the Plaintiff and stayed at Dr. Gabriel Muyinda's place. Paul Waishimoka asked PW4 to travel to Lusaka from the Eastern Province which he did. Paul Waishimoka and himself then had a private meeting where he told him that he had scrutinized amongst his children in Kolwezi family but he did not see anyone other than PW4 to become a chief. PW4 however told him that he was still serving in the civil service and was still enjoying his career. Paul Waishimoka then told him that since he has refused

to be a candidate of the Cheiftainess, there was no choice but install the Plaintiff as Chief Chibwika.

On 26<sup>th</sup> May, 2015 his uncle Paul Waishimoka called him and informed him that they had set a date for the installation of Chief Chibwika. On 17<sup>th</sup> June, 2015 he travelled to Chibwika Chiefdom using a ZNS vehicle and went to Paul Waishimoka's village but did not find him. On 18<sup>th</sup> June, he met with Wachikeka Benadu Mudata at Nyambaza's house. Then Paul Kamusaki, the Prime Minister told him that he wanted to hand over the instruments of power given to him by the Mushidi family because the Plaintiff was his candidate. It was agreed to give the instruments of power to Golden Muyinda.

On 19<sup>th</sup> June, 2015 the three royal families sat to churn out matters relating to the installation ceremony. It was agreed that Mr. John Chidata to be the Chairman of the selection. On 19<sup>th</sup> June, they wrote to the Government Ministry in Mwinilunga District to invite them to come and witness the ceremony. This letter was contained at page 40 of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants Bundle of Documents. He said they did not receive a response to their invitation.

On 20<sup>th</sup> June, 2015 at around 15:00hrs they went to the main Arena and they found three chairs one representing each of the three royal families in Chibwika Chiefdom. After a roll call was conducted they went to a place called Kafoto with senior headman Chilumbu. While there Paul Kamuski of Mushidi informed them that his candidate was Julius Muyinda, Bendau Mudata of Wachikeka also said he had no candidate and PW4

representing the Kalwizhi Royal family also said he had no candidate but the Plaintiff. He stated that they saw that the Plaintiff was the only son who could look after them having considered how he portrayed himself both when the father was alive and while he acted as interim Chief. After resolving the selection of the Plaintiff they went to the main arena and they informed Mr. John Chidata that the Plaintiff had been selected at the Chibwika the IV.

During this time, the Plaintiff was at his house and they followed him and told him that he had been selected as Chief Chibwika. People lifted him and was taken to the main arena and a royal salute was done by gun shots using a muzzle loader. It was then announced that the Plaintiff had been installed as Chief Chibwika. They went to a place called Katewu with members of the three royal families. They broke the night at Katewu where various activities were conducted. The following day the chosen Chief was taken shoulder high to the palace covered in a chitenge. He sat on the mat and they found the interim Chief Golden Muyinda sitting on a stool. The Plaintiff was uncovered and he went and grabbed the stool from the interim Chief by force. He was then lifted and placed to sit on the said stool. The instruments of power were then handed over to the Plaintiff by Bendau of Wachikeka and the crown that was placed on his head by Chivwika Nkanu.

Father Kennedy of Rwau Mission blessed the event and chief Nyakaseya was also present and he blessed the newly installed Chief. Paul Waishimoka was not in attendance and he did not

know the reason he was not in attendance because his house is only 5km from the palace.

After installation the three royal families took the Chief for introduction to the Government offices. Thereafter the members of the Royal family resolved to go and inform Chief Kanongesha that Chief Chibwika had been installed. He subsequently travelled back to Lusaka after two days.

He stated that no one from Kalwizhi family had taken an action against him for having ill represented the Kalwizhi family.

He stated that his Uncle Paul Waishimoka gave him a lot of responsibility before the death of their brother Chief Chibwika. He stated his own mother who was also the mother of the Plaintiff was nowhere to be seen on this important day.

He explained that Chief Chibwika used to ascend to Kanongesha after the death of Kanongesha and as such Chief Chibwika was his deputy. He stated that the culture had been destroyed because the current Senior Chief Kanongesha instead of passing through the Chibwika Chieftaincy he went straight to being Kanongesha and that was a taboo. and it was for this reason that he said the culture had been destroyed. He said the current Chief Kanongesha ascended to the throne in 1994.

When he left for Lusaka after Installation he received word that Senior Chief Kanongesha had written to some family members, government officials and other chiefs for purposes of installing a Chief Chibwika. For peace and stability they requested for the High Court to stop this from proceeding. The High Court at

Kabwe granted the injunction where he and Dr. Gabriel Muyinda were Plaintiffs. This was evidenced in the 1<sup>st</sup> Defendant's supplementary bundle of documents filed into Court on 1<sup>st</sup> March, 2018 at page 136 to 143. The Court asked them to resolve the matter out of Court and they had to two excuria meetings with Chief Kanongesha on 13<sup>th</sup> August and 7<sup>th</sup> November, 2015 but the matter was not resolved. This was evidence by minutes of these meetings at page 23 of the Plaintiff's bundle of documents.

He stated that the Plaintiff was correctly selected and installed by the three Chibwika royal families. He stated that there was no law regarding rotation in the selection of the Chibwika amongst the royal families. He said that if the three families have agreed and resolved on who should succeed then that would be the position. If there is no one eligible from the other families there was nothing that stopped the families to select from the same family as long as they are in the royal family that belongs to the Chibwika Chieftaincy.

He explained that Chief Kanongesha's uncle who died in 1993 was from Mulumbi family, in 1994, his nephew the 1<sup>st</sup> Defendant from Mulumbi family succeeded him on the throne. He also explained that Chieftainess Ikelengi has succeeded the father, Chief Kanyama succeeded the father and his father also succeeded his father. He stated that all these practice Lunda custom.

Under cross examination he denied being a headman and said he was just a member of Kalwizhi royal family. He stated that the



reason he declined to be a candidate was because as a serving officer he could not become Chief and at the time he was still enjoying his career. He confirmed that when he came from Lusaka for the installation he went straight to Paul Waishimoka's place but did not find him. He stated that his last communication with Paul Waishimoka was that he was heading to Mwinilunga for the installation of the Chief Chibwika as earlier discussed. He tried to call him but his calls went unanswered. He stated that he had communicated with his mother and told her that he would be travelling for the installation of Chief Chibwika. He even sent a land cruiser to pick his mother and everyone else for the ceremony but he denied sending a Land cruiser to pick up Chief Nyakaseya.

He further confirmed meeting Paul Kamusaki and Bendau Mudata at Nyamabaza's house on June 18<sup>th</sup> 2018 and that they discussed the handing over of the instruments of power. He confirmed that he was not a headman at that time and that Paul Kamusaki was headman Mushidi. He stated that if anyone said that the headman at the time was Luka Kamusaki, that person would be lying. He stated that at the meeting of 23<sup>rd</sup> May, 2015 they discussed the selection and installation of Julius Muyinda as Chief Chibwika. He was referred to the minutes of that meeting and he confirmed the program that was agreed upon. He stated that he did not know who the headman of Kalwizhi was but that it was not Paul Waishimoka.

According to him, Paul Waishimoka he attended the meeting of 23<sup>rd</sup> May, 2015 as a senior member of the Kalwizhi family and not as a headman. He denied Paul Waishimoka ever being

headman kalwizhi. He however read minutes on page 19 where Paul Waishimoka was referred to as Headman Kalwizhi. He stated that the minutes were wrong to refer to Paul Waishimoka as headman Kalwizhi. He stated that Paul Waishimoka was only present at the installation of Mwamba Ilunga as a senior member of the Kalwizhi royal family. According to him, the position of headman Kalwizhi was vacant.

He stated that Paul Waishimoka was the Chair person for the committee that selected the Mwamba Ilunga. He however stated that he was not aware that this committee was the responsible for overseeing the transition for the selection of Mwamba Ilunga to the selection of the substantive Chief Chibwika.

He confirmed that at this meeting it was agreed that they choose the Chief and then take the candidate to Chief Kanongesha. He also confirmed that the instruments of power were relinquished to Golden Muyinda who is the brother to the Plaintiff. He conceded that Paul Kamusaki, Golden Muyinda and the Plaintiff all belong to Mushidi royal family and therefore the instruments of power were still within the Mushidi family. It was his evidence that on 18<sup>th</sup> June, 2015 Golden Muyinda became the new Mwamba Ilung'a but that he was not initiated into Mwamba Ilung'a the way that the Plaintiff was when he was appointed Mwamba Ilunga nor was he taken to Senior Chief Kanongesha.

He further stated that they wrote a letter to the Government offices of 19<sup>th</sup> June, 2015 inviting them to the installation of Chief Chibwika and a copy of the letter was sent to the Office of the President but there was no acknowledgment. He added that even

the police service did not acknowledge but they came. He conceded that they only gave the government departments one day notice before the event.

He also conceded that he did not write a similar letter to Chief Kanongesha and that Chief Kanongesha was not kept informed about what they were planning.

He stated that on 20<sup>th</sup> June, 2015 they went to Kafoto and stated that he verified that there was no one else who had an interest in contesting for the Chieftaincy.

He was referred to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants bundle of documents filed on 27<sup>th</sup> May 2018 at page 39 where he confirmed that it was an application addressed to the chairman of Chibwika Royal Establishment. The application was by Ackson Kasapatu of Wachikeka royal family who was interested in contesting as Chief Chibwika.

He was also referred to page 35 of the 1<sup>st</sup> Defendant bundle of documents filed on 1<sup>st</sup> July, 2019. He confirmed that Phenias Mutembu of Kalwizhi royal family also wrote a letter dated 16<sup>th</sup> June, 2015 to apply to contest the Chibwika Chieftaincy.

He stated that on the day of the installation he was the one representing Kalwizhi family, Bendau Mudata was representing the Wachikeka Royal family while Paul Kamusaki was representing Mushidi royal family. He said he did not speak to Phenias Mutembu on the material date but they spoke prior to this date. He conceded that the Plaintiff was nominated but did

not express his interest in writing. He also confirmed that Obi Ntenda also expressed interest from the Dinanga royal family.

He stated that they did not invite other chiefs and Chief Nyakaseya was invited verbally. He went on to tell the Court that Chief Nyakaseya had traditional authority to bless the newly installed Chief. He confirmed taking the installed Chief to the boma but stated that it was not necessary to take the Chief immediately to Chief Kanongesha. He however stated that the family members later went to Chief Kanongesha to inform him of the installation.

The witness was referred to the minutes of the installation of Chief Chibwika. He maintained that they were not selecting the 5<sup>th</sup> Chibwika even though the minutes stated that the ceremony was for the installation of the 5<sup>th</sup> Chief Chibwika.

He gave a historical background of how Kanongesha came to Zambia and added that because of the nature of the way Chibwika and Kanongesha Chiefdoms operated, once Chief Kanongeshadied the serving Chief Chibwika would ascend to the throne as Chief Kanongesha. According to him Ndembi proceeded straight to the throne as Kanongesha without being Chief Chibwika and he comes from Nyaluhana royal family.

He confirmed that the Plaintiff was the son of the immediate past Chief Chibwika. He conceded that there was rotation from each royal family and confirmed that in the history of the Chibwika chieftaincy a son had never inherited their father. He explained that the reason he said that the culture had been destroyed in the minutes of 20<sup>th</sup> June, 2015 was because the current Chief

Kanongesha was not a Chief Chibwika prior to ascending to the throne as Chief Kanongesha. He stated that Chief Kanongesha Silas Kamonda died during the reign of Francis Biscuit Muyinda.

He was referred to page 4 of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants bundle of documents where there was a letter to Dr. D. K Kaunda dated where Francis Muyinda gave reasons why he had declined to ascend to the throne as Kanongesha at that time. He however maintained that in 1994 when Silas died Francis Muyinda was the reigning Chief Chibwika but stated that he did not know his views about ascending to the throne at that time even though he knew that he was a devout catholic.

It was his evidence that he did not know that there was a letter written to Chief Kanongesha dated 21<sup>st</sup> June, 2015 from members of Chibwika chieftaindom protesting the installation of the Plaintiff as Chief Chibwika. He confirmed that among the people who objected was his mother Violet Kaputa.

Under further cross examination by the State he told the Court that that he had been in the public service for 22 years. He further confirmed that government officers were not part of the electoral college in chieftaincy. It was his evidence that the police were present at the ceremony to provide law and order.

In re-examination, he maintained that Paul Waishimoka was not headman Kalwizhi but attended the meetings as a senior member of the Kalwizhi family. He further stated that Paul Waishimoka was the chairman for the committee that was selecting Mwamba Ilunga. The role of the royal family was to ensure that the instruments of power were correct. He explained that Golden

Muyinda was not initiated as Mwamba Ilunga as initiation was a preserve of a Chief and not a Mwamba Ilunga.

On the installation process, he told the Court that there was no one from the Kalwizhi family who was present but that they were aware that the selection was taking place. With respect to the application letter by Ackson Kasapatu, he stated that there was no evidence of acknowledgement of this letter. He further stated that there was also no acknowledgement of the letter protesting the installation of Chief Chibwika which was addressed to Chief Kanongesha.

With respect to the rotation of the royal families he clarified that this was the first generation of change after all the royal families have had an opportunity to be on the throne. He stated that there was no precedence of movement after all the royal families have been on the throne.

On the issue of the first Defendant being installed as Chief Kanongesha without being a Chief Chibwika he stated that in addition to the first Defendant, Ndembi and Selasi Kamonda also ascended to the Kanogesha Chieftaincy without first being Chief Chibwika. He stated in light of this there was no strict adherence of Lunda tradition in terms of who ascends to the throne.

It was his evidence that when the late Francis Muyinda was to ascend to the throne as Senior Chief Kanongehsa in 1994, PW4 was present when Francis Muyinda was told that since he declined to ascend to the throne in 1971, he was eligible now. They moved to Nyaluhana where they were for a week as they prepared for his installation as Chief Kanongesha. They however

heard that the Mulumbi family had installed the 1<sup>st</sup> Defendant as Chief Kanongesha.

He clarified that the Chief Chibwika is selected and installed by the three royal families and thereafter taken to Senior Chief Kanongesha for his blessings.

**PW5** was **Paul Kamusaki** of Chibwika in Mushidi Village. He testified that when the late Chief Chibwika died they sat as a family and discussed what would happen with the vacant position. The three royal families sat to select the Mwamba Ilunga who would be the interim Chief. The Plaintiff was selected as the Mwamba Ilunga and he was then taken to the office of the District Commissioner to show them that he would be the one who would lead the chieftom.

Following this, they also took him to Senior Chief Kanongesha and explained how the Plaintiff was selected as Mwamba Ilunga. They slept at Chief Kanongesha's palace and the following day they went to their various homes.

After the rains had finished, it was decided that the substantive Chief Chibwika be appointed.

In the month of June, the three royal families convened and they proposed a date for the day of selection to enable everyone required to be present for the selection. On behalf of Mushidi royal family he selected the Plaintiff as a candidate for the Chieftaincy and he asked the others to also make their nominations. Wachikeka said that after checking the whole family there was no person he could nominate and he too

endorsed the Plaintiff as a candidate. Kalwizhi also endorsed the Plaintiff to be crowned a chief.

After the selection was done Mr. Chidata was called to stand in as Chairperson during the installation ceremony. Once this was done Mr. Chidata announced to the people that the Plaintiff had been selected as Chief Chibwika and gunshots were fired to symbolize that a Chief had been selected. After the gunshots there was jubilation and thereafter the Chief was taken to Katewu where they were for the night. The following morning, they took him to the palace. He stated that the information of what happens at Katewu was not revealed to the members of the public. They lifted the Plaintiff from Katewu to the Palace.

He recalled that the instruments of power were taken from the Mwamba Ilunga on 20<sup>th</sup> June, 2015. When the Plaintiff was taken to the Palace the Chief got a stool from the selected Mwamba Ilunga who was holding on to the instruments of power. By that time Chief Nyakaseya had arrived and he blessed the newly installed Chief Chibwika

This was followed by jubilations at the palace the whole night and they were celebrating and dancing for two days.

They later went to Chief Kanonge with the three royal families and two sub chiefs namely Mwilunga and Chilumbu. They even wrote a letter but when they went to his palace they found that he was not there. They found the Prime Minister (Kana Mpumba) and his sister. They went with a goat, cassava and money in the sum of K500. They received the goat and cassava but the money was returned. He referred the Court to page 2 of the Plaintiff's



bundles of documents dated 20<sup>th</sup> December 2018 and he stated that he is the Kana Mpumba for Chibwika chiefdom.

After the appointment of the Mwamba Ilunga, they took him to Chief Kangogsha and Chief Kanongesha blessed the Mwamba Ilunga and told him to keep the chiefdom well.

Under cross examination by Mr. Mbambara it was his evidence that the letter he wrote to Chief Kanongesha was written when they were still in Chibwika and this letter was signed by all of them. He conceded that there was no evidence that Kana Mpumba acknowledged receipt of the letter in issue. He stated that he was equally surprised that the letter he delivered to the Chief found itself in the Plaintiff's bundle of documents.

It was his evidence that on 26<sup>th</sup> June, 2015 the headman Kalwizhi was Jephon Mukanda, PW4 while Headman Wachikeka was Bendau Mudata. He stated that these two signed this letter to Chief Kanogesha. He stated that PW4 was installed as headman in 2015. He explained that at that time Paul Waishimoka had run away and gone to Kanongesha Chiefdom and there was a vacancy in the position of headman Kalwizhi. Therefore PW4 was appointed as acting headman for Kalwizhi. He stated that if someone stated that Paul Waishimoka was the headman at the time they would be lying.

According to him, they did not know when exactly he ran away but they heard that he had run away to Chief Kanongehsa. He however mentioned that he could have run away due to fear but he was not sure. He said he had stayed in Kanongesha Chiefdom for about two years.

He confirmed that when they were selecting the Mwamba Ilunga, Paul Waishimoka still the headman of Kalwizhi and he was the chairman of committee that was formed for purposes of selecting both the Mwamba Ilunga and the substantive Chief Chibwika. According to him Paul Waishimokawas also present when they were selecting the Chief Chibwika. He also stated that if anyone were to say that he was not present during the selection then that person would be lying.

He confirmed that PW4 lived in Lusaka and is a ZNS employee and they had to select someone since the owner of the village had run away, hence his selection. He stated that if there is a vacancy in the royal family they would sit down and discuss who would take over. He confirmed that Mudata Bendau represented Wachikeka, Jephon Mukanda represented Kalwizhi and himself was representing Mushidi. He also stated that PW4 was appointed as Headman Kalwizhi after the selection of the substantive Chief.

**He stated that Paul Waishimoka was around but he ran away. According to him, PW4 was selected by Wachikeka and Mushidi so that he could represent Kalwizhi since the owner of the name had run away. When they selected PW4 they needed to complete the coram for the selection** of Chibwika after Paul ran away. He confirmed that PW4 was the one who said that having looked at the Kalwizhi family he found that there was no candidate to nominate for the Chieftaincy.

When referred to the Plaintiff's bundle of documents filed on 23<sup>rd</sup> May, 2019 on pages 16b and 16c which contained minutes for the selection of Chief Chibwika, he said he agreed with the

submissions made by PW4 at the selection ceremony. He confirmed that there were no other submissions that were made.

He further stated that the instruments of power were being held by the Plaintiff before he was selected as substantive Chief. According to him, when they selected him they instruments of power were grabbed from him by headman Wachikeka and given to Golden Muyinda at the arena and then they later on proceeded to Katewu.

He stated that his role in this process ended at selection and revealed that the Plaintiff was his son by virtue of him being the lastborn son of his late brother Katayi Francis, the immediate past Chief Chibwika. Golden Muyinda is the son of Amon Muyinda, the brother of the late Chibwika Francis Katayi. He said that the instruments of power were not with Golden Muyinda for long as he was given the instruments on the very day of selection on 20<sup>th</sup> June, 2015. He stated it is important to take the appointed Mwamba Ilunga to Chief Kanongesha but that in the case in casu Golden Muyinda was not Mwamba Ilunga because he merely held the instruments of power for a short while. He added that it was therefore not necessary to take him to Chief Kanongesha

He denied having abrogated tradition by not taking the Mwamba Ilunga who was briefly appointed before installing the Plaintiff as the Chief Chibwika.

He conceded that the events were strategized in such a way that the installation could swiftly take place. He confirmed that the first Chibwika was Kafulezhi who hailed from Kalwizhi and was

appointed by the three royal families. The next was Chikunzu Lemba Wandanjing'aof Wachikeka. The third was Francis Katayi Francis from Mushidi. He stated that Ndembi went directly to the position of Chief Kanongesha. He told the Court that while the minutes stated that they were selecting the 5<sup>th</sup> Chibwika, to the best of his knowledge they were selecting the 4<sup>th</sup> Chief Chibwika.

He confirmed that in the history of the Chibwika chiefdom there had been no son who had ever inherited his father as Chief Chibwika apart from the Plaintiff. Further, that there had never been a time the history of the Chibwika chiefdom that there is a repetition in succession from the same royal family. He stated that Chief Kanongesha has no power to install a Chief Chibwika but the Chief Chibwika is merely taken to Kanongesha after installation for his blessings.

He stated that he Ackson Kasapatu came from Wachikeka, Phenias Mutembu was from Kalwizhi and he did not know Obi Ntenda. He denied scheming to install the Plaintiff with total disregard of Lunda custom. He maintained that it was the three royal families that selected Chief Chibwika and not the Muyinda family.

When reexamined he referred the Court to page 22a of the Plaintiff's bundle of documents and he confirmed that this letter was served on the Prime Minister at Senior Chief Kanongesha's palace as he was part of the people who delivered it.

He the Court that the late Francis Biscuit Katayi Muyinda was a teacher and civil servant. He stated that if there was no one to fill a position in the village a person who is employed could be

appointed while he is resident elsewhere as the people in the village would be giving updates on what was pertaining in the village. He contended that headman Chilumbu, Headman Kubwyaya and Chief Chilumbu agreed that the Plaintiff who was Mwamba Ilungato be selected and installed as Chief Chibwika. He stated many people contributed to the chieftaincy of the Plaintiff.

According to the witness, the succession should be by rotation but stated that if they found a competent candidate in the same royal family they could still install that person.

Under further reexamination by Mr. Mulenga he clarified that the royal families had agreed to set the date of 20<sup>th</sup> June, 2015 for installation of Chief Chibwika and Paul Waishimoka was not present in this meeting but that Phenias Mutembu was present in that meeting.

The Plaintiff closed its case and the Defendants opened theirs.

**DW1** was **Matthews Sweta (Senior Chief Kanongesha)** aged 56 of the Lunda People in Mwinilunga District. He testified that he was sworn in as Chief Kanongesha on 27<sup>th</sup> June 1994.

He testified that he was the custodian of Lunda tradition and custom and in charge of all chiefs and sub chiefs in the District. He listed the chiefs under him as :

- 1). Chief Chibwika
- 2). Chief Nyalamba
- 3). Chief Ikelengi

4). Chief Nyakaseya

5). Sub chief Mukayala

6). Sub Chief Ntambu.

He was the one in charge because he was the one who puts on the Royal bracelet (Lukanu) and because of this royal bracelet he is the one who installs all the chiefs. He said he is the chairperson during the selection of chiefs and was the one who gives the instruments of power to the chiefs and was also the custodian of the courts for the chiefs.

He stated that he is the second to Mwanti Yamvwa in Lubunda. He was the one who installed Chief Nyakaseya and in 2010 he went to install Chief Kanongesha in Angola and he also went to install Chief Mwinilambain Ikelengi district.

He explained the history of Chief Kanongesha in Zambia. He narrated that Chief Kanongesha Mulimbi Datuma the first came to Zambia and identified Kafulezhi who was his brother to be the first Chibwika. Kanongesha Mulumbi Datuma went to meet with his royal family and they chose Kafulezhi who was installed as the first Chief Chibwika. He explained that the first Chibwika, Kafulezhi was appointed because of the works he had done, that he was intelligent and that he was the brother to Mulumbi.

The witness referred the Court to page 99 of the 1<sup>st</sup> Defendant's supplementary bundle of documents and said he agreed with most of the information in that documents but that some of it was inaccurate. He explained that the next Chibwika after Kafulezhi was Ndembi. He narrated that when Mulumbi died his

son Santoka was installed as Mwamba Ilunga while Kafulezhi was then given the instruments of power as the next Kanongesha. After Kafulezhi had been installed as Kanongesha, Ndembi was installed as Chibwika. Ndembi came from Kanongesha Chimweki Chakalumbu. Ndembi who was Nyaluhana royal family was identified by Chief Kanongesha Kafulezhi in Chibwika and when Kafulezhi died, Ndembi went directly to be installed as Kanongesha.

After Ndembi had been installed as Kanongesha, he also went to choose Chief Chibwika and he chose Chikunzu Lemba as Chibwika III. When Ndembi died, Chikunzhu Lemba succeeded Ndembi as Kanogesha. Chikunzu Lemba wanted to select the next Chibwika alone but his family told him to give them an opportunity to select Chief Chibwika.

He referred the Court to page 3 of the 1<sup>st</sup> Defendant's bundle of documents and he stated that with the wisdom and guidance of the Chief they selected Francis Katayi Muyinda as the new Chibwika. When Chikunzu Lemba died, Francis Katayi Muyimda was supposed to take over from him but he refused to be crowned as the new Kanongesha due to his christian faith under the Catholic Church. His rejection was contained in a letter that was addressed to the then President Kenneth Kaunda. The owners of Kanongesha the 1<sup>st</sup> selected Mulumbi royal family's Silas Kamonda. The five royal families were upset that Francis Katayi had destroyed the way of inheritance from Chibwika to Kanongesha.

He explained that initially the royal families were five namely Kalwizhi, Mushidi, Wachikeka, Dinang'a, Nyaluhana. In August 1993 Silas Kamonda died and there was no one to take over as Kanongesha and that was how Mulumbi Royal family deemed it fit to install the 1<sup>st</sup> Defendant as Senior Chief Kanongesha. All the royal families had been waiting for the late Francis Katayi so that they could revert to the original position where a Chibwika would transition to be the Kanongesha.

He narrated that in 1979 Chief Chibwika was in Kabwe after he was charged for revealing the confidential information from the Chieftaincy in his letter to the President. Chief Kanongesha followed him to get him back to Chibwika Chieftaincy. Chief Kanongesha went to the government to ask that he be returned to his work. With the powers vested in him Kanongesha gave him back the throne.

He stated that at the time of Chief Francis Katayi's passing, he had a very good relationship with him as he was his uncle and they loved each other very much. They worked well together and they came up with a ceremony called Mwacha Lunda. He never desired the chiefdoms to be separated and desired unity of the chiefdoms.

In 2014 he received news of the death of the late Francis Katayi from the 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Defendants. He sent his representatives and his family to the funeral and after they returned the Chairman for the royal establishment brought him the newly selected Mwamba Ilunga. He gave the Mwamba Ilunga orientation on how to be Mwamba Ilunga and counseled him to take care of



the people and not to sell the land and use the government date stamp for ill. He told him that when you are Mwamba Ilunga you would be the one who will give the throne to the newly installed chief. He further told him that at the time of this selection they would go back to the palace. He then told him to go the government offices and reveal to them that he was the one who had the flag and the Chief retainers.

He narrated that on 9<sup>th</sup> May 2015 he received a letter from the royal families through the Chairperson Mr. Paul Waishimokaon who was aspiring to be Chief Chibwika.

On 12<sup>th</sup> May, 2016 he was at the Boma and he instructed the Chiefs and Traditional Affairs office to write a letter to Mwamba Ilunga informing him that he would be going there so he should sensitize the people over the chieftaincy of the chiefdom. After sometime he did not receive any reply from the interim chief. On 22<sup>nd</sup> June 2015 after coming from his father in Mwatiyamvwa, he was informed that there was a group of people who had come from Chibwika. Paul Waishimoka was in their midst and they told him that there were some wrangles over the selection of a chief. It was reported to him that they complained that what the Mushidi Royal family had done was wrong and not in accordance with tradition for the selection of the Chief Chibwika.

Paul Waishimoka went to his palace showed him representatives from Wachikeka, Nyaluhana and Dinanga royal families. He also showed him the candidates aspiring to be Chief Chibwika. Paul Waishimoka told him that they were surprised with headman Mushidi's decision to elect his son the Mwamba Ilunga as a Chief

Chibwika. They said that this was the first time they were seeing a Mwamballunga becoming chief. They also complained that it was the same royal family which was ruling in the same Chibwika Chieftaincy.

He stated that the royal families said that it was not right for a son to ascend to the throne because this was against their tradition where chieftaincy is matrilineal. He testified that their complaints were legitimate because according to the tradition, Chibwika Chieftaincy is connected to Chief Kanongesha

He explained that the royal bracelets is made out of human extracts/remains from a woman and this is given to a Kanongesha. According to him, the chieftaincy of Ikelengi is given to the children.

When recounting the past Chief Chibwikas he explained that the third one was from Wachikeka, the fourth was Francis Katayi who was from Mushidi and the newly crowned is Julius also from Mushidi.

He testified that when the Plaintiff came to his palace he came as Mwamba Ilunga and he accepted that he would continue to work in that capacity until the Chibwika was appointed. It was his evidence that it was the duty of the Mwamba Ilunga to bring the aspiring candidates to him because he is a caretaker chief. However, the Plaintiff in his capacity as Mwamba Ilunga did not take them to Chief Kanongesha but rather they went by themselves to announce their candidacy

It was his evidence that they needed to select someone who was credible and who would work hand in hand with the Senior Chief Kanongesha. He explained that this would have meant that they had all selected the person of their choice and exercised their democracy. In the case in casu he saw that they did not follow the rules of selection. The Plaintiff used his family to force them to install him a Chief in a wrong manner. The correct procedure was that each royal family was supposed to sit and identify who they felt was supposed to a candidate. From there the aspiring candidates were to be taken to Senior Chief Kanongesha's Palace. Chief Kanongesha would then scrutinize all the candidates and then pick one who he thought was suitable for the position of Chief Chibwika.

When referred to the minutes of 23<sup>rd</sup> May, 2015 he conceded that it was a road map for the selection of Chief Chibwika but that this road map was not followed by the Plaintiff and Mushidi Royal family and this was what caused the other royal families to complain to him.

It was his evidence that on 25<sup>th</sup> June he wrote to Mwamba Ilunga and after that on 26<sup>th</sup> June the Kana Mpumba received the headmen who came to report that the Chief Chibwika had been installed. They agreed to go and address the issues that arose in Chibwika and they agreed that they meet on 30<sup>th</sup> June. On 30<sup>th</sup> June the royal families from Dinanga, Nyaluhanga, Wachikeka and Kalwizhiall went to his palace to address this issue but on the same day they received summons from Kabwe High Court where he was charged with interference and an injunction informing them to not disturb the Plaintiff who was ruling.

When they went to Kabwe, the Court gave them an opportunity to attempt to resolve the matter which they tried to do on two occasions but were unsuccessful. When the matter was subsequently dismissed before the Kabwe High Court, the Plaintiff instituted this action against the Defendants.

Under cross examination he confirmed that he knew Chief Sailung'a, Chief Nyakaseya, Chief Natmbu, Chief Kakoma and Chief Kanyama but that he did not know if they knew Lunda tradition.

With respect to the attempts to settle the dispute he stated that it was the Court that asked them to convene and attempt to settle the matter *excuria*. He stated that the initial attempt was convened at the Plaintiff's instance.

He was referred to the minutes of 18<sup>th</sup> August, 2015 and confirmed that three chiefs out of five signed the document and it was concluded that Julius Muyinda was duly elected and installed as Chief Chibwika in accordance with the Lunda tradition and cultural practices and that he was very popular among the people of Chibwika.

He conceded that he was not the only one with knowledge on Lunda custom. He stated that Chief Kanongesha Muluba Datuma came from the Chieftaincy of Kanongesha in Angola but that there was no blood relationship between him and Kafulezhi.

He stated that the institution of Kanongesha was the one that took the Chibwika through the rituals. He however stated that the Kanongeshawould personally conduct certain rituals.

He explained that the last stage of the installation of Chief Chibwika is where the newly installed chief would swear to the royal bracelet. He stated that according to Lunda tradition there was only one royal bracelet which is supposed to be with Senior Chief Kanongesha. When asked if he was wearing the Lukanu, he answered in the negative stating that it was not worn like a watch. He denied that the Lukanu had been retrieved from him by Chief Kanongesha from Angola.

He stated that they previously used to let the chief sit on a reed mat but now put them on a stool called Ikubu. He however denied that this change meant that there was a change in tradition. He stated that Kafulezhi was appointed as Chibwika because he was intelligent, due to the works he had done and because he was his brother. He stated that according to their tradition, there should be a blood relations for one to be crowned as Chief but conceded that there was no blood relation between Kafulezhi and Mulumbi.

When referred to page 99 of the 1<sup>st</sup> Defendant's Bundle of documents he maintained that it was inaccurate that Mwanta Kabanda Nkondi Kanongesha was the one who installed Kafulezhi. He conceded that while this document had some untruths, he produced it before Court to show the link between Kanongesha and Chibwika Chieftainship.

With respect to Ndembi he confirmed that there was no written record of Ndembi as a Chibwika. When referred to page 3 of the Defendant's Supplementary bundle of documents he confirmed that it was a letter authored by Mr. Banda. He stated that the

letter did not reveal a departure from the tradition and that the people did not choose their Chief.

He stated that Silasi Kamonda came from Mulumbi and he denied that the disqualification was based on family affiliates was on rotation basis. He stated that he was not aware that Francis Chibwika in 1993 or 1994 applied to be a kanongesha. He denied that Francis Chibwika had been taken up position in Nyaluhana to become the next Kanongesha. He stated that it was the royal families that blocked him from becoming the Kanongesha.

He confirmed receiving the Plaintiff as Mwamba Ilunga and that he was told that the families selected him as Mwamba Ilunga. He also confirmed that Chieftainess Ikelengi was a Mwamba Ilunga before she was installed as Cheiftainess. He clarified that when he said there was no Mwamba Ilunga that became a Chief, he was referring to the Chibwika and Kanongesha Chieftaincy.

He stated that he did not know the relationship between the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants to Chibwika nor did he know the relationship between Kafulezhi and Chikunzu Lemba. According to him, while he did not know the relationship between all these, their relationship was matrilineal because for one to ascend to the throne their relationship should be matrilineal.

He conceded that he was never a Chibwika stating that he was an exception to the rule that a Chibwika succeeds a Kanongesha. He stated that there are circumstances that lead to circumvent the traditions and on agreement by the royal families and not just a few people. He stated that no other Chibwika has

died while on the throne and therefore Francis Chibwika was the only one who had such succession issues.

He denied knowing that the Mother of Julius Muyinda is the grand daughter of Kanongesha the 6<sup>th</sup>. He confirmed that before he became Kanongesha there was Silasi Kamonda from Mulumbi and even if he himself was from Mulumbi.

He stated that while the last two Kanongeshas were both from Mulumbi, he could not relinquish his powers because according to the rituals of the royal bracelet you cannot relinquish your powers. He denied that Chief Nyakaseya installed him and said that it was Kafwana Chivwika Nkanu.

He stated that Golden Muyinda is not Mwamba Ilunga and according to him the Plaintiff was still Mwamba Ilunga and was only Chief because of the High Court.

He stated that the system of selecting a chief is now democratic and that there was a group of people from different royal families who petitioned against the installation of the Plaintiff as Chief Chibwika. He further stated that the meeting of 20<sup>th</sup> June, 2015 was not fair for those who were not present at the proceedings. He however conceded that in 1966 the Kanongesha's candidate was rejected.

In re-examination he clarified that the Chairperson of the meeting that of 18<sup>th</sup> August, 2015 was Chief Silung'a and he did not sign the minutes. He explained that in 1993 when Chief Chibwika applied to be Chief Kanongesha he was disqualified by virtue of his letter disgracing the Kanongesha Chieftaincy in

1971. He confirmed that he had no record of Ndembi being Chibwika.

**DW2** was **Paul Waishimoka** of Kanongesha Chiefdom in Mulumbi. He testified that he was the headman of Kalwizhi of Chibwika Chiefdom and is the chairperson for Chibwika Royal establishment and that he had been Chairperson for a long period of time and worked with the late Chief Chibwika. During his tenure he had been moving with the late Chief Chibwika to all his meetings.

It was his evidence that the Mushidi Royal family wrongly selected the Plaintiff who was Mwamba Ilunga as a candidate to be Chief Chibwika.

He explained that Kanongesha Ndatuma is the first in Zambia. Kafulezhi became the deputy of Chief Kanongesha and after Mulumbi Ndatuma died, Kafulezhi went to inherit the throne as Kanongesha. He then appointed Ndembi from Nyakansaila or Nyaluhana as the Chibwika Chief. Ndembi was on the throne for three months and then Kanongesha died and Ndembi ascended to the throne as Kanongesha and he then selected Chikunzu Lemba as Chibwika from Wachikeka Royal family. After Ndembi died Chikunzu Lemba ascended to the throne as Kanongesha and all these Chiefs were selected by Kanongesha with his powers. Chikunzu Lemba selected Jeffery Malichenga as Chibwika alone but the five royal families (Klawizhi, Wachikeka, Mushidi, Dinaga and Nyaluhana) raised a complaint that they also needed to be accorded an opportunity to go round and



identify their children and then take them to Kanongesha. There was then a list of potential candidates

He confirmed that this list of names was contained on page 4 of the Defendants Supplementary bundle of documents. After representations were made Francis Katayi Muyinda was selected as Chief Chibwika. Chief Kanongesha took Chief Chibwika to a place called Ihung'u where sacred acts are done there by elderly people.

He stated that all the installations for Chief Chibwika were done from Kanongesha. He stated that there was no chief that had been installed from Chibwika as all chiefs are installed from Kanongesha. According to him, even the royal families had no power to install a Chief as installation is the preserve of Senior Chief Kanongehsa at Kanongesha Chiefdom.

He also recounted the events that led to Francis Katayi Muyinda refuse to ascend to the throne as Kanongesha after Chikunzu Lemba died in 1969. He stated that the royal families cursed him that he would never ascend to the throne of Kanongesha. They then selected a person from Mulumbi Silas Kamonda Salowu to be Chief Kanongesha. When this Kanongesha died, the royal families selected the current Senior Chief Kanongesha, 1<sup>st</sup> Defendatnt.

He further narrated that in the year 2014 Chibwika Katayi Muyinda died and he was the first chief to die as a Chibwika. The Plaintiff was then chosen as Mwamba Ilunga and confirmed being present at the said selection as portrayed on pages 34 to 41 of the Plaintiff's bundles of documents. After the installation he as

chairman was among the people who took the Mwamba Ilunga to Chief Kanongesha where they stayed for a full week.

After the rain season had ended he met with the royal families and they discussed the need to select a substantive Chief Chibwika. They agreed that on 23<sup>rd</sup> May, 2015 they royal families would meet to select a day to the selection of the substantive Chief Chibwika. On 23<sup>rd</sup> May, 2015 the Plaintiff refused to hold the meeting for the selection at the palace and said that the meeting should be held at Headman Mushidi's palace, Luka Kamusaki.

On 23<sup>rd</sup> May, 2015 the three royal families gathered at Mushidi's palace but Nyaluhana and Dinganga royal families did not attend. He narrated that he became sick on that day and he asked his brother Ackson Kasapatu to stand in on his behalf as Chairman and he would merely be in attendance. The Plaintiff sent his Prime Minister Paul Kamusaki and Godfrey Kainda as Secretary.

Violet Kaputa, the mother to PW4, was present at this meeting it was agreed that on 19<sup>th</sup> June 2015 would be the date of arrival or the selection of Chief Chibwika. The 20<sup>th</sup> of June, 2015 was set to select the candidate and the 21<sup>st</sup> June, 2015 was the date selected to take the selected candidate to Senior Chief Kanongesha. After the meeting PW5 informed them that there was a letter that had come from Senior Chief Kanongesha. He however stated that he did not see the letter to know its contents.

Paul Kamusaki was then instructed to write to everyone including those in town to see how they could select the

candidates. On 19<sup>th</sup> June, 2015 people started arriving and on 20<sup>th</sup> June, 2015 the five royal families gathered at Headman Mushidi, Luka Kamusaki's house for the meeting. Paul Kamusaki was the Prime Minister at the material time for Chibwika. When they went to Luka Kamusaki's house they did not find anyone and the four royal families met at Luka Kamusaki's house while the Mushidi royal family was meeting somewhere else. He said that he did not know why that was so. It was his evidence that PW5 went to the meeting at Luka Kamusaki's house and told them to wait for him as they had a brief meeting elsewhere.

On 20<sup>th</sup> June, 2019 he saw a police vehicle pass with police officers in it armed with their guns. When they wanted to cross and enter into where there was a gathering, they were chased by Paul Kamusaki. He then advised the people he was with to leave and go and inform Chief Kanongesha. They went to Febby Kandong'o and when they checked they found that Violet Kaputa was not in their midst. After some time they saw Violet coming from the direction they had been chased from. She narrated that she went to the arena and she saw the Plaintiff smeared in white powder and Patrick Muyinda was hugging him. She told them that she confronted them and told them that this was not what was agreed.

On 21<sup>st</sup> June, 2015 they went to senior Chief Kanongesha and narrated to him what had transpired. They complained that according to their tradition, a Mwamba Ilunga was not supposed to be a candidate for the Chieftaincy. If he wanted to be a candidate he was supposed to surrender the instruments of power and this made him free to stand as a candidate but this

was not the case. They also complained that there was a rotation in the chieftaincy of Chibwika and Kanongesha and they should not have repeated a chief from the same family. They further complained that the Chibwika Chieftaincy did not allow sons to ascend to the throne as it was not patrilineal but matrilineal. This was because the Lukanu could not be worn by someone from his father's side because traditionally one had to come from the mother's side.

They also explained to Chief Kanongesha that they were reporting the matter so that he could determine the wrongs that the Mushidi royal family had done. Chief Kanongesha told them he was not aware about this information and he asked them to go to the Boma and inquire. They went to the District Commissioner's office and they said they were not aware of the installation of the Plaintiff as Chief Chibwika.

On 30<sup>th</sup> June, 2015 all the royal families gathered at Chief Kanongesha's palace except Mushidi royal families. While there, Chief Kanongesha received summons from the Court and he told them that they could not proceed with the meeting until they went to Kabwe to attend to the summons. When they went to Kabwe they were advised to see if they could resolve the matter outside Court. They tried to sit down and resolve the matter on two occasions but failed and they proceeded to Kabwe but the case was thrown out. The Plaintiff then went to institute the case in casu in Lusaka.

He stated that he was headman Kalwizhi but was staying in Knaongesha Chieftaindom for fear that if he stayed in Chibwika he

would not live well. He told the Court that he wished to return to his home and that he had suffered since he was unable to attend funerals back home and his children had abandoned school. According to him, the word around the Chibwika Chiefdom was that he was the one who went to report them to Chief Kanongesha.

Under cross examination he conceded that he was a witness with vested interest. He stated that he ran away from the village due to the actions around him. He stated that the people cited on the summons were agents and the agents represent him. He confirmed that when they went to tell chief Kanongesha about what had transpired in Chibwika he was in the company of nine others. He however failed to answer whether he was the only one who had run away for fear of his life.

He stated that after the death of Chief Chibwika they gathered after the burial but that he did not know if anyone from the Kalwizhi family represented the family because he was not present. He maintained that it was not allowed to select a Mwamba Ilunga as a substantive chief unless he resigns as a Mwamba Ilunga. According to him, the Plaintiff did not resign as Mwamba Ilunga because he was not aware of who he selected to take his place as Mwamba Ilunga. He reiterated that Chibwika Chieftainship is matrilineal and that the Chieftainship of Ikelengi was different from that of Chibwika and Kanongesha.

He explained that Kafulezhi was the uncle to Chikunzu Lemba and Chikunzu Lemba and the late Francis Katia Muyinda were brothers. He further stated Datuma and Kafulezhi were related

through their mothers. When asked about all the candidates who were aspiring to be Chief Chibwika during the time of Francis Muyinda's rise to the throne, he stated that all the candidates were members of royal families to ascend. He clarified that all five royal families were part of Chibwika Chieftaincy.

He was referred to page 4 of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> Defendants' bundle of documents. He stated they settled for Matthews Sweta, the 1<sup>st</sup> Defendant to be Chief Kanongesha because the late Chief Chibwika refused that he would never be Kanongesha.

He recalled that he was taken to Lusaka by the Mwamba Ilunga and stayed at the Plaintiff's brother's house Dr. Muyinda. When they reached they found PW4 and they bought two bottles of whiskey. He however did not drink the beer but merely spilt it on the floor while pretending to be drinking. He pretended to be drunk and they told him that they had brought him to Lusaka to secure his support for the Plaintiff. He stated that at first he refused to support the Plaintiff but he said out of fear he told them that they can sit down as a family. They bought him a blanket, pillow and he was given a ZAWA uniform and a K500 by Gabriel Muyinda.

According to him, the agreement was that they select a candidate who would then be taken to Chief Kanongesha and not to select the Plaintiff as Chief Chibwika. He stated that he was not aware about the meeting that took place selecting Chief Chibwika as he was not present at such a meeting. According to him on 20<sup>th</sup> June, 2015 the four royal families gathered at Luka Kamusaki's house but there was no one at his house. Mushidi Royal family

was not present at this gathering as they were gathering somewhere else. While they were gathered there Paul Kamusaki PW5 went there and excused himself saying that they had a short meeting and would be back shortly.

He stated that others had decided to go against the earlier agreement and decided to appoint the Plaintiff as Chief Chibwika. He however stated that a person who had not been installed by Chief Kanongesha was not a chief because he would have not passed through the rituals.

He also stated that he knew Golden Muyinda but did not know that he was appointed as Mwamba Ilunga. He stated that he was not aware that there was no rotation in Mulumbi because according to him rotation was there otherwise it would be taboo. He further stated that this was the first time a Chibwika was dying as a Chibwika. It was put to him that it was not fair to Kanongesha to ask him to determine on a tradition that had not ever occurred. With respect to the attempted settlement out of court, he told the Court that they failed to agree at Mwinilunga school. He said he had never seen a son inherit his father's throne in the Kanongesha chiefdom.

He stated that he was not ready to go back to Chibwika Chiefdom if the Plaintiff invited him to do so regardless of him being assured that he would be safe. It was his evidence that since there is rotation amongst the five royal families, they were supposed to sit down and decide who should ascend to the throne. He added that the royal families can apply and they can

pick anyone even if that person's family has been on the throne before.

In re-examination he stated that he ran away from his home because there were a lot of issues that had reached the police. He stated that he was an agent in the matter that was before the Kabwe High Court.

He said it was in the chieftaincy of Chibwika that there be rotation. He recalled that when he was taken to Lusaka with Mwamba Ilunga they bought him whiskey to drink but he was only drinking some of it and spilling some and pretended to be drunk. According to him, they told him to help with selecting the Plaintiff as Chibwika. He agreed that they would sit down and discuss the matter. He was given a pillow, bedsheets and a ZAWA uniform.

**DW3** was **Ackson Kasapatu**, the 3<sup>rd</sup> Defendant herein. He testified that the reason he and the other two Defendants were added as parties was because they also had the desire to be installed as Chief Chibwika. He testified that he comes from Wachikeka Royal family, Phenias Mutembu comes from Kalwizhi royal family while Obi Ntenda is from Dinang'a royal family. He said that he expressed interest of being Chief Chibwika in an application letter. The said letter was contained in the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendant bundle of documents on page 39. The letter was dated 29<sup>th</sup> May, 2015 and it was agreed that they should meet on 20<sup>th</sup> June, 2015 to identify the candidates.

On the material day they went to Luka Kamusaki's residence but they did not find him. They waited until mid day when Paul



Kamusaki arrived and they inquired as to what was happening since they had been waiting. He told them that there was an issue in the Mushidi royal family which they were trying to resolve but that he would join them shortly. As they were waiting, they saw a police vehicle with police dressed in riot gear. Shortly thereafter, they heard gun shots and they decided to go and see what had happened as they were concerned. When they reached a barrier Paul Kamusaki told them that they had already selected the Chief, his son and no one was going to cross the barrier.

The Chairperson Paul Waishimoka, who was in their midst, suggested that they should go back. They went to their sister Febby Kandong'o's place and waited for their sister Mukanda who came after some time. She narrated that when she remained behind she met Paul Kamusaki and confronted him about why they had lied to them and made them wait elsewhere when they were having a gathering somewhere else. She said she went into the arena and found the Plaintiff hugging Patrick Muyinda and he was smeared in white powder. They told her that it was not them but her son Jephon, PW4, who had helped facilitate this.

When they heard this they were not happy because they had failed to fulfill the agreement they had made and they did not follow their tradition. They gave their applications to Paul Waishimoka and accompanied him to Chief Kanongesha where complained that they were surprised that the Mushidi royal family had selected their son Mwamba Ilunga as Chief Chibwika.

When they went for a hearing on 30<sup>th</sup> June, 2015 they could not proceed with the hearing because they received summons from

Kabwe High Court where they were Chief Kanongesha sued by PW4 and Gabriel Muyinda. He was informed that that the summons restrained him from proceeding with the meeting. At the Kabwe High Court they were advised to explore excuria settlement and the matter was eventually dismissed.

He told the Court that all attempts to resolve the dispute had failed and the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants made counter claim which they asked the Court to resolve in their favour.

Under cross examination he told the Court that the three royal families that were present at Chief Chibwika's funeral but that this did not mean that they were the only royal families in Chibwika Chiefdom. According to him, it was not necessary that all the stakeholders participate in the selection of Mwamba Ilunga. According to him, his complaint letter reached the Chibwika Royal Establishment despite there being no acknowledgment of receipt.

He denied that on 20<sup>th</sup> June, 2015 when Paul Kamusaka went to them, they were near where the meeting was being held and that was how he was able to see Paul. According to him, when the gunshots were fired they did not know that it was a royal salute. He confirmed that Headman Wachikeka at the time was Bendau Mudata who was now deceased.

Under further cross examination by Mr. Mulenga he told the Court that he was not aware if headman Kalwizhi was present at the installation because he was not with them. He stated that he did not personally witness Headman Bendau Mudata receiving a cow as a bribe from the Plaintiff as this was just reported to him.

He confirmed that there were no representatives from Dinanga and Nyaluhana royal families when the roadmap for the selection of Chief Chibwika was agreed upon. He further confirmed that there had been no instance in Chibwikwa Chieftaincy where a son inherited his father to the throne.

He denied that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants were meant to fabricate the happenings around the Chibwika Chieftaincy.

In re-examination he told the Court that the dates were changed as the date of arrival were put as the date of selection and that was how they ended up missing the meeting and he stated that they did not follow the dates agreed on 23<sup>rd</sup> May, 2015.

He confirmed that there was an allegation that the Plaintiff wanted to bribe Bendau Mudata by buying him a cow. According to him PW4 had no authority to represent the Kalwizhi family because Paul Waishimoka was around at the time. He further explained that Bendau Mudata told him that he had been asked to assist the Plaintiff to become Chief Chibwika and that he would be given a herd of cattle if he did so. He stated that Bendau Mudata was staying with the Plaintiff until his death in 2019

**DW4** was **Violet Mukanda** of Kalwizhi Village in Chief Chibwika's Chieftaincy. She testified that she is the granddaughter to the late Chief Kafulezhi. It was her evidence that after the death of Chief Chibwika, traditionally they are to choose a Mwamba Ilunga who would be the chief mourner to lead the funeral. The Mwamba Ilunga is in tenure for one year as the Chief's funeral lasts for one year.

The Plaintiff was later appointed Mwamba Ilunga and the Chairperson for the royal families, Paul Waishimoka, took him to the Senior Chief Kanongesha. She said when they were selecting the Mwamba Ilunga all the royal families were present and she witnessed this selection and installation. She referred the Court to page 51 of Plaintiff's bundle of documents and confirmed that she was in the photo during the ceremony.

They later received information that they needed to gather at the Chief's palace on 23<sup>rd</sup> May, 2015 to discuss the selection of the new Chief Chibwika. On 23<sup>rd</sup> May, 2015, at this meeting the Chairperson for all the royal families Paul Waishimoka was not feeling well and the one that who stood on his behalf was Mr Kasapatu, DW3. The two royal families Dinang'a an Nyaluhana did not attend the meeting and she did not know if the Mwamba Ilunga sent invitation letters to those two royal families. It was agreed that they would select the chief and that they candidates would be taken to Senior Chief Kanogesha because he was the one in charge of selecting the chief.

At the meeting it was suggested that had PW4 been around they would have selected the Chief. She responded that PW4 had no authority over her and since there were his uncles and royal families present, his presence would not be required. She said he would not stand for Dinanga and Nyaluhana royal families.

They agreed to meet on the 19<sup>th</sup> June, 2019 and on the 19<sup>th</sup> June, 2015 the four royal families met. Paul Kamusaki went to where they were gathered and told them that they were some challenges at the palace of Mwamba Ilunga and that they would

join them shortly. They sat and waited for him and after he left they saw a vehicle for soldiers and the police whom she assumed were just passing as the road they were on led to Kabompo where there is a border between Zambia and Angola. Shortly thereafter, they heard one gunshot but were not bothered until they heard rapid fire. They headed for the palace and as they were going to the palace they found a barrier and they were stopped from passing the barrier.

As they were restraining the men, she managed to sneak in and went inside the arena and she entered and found Paul Kamusaki who was standing beside a vehicle. She grabbed him from his shirt and held his neck and she asked him what he was doing here when it had been agreed on 23<sup>rd</sup> May, 2015 that he would write letters to the two royal families that did not attend the meeting. He told her that they were installing Mwamba Ilunga Julius as Chief.

She scolded him for being an elderly person and having been Prime Minister for the late Francis Katayi who knew very well about the tradition and yet he installed a chief when the deceased Chief Francis Muyinda Katayi came from Mushidi. He responded that it was not him but her son PW4. She told him that the Chieftaincy was matrilineal as was the case with Kanongesha where they go and swear to the royal bracelet at Chief Kanongesha's palace. She said even if he was her nephew they could not allow him to take over since it was the same people who were on the throne.

She then she saw the Plaintiff hugging his brother Patrick and he was smeared in white powder. They were moving with a crowd of people behind them who were singing. She went toward The Plaintiff Mwamba Ilunga and Patrick and pulled them apart with so much strength and told them that what they had done was a taboo. She told the plaintiff that the chieftaincy in Chibwika Chieftaindom was by rotation. He told her that her son Jephon Mukanda was the one who helped him in the installation. She looked for her son in the arena but was told that he ran away. She later left the arena and went to find the four royal families she was with. She said she was very angry because her son stood for her brother's son just to help him be chief due to his ranks.

Paul Waishimoka then explained that when they have any problems in Lunda tradition they are taken to Chief Kanongesha. On 21<sup>st</sup> June, 2015 they went to the palace of Chief Kanongesha and registered their complaint over what transpired.

Under cross examination she stated that she is the elder sister to Chieftainess Ikelengi and confirmed that the Chieftainess succeeded her father as the Chieftaindom is patrilineal. She stated that the minutes she was referred to did not record that it was the family of the deceased Chief where a Mwamba Ilunga should be selected from. She denied being proposed as a potential Mwamba Ilunga. She confirmed that the Plaintiff was the first Mwamba Ilunga since inception of Chibwika Chieftaindom and that there were no problems from the time he was selected as Mwamba Ilunga.

She said she knew Phenias Mutembu as he hailed from Kalwizhi royal family. She said she was not aware that he was the one who seconded the Plaintiff as Mwamba Ilunga. She stated that according to their tradition the royal families have no powers or authority to select and install Chief Chibwika. She stated that the duty of Paul Waishimoka was to be chairperson over the selection of Mwamba Ilunga. With regard to the selection and installation of Chief Chibwika she stated that there was a meeting on 23<sup>rd</sup> May, 2015 which was attended by the three royal families. It was agreed at this meeting that on 20<sup>th</sup> June, 2015 all the five royal families would select candidates from all the royal families who were aspiring to be Chief Chibwika. When referred to the Defendants 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> bundles of documents she confirmed that two of the five royal families did not participate in the selection of Mwamba Ilunga.

She confirmed that on 20<sup>th</sup> June, 2015, four families met but that there were no minutes because the meeting never took off. She stated that the Plaintiff as Mwamba Ilunga and his family were not present at this meeting and he was the one who was supposed to take the names of the candidates to Chief Kanongesha.

She confirmed that the Chibwika chieftaincy is matrilineal in selection of Chief Chibwika and recounted the procedure of first selecting a Mwamba Ilunga and then subsequently a chief. She also stated that this chieftaincy was selected by rotation. She denied that this day was meant for selection of a chief but stated that it was meant for discussing candidates who would be taken to Chief Kanongesha.

When referred to the encounter she had at the Arena on 20th June, 2015 she maintained that the Prime Minister Paul Kamusaki was manning the gate and that was why she grabbed him by the shirt. She confirmed that she was in a mind frame where she did not care the consequences of her actions for purposes of the chieftainship and was ready to die. She stated that the Prime Minister abrogated tradition by allowing the Plaintiff to be installed as Chief when traditionally he cannot ascend to the throne as Chief Chibwika.

She stated that the installation and swearing of the chief is done at a place called Ihung'u and that was why she had not witness the swearing in ceremony.

In re-examination the witness stated that there was no son who had ever inherited their father in Chibwika. She denied being jealous of the Plaintiff as a reason to report him to Chief Kanongesha and that they went there because he is a senior chief. She stated that PW4 could not represent kalwizhi family because he was a son and there were older people who could do that. Further, that he could not just become headman of Kalwizhi when the headman was still living. She explained that she came from Ikelengi because that was where her mother married her father from and went to Chibwika. She stated that it was the royal families that select a Mwamba Ilunga.

At the close of the defence all parties agreed to file in written submissions.

It was submitted on behalf of the Plaintiff that he is the right person to be selected as Chief Chibwika. Counsel submitted that



the Plaintiff was entitled to ascend to the throne of Chibwika because he belongs to the Chibwika Royal family. He further submitted that in the Plaintiff's evidence he told the Court that there were living examples that majority of Lunda people practice the patrilineal system of which he gave an example of Chief Nyakaseya, PW2. It was contended that there was sufficient evidence of current Lunda Chiefs who are sons and daughters succeeding their fathers and mothers and this could establish that the Plaintiff rightly and in accordance with Lunda tradition and culture succeeded his father to the throne. He added that even the Defendants' witnesses admitted the evidence that many Lunda chiefs practice the patrilineal system of succession but what they argued was that Chibwika and Kanongesha Chiefdoms practice the matrilineal system of succession. According to him, there was nothing on record that could stop the Plaintiff from succeeding his father.

It was further submitted that the question as to whether the Plaintiff was the right person to succeed the Chieftaincy of Chibwika was brought before the tradition committee which included six chiefs in attendance at the meeting of 18<sup>th</sup> August, 2015. In the minutes of that meeting it was stated that the Chibwika Royal Establishment consists of only three families which are Wachikeka, Kalwizhi and Mushidi and excluded Dinanga and Nyaluhana. As such these two should not be allowed to meddle into the affairs of Chibwika Chiefdom.

It was submitted that the committee of traditional leaders who hail from Mwinilunga concluded that the Plaintiff was duly selected and installed as Chief Chibwika in accordance with

Lunda Tradition and cultural practice. He submitted that PW2 was one of the Chiefs who was present at this meeting. It was counsel's contention that the Defendants agreed that a son could succeed his father in Lunda tradition including Chief Chibwika provided that the son was born whilst the father was a Chief. He added that the contention that a son cannot inherit his father is not true and stated that DW3 in cross examination told the Court that Francis Biscuit Katayi was his father. Counsel cited the case of **Ted Savaya Muwowo alias Chief Dangolipya Muyombe v Abraham Muwowo alias Temwani Winston Muwowo (suing in his capacity as Chairman of Uyombe Royal Establishment Committee SCZ/8/50/2014)** to support his argument.

It was further submitted that the contention that no Chief Chibwika has ever been succeeded by the son in the manner the Plaintiff has done, is misplaced in that there has never been a Chief who has died as a Chief Chibwika and the current situation was novel. It was therefore his submission that the Plaintiff rightly succeeded the throne of Chibwika.

It was Counsel's submission that the Plaintiff had relinquished his position as Mwamba Ilunga and the same position was given to Golden Muyinda. He argued that the Defendants contention that there was rotation in the succession and as such the Plaintiff who came from Mushidi Royal family could not qualify to be appointed as Chief Chibwika because his father was also from Mushidi was an afterthought. It was his submission that there was no established system of rotation of the royal families ascending to the throne in the Chibwika Chieftdom. It was submitted that rotation was not sufficient ground to reverse the

installation of a member of the Chibwika Royal Establishment who was properly installed by the royal families after the correct electoral college.

It was Counsel's contention that there had never been a complete rotation that could be relied on in order for it to become a tradition of rotation. According to Counsel, the issue of rotation is the people's views or wishes of particular individuals which is discouraged in the case of ***Ted Savaya Muwowo alias Chief Dangolipya Muyombe v Abraham Muwowo alias Temwani Winston Muwowo***. It was submitted that the Chibwika Royal families had not yet established a custom or tradition that could be well known as defined in Blacks Law Dictionary. It was his contention that it would only be clear as to what would be custom upon all the royal families ascending to the throne at least two times. He maintained that the Plaintiff was the right person selected and installed as Chief Chibwika. The Court should therefore deny the nullification of the installation of the Plaintiff as Chief Chibwika.

It was Counsel's submission that Article 165 and 266 of the Constitution Of Zambia Amendment Act No. 2 of 2016 implies that a person to be a chief need only to obtain consent from the people within the chiefdom. In this case Chief Chibwika does not need any authority from Kanongesha Chiefdom. He argued that Chief Kanongesha had no power or any role to play in the process of recognizing or selecting a chief of the Chiefdom he does not belong to. He further submitted that even government has no authority to supervise or control how Chief Chibwika is selected.

It was also submitted that the Chibwika Chiefdom consisted only of three royal families and this was noted from the meeting of 23<sup>rd</sup> May, 2015 where it was resolved to meet from 19<sup>th</sup> to 20<sup>th</sup> June, 2015 for purposes of selecting the substantive Chief Chibwika. He therefore submitted that the Plaintiff was correctly selected by the three royal families of Chibwika Chiefdom. He submitted that Nyaluhana and Dinanga were not part of the Chibwika royal families and they are not mentioned in any meeting prior to 21<sup>st</sup> June, 2015.

Counsel cited the case of **Chief Chipepo (also known as Chilufya Mwamba) v Senior Chief Mwamba (also known as PaisonChilekwa Yamba Yamba) SCZ Judgment No. 25 of 2008** to support his argument that the only people who had the right to select a chief were the three royal families who selected Julius Muyinda and not the 1<sup>st</sup> Defendant. He added that no one from Dinanga or Nyaluhana gave evidence before the Court to affirm that their families were part of the Chibwika Royal families.

It was submitted that the 5<sup>th</sup> Defendant abandoned his defence and counter claim when he failed to appear and give evidence in Court. It was his contention that this was not a class action and therefore no defendant could testify on behalf of another defendant even if they seek similar reliefs.

He submitted that DW2, DW3 and DW4 complaining that they were not in attendance when the selection of Chief Chibwika was being done could not hold any water because the evidence showed that the Defendants were present in previous meetings. It was submitted that the selection of the Plaintiff as Chief

Chibwika could therefore not be faulted because the three royal families were present. He added that in the unlikely event that the Court found that the other two families were part of the royal family, it still would not change the fact that three royal families who were in the majority supported the installation of the Chief Chibwika.

It was his contention that DW4 and her team were within the hearing distance of where the selection was being done and that was how she was able to go to the venue having realized that the Plaintiff had been selected as the substantive Chief. He argued that she and her colleagues sat on their rights when they did not participate and cannot object to this late in the day. It was his submission that the installation of the Plaintiff was substantiated.

He further submitted that the 2<sup>nd</sup> Defendant no longer had power to recognize the Plaintiff and he had no claims against the State. He asked the Court to grant the Plaintiff reliefs sought with costs save for the claim against the 2<sup>nd</sup> Defendant.

On behalf of the Defendants it was submitted that the Plaintiff was not the right person to be installed as Chief Chibwika. Counsel submitted that belonging to one of the royal families did not automatically entitle one to be chief without regard being had to the traditional procedures and customs. He added that belonging to the royal family only entitled you to be and eligible candidate to contest the Chieftaincy.

He argued that that the Plaintiff was the Mwamba Ilunga who did not properly hand over the instruments of power and further

that he was the biological son of the late Chief Chibwika and therefore rotation was not followed. He also submitted that the Plaintiff had not demonstrated that the majority of Lunda Chiefwere patrilineal as no witness was called to confirm this position. He added that all the witnesses from both parties confirmed that historically Chibwika Chieftaincy is matrilineal.

With respect to the assertion that the Committee of the Royal highnesses that met on 18<sup>th</sup> August, 2015 came to the conclusion that the Plaintiff was duly selected and installed as Chief Chibwika, it was the Defendants' submission that there was no special committee designated for this purpose. He submitted that this meeting was convened by the parties in an attempt to resolve the Kabwe High Court matter. He added that the royal families did not sign the minutes for this meeting and there was no indication that the signatories had the power to decide whether Julius Muyinda was duly selected and installed.

With respect to the rotation, it was submitted that all the Plaintiff's witnesses in cross examination agreed that what transpired in the Chibwika Chieftaincy showed a pattern of rotation in succession. Further, that the Plaintiff agreed that the other families who had waited so long could now have chance to rule after Mushidi's rule through Biscuit Katayi Muyinda for 47 years.

On the argument that no one from Dinanga family was called to testify, it was Counsel's submission that the evidence of the 3<sup>rd</sup> Defendant covered the claims of the 4<sup>th</sup> and 5<sup>th</sup> Defendants and the 5<sup>th</sup> Defendant hailed from Dinanga royal family. Counsel

maintained that the selection and installation of the Plaintiff as Chief Chibwika was not validly done according to Lunda tradition citing five reasons.

Firstly, it was submitted that the Plaintiff was Mwamba Ilunga and the instruments of power were not properly handed over to allow him to fairly compete with the other contestants. It was argued that the Mwamba Ilunga was the caretaker chief and one of his roles was to receive the application letter from the aspiring candidates for the Chieftaincy. However, because the Plaintiff as Mwamba Ilunga had a conflict of interest, there was nowhere to take the letters to. According to him, it was the Mwamba Ilunga who should have facilitated the process of selection and installation and that was why the Mwamba Ilunga is not allowed to contest.

He further submitted the evidence of PW3 was that the Plaintiff relinquished the instruments of power of 18<sup>th</sup> June, 2015 to his brother Golden Muyinda who was chosen on that same date. Golden was never taken to Chief Kanongesha and this was an abrogation of custom and tradition. Counsel argued that this was a well-orchestrated scheme by the Plaintiff and cited the case of **Collence Mulema Matebo Ben Kampelo (Suing as Chief Matebo) Appeal No. 48/2011** where the Supreme Court observed that it was a well-orchestrated scheme actuated by selfishness and consumed by superiority complex.

Secondly, it was submitted that there were no government officials at the selection of the Plaintiff as Chief Chibwika which fact was undisputed. Counsel referred to Paragraph c of Cabinet

circular number PA/4/22 of 1972 which requires that the District Secretary should ensure that all parties concerned have been invited to attend the meetings for the selection of the Chief and that a record of all who attended is taken. He submitted that this administrative requirement does not run in conflict with the amended Constitution of 2016 regarding recognition of traditional leaders. He submitted that this administrative requirement was emphasized in the case of **Matthew Namahalik Musokotwane v George Simukal and other Appeal No. 97 of 2015**. It was his submission that failure to abide by the provisions of this circular renders the selection and installation a nullity as was in the case referred to.

He argued that since it was the undisputed evidence on record that the government officers were not present, it therefore followed that the installation was not validly done.

With respect to the Plaintiff's submission regarding Article 165 and 266 of the amended Constitution, it was Counsel's submission that these provisions do not cast a blanket prohibition against anyone from having a say on how the Chief is selected other than the people in the Chieftainship. It was submitted that the culture, customs and traditions, as provided by Article 165, of the Chibwika Kanongesha Lunda Chieftainship was what the Plaintiff now sought to conveniently circumvent.

He argued that the Constitutional provisions referred to do not outlaw the traditional and customary role of Senior Chief Kanongesha in the Chibwika Kanongesha selection and installation process.



Thirdly, it was submitted that despite the Plaintiff arguing that there is no established rule of rotation because each royal family had only ruled once, the evidence on record showed that there had never been a time in the history of the Chibwika Chieftaincy that two chiefs consecutively came from the same royal family. Counsel referred to section 2 of the Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act No. 16 of 2016 and submitted that from this statutory provision, it was clear that traditional knowledge and practice were not usually written down but passed on from generation to generation orally and by practice.

It was submitted that while the Plaintiff denied the existence of Ndembi, a letter on page 8 of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants Bundle of Documents authored by the late Francis Katayi Muyinda which demonstrates that he addressed himself as Chief Chibwika the 4<sup>th</sup>. It was contended that this is in complete agreement with the various defence witnesses who stated that the 2<sup>nd</sup> Chibwika was Ndembi from Nyaluhana royal family. It was further argued that the undisputed evidence on record is that the Plaintiff is the biological son of the late Biscuit Katayi Francis Muyinda who also comes from Mushidi royal family. It would therefore be against the traditional and customary practice historically to select and install a Chief who was from the same royal family as his predecessor and is the biological son of the deceased Chief.

Counsel called in aid the case of ***Ted Chisavya Muyowo Alias Chief Dangolipya Muyoba v Abraham Muwowo Alias Temwani and Winston Muwowo (suing in his capacity as***

**Chairman of Uyombe Royal Establishment Committee)** and argued that the purported installation of the Plaintiff as Chief Chibwika should be nullified because the customary tradition of rotation was not followed.

Fourthly, it was submitted that the Chibwika Chieftainship is matrilineal. Counsel disputed the Plaintiff's evidence that Chibwika Chieftainship practiced both matrilineal and patrilineal systems. It was submitted that there was no evidence produced by the Plaintiff to show that there was any Chief Chibwika who ascended to the throne through the patrilineal system. He added that there was no dispute that Biscuit Katayi Muyinda refused to ascend to the position of Chief Kanongesha due to the traditional practices leading to the installation. The succession practice in the Chieftainship is purely matrilineal because of the Royal Bracelet or Lukanu.

Lastly, it was submitted that there were five royal families under Chibwika Chieftainship while the Plaintiff argued that there were only three. Counsel contended that the 2<sup>nd</sup> Chibwika Ndembi was from Nyaluhana royal family which evidence was disputed by the Plaintiff but conceded that Ndembi became Chief Kanongesha.

It was submitted that there was no full participation of all the royal families of Chibwika. It was submitted that as was stipulated in the case of **Namahalika Musonkotwane V George Simukali and others**, Cabinet circular number PA/4/22 of 1972 requires the meetings for the selection of the Chief to be held in accordance with tribal custom and all parties concerned

be invited to attend. It was Counsel's contention that the evidence on record revealed that only the three royal families sat for purposes of selection of Chief Chibwika. He added that the evidence on record also revealed that there were only three people who were present at the selection, namely, Paul Kamusaki from Mushidi, Bendau Mudata from Wachikeka and Jephany Mukanda from Kalwizhi. There was also evidence to the effect that the headman of Kalwizhi at the time was Paul Waishimoka but Jephany Mukanda was co-opted for convenience in that hour because Paul Waishimoka was not present. It was his contention that three people representing themselves and their own interests could not form the Electoral College for Chibwika especially that these people did not have authorization from all the royal families to carry out the selection process.

It was finally submitted that the Plaintiff had not proven its case in accordance with the case of **Khalid Mohamed v The Attorney General (1982) ZR 49**.

In reply Counsel for the Plaintiff submitted that it was a misrepresentation to say that all five royal families were present at the installation of the Plaintiff as Mwamba Ilungawhen the evidence on record was that only three royal families were present from the time Chief Chibwika dies.

He reiterated his submissions that Senior Chief Kanongesha has no role to play in the selection and installation of Chief Chibwika and that ther three royal families were in attendance at the selection and installation of chief Chibwika. He submitted that the minutes of 18<sup>th</sup> August, 2015 were important because

independent traditional leaders some of whom were Lunda by tribe were involved in analyzing the culture and the tradition of the Lunda. He contended that the fact that the Defendant did not raise any objection against production of these minutes, they could not raise doubt now as it was too late in the day.

It was Counsel's submission that with respect to the counter claim, a party who had settled pleadings but failed to appear at trial amounted to abandoning of their counter claim and such action should be dismissed with costs. He argued that the case before this Court was not a class action and therefore each Defendant should appear and speak to the pleadings having been settled. It was contended that it could be concluded that the absence of Dinanga and Nyaluhana royal families from the meeting where the Mwamba Ilunga was selected and the meeting of 23<sup>rd</sup> May, 2015, then the two alleged royal families did not belong to Chibwika Chiefdom.

He submitted that the 4<sup>th</sup> and 5<sup>th</sup> Defendants abandoned their claim counter claim and defence when they failed to give evidence in Court and he cited the case of **Charles Hector Sambundu and 8 Others v Lufwanyama Enterprises Limited and 3 Others 2012/HP/0916**.

It was further submitted that there was no dispute that the Plaintiff was selected and installed as Chief Chibwika and also that during the installation all required rituals were accordingly performed and instruments of power handed over to the Plaintiff. He contended that the 1<sup>st</sup> Defendant stated that once a person had been selected and installed, he cannot be removed

from the throne irrespective of how the person had been chosen. He reiterated that that the Court should find that the Plaintiff was correctly selected and properly installed as Chief Chibwika.

Counsel further submitted that according to the evidence, in Lunda tradition once a son has been chosen as a Mwamba Ilunga, he automatically ascends to the throne and this was confirmed by the traditional leaders at the meeting held on 18<sup>th</sup> August 2015.

He further submitted that the Plaintiff handed over the instruments of power when it became apparent that he was nominated by one of the royal families. He argued that the presence of stakeholders did not affect the selection of a chief of the royal families. He stated that what was important was that consent is obtained from the people within the Chiefdom in accordance with the customs and traditions which is accepted and known by the people.

He cited the case of **Kililo Ngambi v Opa Kapijimpanga (2018) Appeal No. 210/2015** and argued the attendance of government officers, particularly where there was an attempt to invite them could not be a basis of nullifying the selecting and installation of the Chief on the throne because these do not form part of the electoral college.

With respect to Cabinet Circular number PA/4/222 of 1972 relied on by the Defendant, it was submitted that the provisions of the Constitution as amended in 2016 outweighs the cabinet circular. It was his contention that Article 165 and 266 was understood to mean that for a person to be chief, he only needs

to obtain consent from the people within the chiefdom. In this case Chief Chibwika's Chiefdom did not need any authority from the Senior Chief Kanongesha to recognize or select a Chief.

He maintained the earlier argument that there was no established system of rotation of the royal families because the system must constitute a pattern practiced for a long period of time that its at the back of everyone's mind as their traditional practice.

It was counsel's contention that the protection of traditional knowledge, genetic Resources and Expression of Folklore Act No. 10 seeks to protect intellectual property rights and this case was not about intellectual property rights.

He maintained that each family was represented during the selection of Chief Chibwika whether or not those who represented the families did not have sufficient authority whilst they were claiming they had authority. It is therefore not sufficient to nullify the selection and installation of the Plaintiff as Chief Chibwika.

I have carefully considered the evidence on record and the submissions by the parties.

The Plaintiff has on record and in its submissions conceded that the claim against the 2<sup>nd</sup> Defendant does not stand in light of the Constitution Amendment Act No. 2 of 2016 which no longer provides for government recognition of a Chief. In this regard, the claim against the 2<sup>nd</sup> Defendant falls off.

It has also not been disputed that the Plaintiff was properly installed as Mwamba Ilunga because the undisputed evidence on record is that the Plaintiff was taken to the 1<sup>st</sup> Defendant who is Senior Chief Kanongesha once he was installed as Mwamba Ilunga.

What is in dispute is whether:

1. The Plaintiff qualified to contest as the substantive Chief Chibwika
2. Whether a Substantive Chief could come from the Mushidi royal family in light of the alleged rotation in succession
3. Whether Senior Kanongesha had the mandate to recognize an installed Chief.
4. Whether the Plaintiff was validly installed as Chief Chibwika.

In dealing with these issues in dispute the starting point is to recognize that the role of this Court is not impose a Chief. In the case of ***Kilolo Ngambi v Opa Kapijimpanga*** cited by the Plaintiff, the Supreme Court citing its earlier decision on the role of the Court in Chieftaincy matters had this to say:

“We did state in the case of *Chief Mpepo (Also known as Ackson Chilufya Mwamba) V Senior Chief Mwamba (Also known as Paison Chllekwa Yamba Yamba)* that:

***"A Chief is elected or appointed as such by the people of the community the Chief is to superintend over in accordance with the***

***customs and traditions of the community. It is not the duty of the Court, as the learned trial Judge seemed to imply to choose or impose a Chief on a community."***

Having established this, I will now delve into the issues in dispute.

### **ELIGIBILITY TO CONTEST FOR THE POSITION OF CHIEF CHIBWIKA**

The Plaintiff submitted that he qualified to contest for the position of Chief Chibwika because he belonged to one of the three Chibwika royal families. He further contended that he was validly appointed as Mwamba Ilunga and he relinquished his powers as Mwamba Ilunga to his brother Golden Muyinda on 18<sup>th</sup> June, 2015 so that he could be a candidate for the position of Chief Chibwika on 20<sup>th</sup> June, 2015. He also argued that following this, the three royal families in Chibwika Chieftdom sat and decided that he was the suitable candidate to be Chief Chibwika. The Plaintiff further contended that Chief Kanongesha had no role to play in the selection and installation process.

The Defendants on the other hand argued that the Plaintiff did not qualify to be a candidate to contest as Chief Chibwika because he was a Mwamba Ilunga and that he did not properly relinquish his powers as Mwamba Ilunga to enable him to contest as Chief Chibwika. It was further contended that a Mwamba Ilunga could not become a chief because a Mwamba Ilunga is a caretaker chief who was in that position pending the installation of the substantive Chief, which process he was to



facilitate. According to the Defence, the Plaintiff contesting meant that he did not play his role in facilitating the installation of Chief Chibwika by receiving applications from candidates and taking the said candidates to Chief Kanongesha.

The record shows that the late Chief Chibwika died in the year 2014. Following his death the Plaintiff who is the biological son of the late Chief Chibwika was appointed as Mwamba Ilunga. The undisputed evidence on record is the Mwamba Ilunga is appointed as the caretaker chief who fills the gap pending the selection and installation of the substantive Chief. He is also referred to as the chief mourner and one of his roles is to facilitate the installation of the substantive chief.

It is also on record that the Plaintiff was installed as Mwamba Ilunga at a ceremony attended by the members of the royal families and photos were exhibited of this ceremony. It is further on record that after the said installation the Plaintiff was taken to Senior Chief Kanongesha to be formally introduced as the Mwamba Ilunga for Chibwika Chiefdom. The undisputed evidence on record is further that a Mwamba Ilunga cannot contest for the Chieftaincy while he is in that position. In order for him to contest in the Chieftaincy, he must have relinquished his powers as Mwamba Ilunga. The Plaintiff in acknowledging this requirement contends that he rightly relinquished his powers as Mwamba Ilunga to his brother Golden Muyinda on 18<sup>th</sup> June, 2015 which was two days before the installation of the substantive Chief Chibwika.

The Defendants contend that this was done as a scheme to swiftly facilitate the Plaintiff's candidature without other members of the royal families having a say in the matter.

From the evidence on record, I clearly note that it was agreed that the selection of the candidate to be Chief Chibwika would be done on the 19<sup>th</sup> and 20<sup>th</sup> June, 2015. The Plaintiff admits that the instruments of power were handed over to Golden Muyinda on 18<sup>th</sup> June, 2015.

I agree with the proposition by the Defence that this act of handing over the instruments of power a day before the dates agreed for the commencement of the selection process was swiftly done without the other stakeholders who were only due to arrive on 19<sup>th</sup> June, 2015. There is no evidence on record to show that the relevant stakeholders were present during the selection of Golden Muyinda as Mwamba Ilunga nor were they consulted because they were only due to start arriving on 19<sup>th</sup> June, 2015 according to the minutes of the meeting of 23<sup>rd</sup> May, 2015. This also goes against the earlier selection of the Mwamba Ilunga where a considerable number of the members of the royal family were present for the selection of Mwamba Ilunga and Senior Chief Kanongesha even addressed the Mwamba Ilunga on some of his duties as noted from the minutes dated 12<sup>th</sup> September, 2014.

While there is no clear evidence as to whether there is a time frame required between the relinquishing of his powers as Mwamba Ilunga and the selection of the substantive Chief Chibwika, I have no doubt that relinquishing the powers of

Mwamba Ilunga day before the stakeholders were scheduled to arrive for the selection of the substantive Chief does not give the same stake holders an opportunity have a say on the matter. The Plaintiff in his evidence has attempted to prove that the three royal families of Chibwika Chieftdom were represented by the three people present when the powers were relinquished to Golden Muyinda. There is no evidence that the same people had made consultations with other members of the royal families because there are no minutes that were recorded for this event. In my view, the Plaintiff did not properly relinquish his powers as Mwamba Ilunga to enable him to contest as chief Chibwika and as such he could not contest while still holding the title of Mwamba Ilunga.

#### **ROTATION IN THE SYSTEM OF SUCCESSION IN CHIBWIKA AND KANONGESHA CHIEFDOMS**

In dealing with this issue, I relied heavily on the facts in the recent years as established by in the evidence on record. I call in aid in the case of **Oggie Muyuni Mudenda v Dickson Muyeeka Kamaala Appeal No. 006/2019** where at page J26, the Supreme Court observed that:

*“in deciding the lineages of the appellant and respondent, we shall test the traditional history by referring to the facts in recent years as established by the evidence and examine which of the two competing histories is more probable following the case of Kojo v. Bonsie (1975) WLR 1223 at 1226.”*

In the case in casu, there is no issue pertaining to lineage. However, this Court will seek recourse to this authority due to the reliance on traditional history and occurrences in the recent past being referred to by the parties.

In the case of ***Ted Chisavya Muwowo Alias Chief Dangolipya Muyombe v Abraham Muwowo alias Temwanani and Another referred to by the Plaintiff*** the Supreme Court in delivering its judgment of a chieftaincy dispute had this to say at pages J13 to 14 and J25:

*“Succession in a chieftdom is by way of established traditions and customs and not personal views or wishes of particular individuals....We wish to add that where the tradition and custom of a group of people has a process that is to be followed for the selection of a Chief, that tradition and custom ought to be followed.”*

I have carefully considered the evidence given on the record. The Defence in rebutting the Plaintiff's selection and installation of the Plaintiff as Chief Chibwika has contended that the Plaintiff could not be validly installed as Chief Chibwika because there was a system of rotation that was practiced in Chibwika Chieftancy amongst the royal families. According to the Defendants, there were five royal families amongst which this rotation was to be exercised. It was further contended that the Plaintiff's installation was invalid because it was in abrogation of the system of rotation because the late Francis Muyinda Chibwika was from the Mushidi royal family and so was the Plaintiff who is his biological son. According to the Defence,

there has never been a son who inherited his father on the throne in Lunda customs. The Defence also contended that the installation could not be deemed valid because the Plaintiff was not taken to Chief Kanongesha as a candidate contesting for the Chieftaincy.

The undisputed evidence on record was that the first Chief Chibwika was Kafulezhi of Kalwizhi royal family, the second was Chikunzu Lemba from Wachikeka royal family and then there was Francis Chibwika who was from Mushidi royal family. There was a dispute as to whether Ndembi was ever a Chief Chibwika.

Based on this history the Defendants contended that this showed that there was a system of rotation that was followed in the succession. DW1 in his evidence also emphasized that Chibwika and Kanongesha are matrilineal systems. This matrilineal system meant that a son cannot succeed his father and as such a system of rotation is employed in the succession to the throne.

The Plaintiff on the other hand completely disputes that there is a system of rotation that exists in Chibwika Chieftaincy and that there was not matrilineal as alleged by the defence. The Plaintiff alleged that he had rightly ascended to the throne as there was nothing to stop him from succeeding his father. In cross examination he conceded that the three royal families had all taken succession to the Chibwika Chieftaincy throne. He also confirmed that there has never been a son who inherited the throne from his father in Chibwika Chieftaincy.

The other plaintiffs' witnesses also confirmed that there was no son who had inherited his father in Chibwika Chiefdom. There was no dispute that all the other royal families had all been on the throne as Chibwika with Mushidi royal family being the last royal family holding the throne.

As I have already earlier noted, it was not disputed that each of the three royal families has had an opportunity to be on the Chibwika throne. The Defendant has argued that this shows that there was a system of rotation based on this. I agree with Defendants that there is clear evidence that there is a system that was followed in succession and the fact that the three royal families have all been on the throne shows that there is a pattern that was followed giving an opportunity to all the royal families to ascend to the throne.

Based on the undisputed evidence on record that no son has ever succeeded a Chief Chibwika who was on the throne and that all the royal families, to the extent agreed to by the Plaintiff, had had an opportunity to be on the Chibwika throne in my view shows a clear system. The system agreed to by the fact that a son had never inherited his father who was a previous Chief Chibwika. The first Chibwika as per record was Kafulezhi of Kalwizhi royal family. He was then succeeded by Chikunzu Lemba of Wachikeka (royal family) and the late Francis Biscuit Katayi Muyinda from Mushidi Royal Family succeeded Chikunzu Lemba.

I have no doubt in my mind this shows that there was rotation amongst the Royal families as there had never been one royal family ascend to the throne consecutively.

was Silas Kamonda to be installed as Chief Kanongesha. When Silas Kamonda died, the 1<sup>st</sup> Defendant was then selected to be Chief Kanongesha. It was the Defendants' contention that they were waiting for Francis Muyinda to leave the throne for them to revert to the system where a Chibwika would ascend to be Chief Kanongesha.

In my view the reason the late Chief Chibwika Francis Muyinda was not installed as Chief Kanongesha in 1994 was because he refused to ascend to the throne in 1971. His refusal is what necessitated the change in the tradition of a Chibwika ascending to the throne of Chief Kanongesha. I therefore do not agree to the assertion that the willful refusal by Francis Biscuit Muyinda should be the reason why the other subsisting tradition of each royal family ascending to the Chibwika throne should be distorted. In any case I hold the view that the two situations are completely different because the reigning Chief Chibwika at the time that Silas Kamonda died had earlier refused to be a Chief Kanongesha and that was why there was a departure from the tradition of a Chief Chibwika automatically ascending to the throne of Kanongesha. In the case in casu, the Defendants have shown that there were other royal families that were eligible to contest the throne of Chief Chibwika but the Plaintiff had ensured that the same are not given such an opportunity.

I will borrow the definition of a custom given by Counsel for the Plaintiff according to the Black's Law Dictionary. It is defined as:

*“A usage or practice of the people, which, by common adoption and acquiescence and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject-matter to which it relates”*

The fact that for three consecutive reigns there has been a different royal family taking the Chibwika throne shows that this is a custom in the reign of Chief Chibwika. On the totality of the evidence on this issue I find that there is clearly a system of rotation in Chibwika Chieftom as supported by the evidence on record.

**DOES SENIOR KANONGESHA HAVE THE MANDATE TO RECOGNIZE AN INSTALLED CHIEF.**

The evidence of the Defendants is that Senior Chief Kanongesha installs all the Chief Chibwikas'. Reliance was placed on a letter where the Acting District Secretary A. Banda in 1966 explained that traditionally Chief Kanongesh selects Chief Chibwika but in that case the people rejected the Kanongesha's selection who was Geoffrey Mwalichanga. He presented a list of five names which had Chief Kanongesha's remarks about each individual. The letter showed that the Kanongesha acknowledged that the people preferred the late Francis Muyinda to be Chief Chibwika and allowed them to have the person of their choice.

The Plaintiff on the other hand alleges that Chief Kanongesha has no role to play in the selection of Chief Chibwika. It was not disputed that the first Chibwika was appointed by Kanongesha and the letter I have referred to acknowledge that traditionally



Chief Kanongesha selects Chief Chibwika. The minutes of 23<sup>rd</sup> May, 2015 agreed that it was the mandate of the three royal families to select Chief Chibwika and as such it was not necessary for Chief Kanongesha to go to Chibwika Chiefdom to discuss the issue. It was agreed that once the chief was selected he would be taken to Chief Kanongesha.

I have considered the role of Chief Kanongesha carefully. From the evidence before me it is clear that historically Chief Kanongesha has had a hand in the selection of Chief Chibwika. It was in the selection of the late Francis Chibwika that the people rejected his choice for another preferred candidate. Having said this, from the evidence before me the minutes of 23<sup>rd</sup> May, 2015 have not been completely disputed by the Defendants. It was at that meeting that it was agreed as to the limitation of Chief Kanongesha's role in the selection of Chief Chibwika.

While the minutes show that the families decided that Chief Knaongesha should have no role in selecting Chief Chibwika, I hold the view that contrary to the situation in 1966, Chief Kanongesha was not given an opportunity to either respond to this resolution nor did he consent to it. He did not therefore relinquish his traditional powers as was the case in 1966 when he said he would allow the people to go by what they wished. I therefore find that Chief Kanongesha has a role in the selection process by giving remarks as regards each candidate. It therefore follows that he can refuse to recognize a person selected where he completely has no input and if such a person is not the choice of the majority of the people.

## **WAS THE PLAINTIFF VALIDLY INSTALLED AS CHIEF CHIBWIKA**

The evidence on record shows that it was agreed at a meeting held on 23<sup>rd</sup> May, 2015 that Chief Chibwika would be selected on 20<sup>th</sup> June, 2015. The arrival date for all the interested parties was agreed to be 19<sup>th</sup> June, 2015. The minutes of the meeting indicated that three royal families who were present were the only royal families in Chibwika Chiefdom. Those who were in attendance included headman Kalwizhi, headman Mushidi, headman wachikeka, headman Nyamuhana, DW4, Harry Chiyanga and Godfrey Kayinda among about 28 others. PW4 was not present at this meeting nor was he headman Kalwizhi at the time.

The Plaintiff's evidence is that he was selected by all the royal families represented by PW2 PW4 and PW5. PW4 told this Court that DW2 who was Headman Kalwizhi of the Kalwizhi royal family was not present on the day for the selection. It was for this reason that PW4 stood in for him to complete the qorum for selecting Chief Chibwika.

The Defendants have however argued that the Plaintiff was selected by three people who were alleging to represent the royal families when in fact not. It was contended that this was done in such a way that only the interested parties were involved in this selection without any consideration given to other applicants who were contesting for the Chieftaincy. DW2, who was headman Kalwizhi at the material time, gave evidence that he was in fact invited to Lusaka by the Plaintiff, his brother and PW4 and

attempted to get him drunk in order to gain his support for the throne.

Having carefully perused the record, I agree with the Defendants' assertion that the Plaintiff was selected by only three people because the other interested parties who were present at the meeting of 23<sup>rd</sup> May, 2015 were not present at this selection. The evidence that DW4 and other members of the royal families were gathered at the house of Luka Kamusaki was not convincingly rebutted. It was further not rebutted that Paul Kamusaki told them that he would meet them shortly as he was attending to an urgent matter at the palace. A careful perusal of the minutes for both the 23<sup>rd</sup> May, 2015 and the minutes of the installation of Chief Chibwika shows that very few people who were in the previous meeting attended the installation. The majority of the attendees were actually from Mushidi royal family. I do not see a clear indication of members of Wachikeka and Kalwizhi royal families as was the case for Mushidi royal family which was clearly marked as Mushidi in those minutes.

I have no doubt in my mind that the meeting for selecting the Plaintiff was orchestrated without the full participation of all the members of the royal families as the case was when they selected the Mwamba Ilunga. This is also evidenced by the quick selection of Golden Muyinda as Mwamba Ilunga to hold on to the instruments of power on 18<sup>th</sup> June, 2015 when the other members had not even arrived.

I find no difficulty to find that there was no proper representation of all the members of the royal families when the Plaintiff was selected by three individuals.

From what has already established, the Plaintiff being from Mushidi royal family where Francis Muyinda hailed from could not be considered as the rightful candidate unless it was shown that the people in the Chieftaindom preferred him to any other. No such evidence was produced as was the case in 1966 when Acting District Secretary A. Banda wrote to the Resident Secretary to the Resident, Minister's office that the people had rejected Chief Kanongesha's choice for Chief Chibwika. This is what subsequently led to selection Francis Muyinda as Chief Chibwika. In fact contrary to the position in 1966 when there were five candidates to be selected from, in the present case the Plaintiff alleges that he was the only candidate who was contesting the position of Chief Chibwika. I reject this proposition because my record shows that there was an application letter from Ackson Kasapatu, DW3, dated 29<sup>th</sup> May, 2015 addressed to the Chairman of Chibwika Royal Establishment where he was seeking to contest the Chibwika Chieftaincy. The evidence of the Plaintiff does not even make mention of any candidates who applied to contest as Chief Chibwika.

On the totality of the evidence before me I find that the Plaintiff's eligibility to stand as Chief Chibwika was questionable in the first place. Secondly, there was a clear system of rotation that was observed previously in the selection of Chief Chibwika. There is also evidence on record that shows that historically and traditionally Senior Chief Kanongesha does have a role to play in

the selection of Chief Chibwika. Lastly, I find that the selection of the Plaintiff as Chief Chibwika is not valid.

I have no difficulty in agreeing with Counsel for the Defendants who referred to the observation by the Supreme Court in the case of **Collence Mulemena Matebo v Ben Kampelo (Suing as Chief Matebo)** that this was a well orchestrated scheme actuated by selfishness and consumed by superiority complex.

The burden of proving his case was on the Plaintiff as was stated in the case of **Khalid Mohamed v The Attorney General** and I have found that he has failed to prove his case on a balance of probability that he is entitled to any of the reliefs sought.

With respect to the counterclaim by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants, the issues raised in the Counter claim have already been addressed in this judgment. This Court is satisfied based on the evidence before me that the Plaintiff was not validly selected and installed as Chief Chibwika because the system of rotation was not followed and that the Plaintiff being the biological son of the past late Chief Chibwika could not succeed his father according to their custom.

In view of this I find that the Defendants counter claim succeeds and I made the following orders:

1. That the selection and installation of the Plaintiff as Chief Chibwika be nullified because it was done against the custom of matrilineal succession and rotation which is practiced in Chibwika Chieftdom

2. That the matter be referred back to Lunda Kingdom for the selection and installation of Chief Chibwika with the supervision of Senior Chief Kanongesha and all the interested stakeholders
3. That all the eligible candidates be given an opportunity to fairly contest the position of Chief Chibwika in line with the customs in the Chibwika Chiefdom.
4. I accordingly discharge my earlier injunction granted in favour of the Plaintiff on 3<sup>rd</sup> May, 2017.
5. I order that costs follow the event.



*Superior*  
Leave to appeal to the ~~Supreme~~ Court of appeal is granted.

*17th*                      *July*                      *[Signature]*  
*7th*

Dated the ..... day of ..... 2020 under my hand and seal.



**MWILA CHITABO, S.C.**  
**JUDGE**