

REBECCA MBEDZI

APPLICANT

VERSUS

MUVHUSO MBEDZI

1ST RESPONDENT

AND

THE DISTRICT ADMINISTRATOR, BEITBRIDGE

2ND RESPONDENT

AND

**THE MINISTER OF LOCAL GOVERNMENT,
URBAN PLANNING AND DEVELOPMENT**

3RD RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 28 SEPTEMBER 2011 AND 6 OCTOBER 2011

Mr J. Sibanda for the applicant
Mr W. Tshakalisa for 1st respondent
Mr J. Mubengegwi for the 2nd and 3rd respondents

Opposed Matter

MATHONSI J: This matter concerns the disputed Sitaudze Chieftainship of Beitbridge. Basically two families have emerged as claimants to the same chieftainship, namely that of Matshaba the father of Tsetani who sired the applicant in this matter and that of Siturumane, the father of Darana, the father of Pariti, who sired the first respondent in this matter.

Pariti was the last chief Sitaudze and his death is the one that has given rise to the dispute that has been placed before me. The descendants of Matshaba, who include the applicant in this matter have argued that they are the rightful heirs to the chieftainship by reason that it belonged to them from its inception but was only disturbed when Chief Matshaba fled from the area after a fall out with the then District Commissioner of Native

Affairs, a Mr Elliot, during the Colonial dispensation. Chief Matshaba had gone to settle in the then Belingwe area.

The Matshaba group argues that Siturumane was appointed Chief Sitaudze just to fill a gap left by Matshaba and that those of his descendants who succeeded him did so on that basis only and that the time has come for the Matshaba clan to reclaim the chieftainship.

On the other hand, the Siturumane clan maintains that Matshaba abdicated the throne and absconded to Belingwe as a result of which a new order was put in place in which Siturumane took over. The Sitaudze chieftainship has since then devolved according to the Siturumane lineage from him to his son Darana who was also succeeded by his son Pariti. For that reason the first respondent as the first born son of Pariti, should succeed him as Chief Sitaudze according to Venda custom and tradition.

This dispute first came before this court as a court application filed by the applicant's sister Kelina Chisale (nee Mbedzi) under case number HC 2424/08. Following the death of Kelina the other sister Anna Mbedzi was substituted as applicant in that matter as the applicant, though the eldest in her family, was then of ill health.

On 17 February 2010, Kamocha J issued an order following argument by counsel for both sides, namely the applicant and first respondent in that matter. The order was in the following:

"IT IS ORDERED THAT:

1. The second respondent (namely the District Administrator for Beitbridge who is the second respondent in the current application) be and is hereby restrained and interdicted from forwarding to third respondent (the Minister of Local Government who is the third respondent in the present application) the first respondent's (the first respondent in the present application) name for appointment according to law by the President to the position of Chief Sitaudzi.
2. It be and is hereby declared that the customary principles of succession to the Sitaudzi Chieftainship were not given due consideration.
3. It be and is hereby directed that the second respondent cause a meeting of the elders of the Mbedzi clan to be convened as soon as possible for purposes of electing a candidate for appointment to Chief Sitaudzi and thereafter for the name of the person so elected at such meeting to be forwarded to third respondent according to law for purposes of being submitted to the President for appointment as Chief Sitaudzi.
4. Each party shall bear its own costs."

Following that order, the second respondent convened a meeting of the Sitaudzi Elders and members of the Chief's council at Sitaudze Court Room in Mpande area of Beitbridge on 16 June 2010. The proceedings of that meeting are captured in a report done by the second respondent dated 22 June 2010 and the minutes taken by L. Mbedzi the Accounting Assistant.

In his report, the second respondent concluded as follows:

"After the agreement by the two groups that the Sitaudze Chieftainship came down through Diasikwa. The chiefs wanted a clear explanation about how the chieftainship switched from Diasikwa to the Siturumani line. An old woman who did not mention her name explained that after Matshaba fled to Chingoma in Mberengwa people remained with no chief and the District Commissioner Mr Elliot appointed Siturumane as Chief Sitaudzi.

It was at this time that meeting went to break. After break Chief Maduna as leader of the negotiating team assigned the District Administrator with the two families to clearly draw the Diasikwa family tree so that if Diasikwa's children are there, they take over their grandfather's chieftainship."

The second respondent's report appears to be in agreement with the minutes of the meeting as recorded by L. Mbedzi, the accounting assistant, which concluded:

Resolution

It was resolved that the District Administrator with the help of the elders from both families draw the extension tree of the Diasikwa family to determine the possible successor. It was said that if there are no successors from that family then one may be elected from the Siturumani family. It was agreed that a meeting will be held after trees from both families have been drawn. Chief Maduna thanked all for attending and co-operating well without any quarrels from both families. The meeting was declared closed at 1650 hours. Food was served thereafter."

What comes out clearly from the foregoing is that his court ordered the second respondent to convene a meeting of elders to deliberate and come up with a candidate for appointment as Chief Sitaudze. The second respondent commenced compliance with the court order by convening the meeting of 16 June 2010. That meeting came up with a resolution for the families to compile "the extension tree" of the family and ended up on a positive note that whoever was to succeed as Chief Sitaudze was to come out of that exercise. Progress had been made when the meeting closed and food was served with Chief Maduna even taking time to thank the families for their co-operation. None of the parties has challenged the minutes.

In my view, the selection of a candidate was work in progress at the end of that meeting. The second respondent and indeed the elders of the family were only expected to follow up on the resolution that had been made at the conclusion of the meeting of 16 June 2010.

What has prompted this application is that, the third respondent, in clear disregard of the order of this court clothing the second respondent with authority and obligation to convene and manage the process and in clear disregard of the outcome of the meeting of 16 June 2010, started a fresh process of electing a candidate. The third respondent's process, was to be run by a team handpicked by himself comprising of Ms. L. L. Dlamini, the Provincial Administrator for Matabeleland North as chairperson, Chief Nyangazonke of Matobo, Chief Ndube of Insiza, C. Tshuma the District Administrator for Lupane and a Mr Khumalo, the District Administrator for Umzingwane.

That team then convened another meeting on 24 February 2011 ignoring the court order and the resolution of the meeting of 16 June 2010 which had been called in compliance with the court order. Hitting the ground running, according to the minutes of that meeting, Ms Dlamini declared that her team had been put together by the third respondent to mediate and resolve the Sitaudze wrangle and she "emphasised that the team would make sure that the chief is appointed before they leave."

I have already stated that this court directed the second respondent to convene the meeting to elect a candidate. The court did not direct the Provincial Administrator for Matabeleland North to do so. I have also noted that the process had already commenced and only needed to be completed. What done on 24 February 2011 was a violation of the court order.

Section 3(2) of the Traditional Leaders Act; [Chapter 29:17] provides:

"In appointing a chief in terms of subsection (1) the President-

- (a) shall give due consideration to-
 - (i) the prevailing customary principles of succession, if any, applicable to the community over which the chief is to preside; and
 - (ii) the administrative needs of the communities in the area concerned in the interests of good governance; and

- (b) wherever practicable, shall appoint a person nominated by the appropriate persons in the community concerned in accordance with the principles referred to in subparagraph (l) of paragraph (a)." (My underlining)

The process of nominating a candidate is the province of the clan and the above cited statutory provision does not envisage a situation where government officials take over the process and dictate to communities who their chief should be. The nomination process calls for soberness and a deep understanding and appreciation of the norms and customs of the clan in question. It is a process that cannot be left to the caprices of outsiders and civil servants in a hurry to bring about an outcome at all costs.

The minutes of the meeting of 24 February 2011, which meeting I have already condemned as not having been in accordance with the court order of 17 February 2010, leave no doubt in the mind that the selection process was not driven by "the appropriate persons" but by Provincial Administrator Ms Dlamini herself. Excerpts from those minutes will help bring the point home;

"The Provincial Administrator said Siturumani was elected by the then government---. She said chieftainships that were lost long back could not be revived."

"The Provincial Administrator narrated a chieftainship wrangle similar to the Sitaudzes that erupted in Matabeleland North in the Kone Chieftainship. She said the Ministry says it will go back to all chieftainships with wrangles but will not bring back chieftainships lost during the white people's era."

"She said the Sitaudzes could agree and choose a successor from the current chieftainship and then choose a headman from the other family---."

"The Provincial Administrator said it was unfortunate that Diasikwa fled and Siturumani was elected and accepted by the then government, she said the Siturumani chieftainship would be followed to avoid further wrangles and hatred."

"The Provincial Administrator read out on the appointment of chiefs from the Act which stated that the prevailing customary principles of succession (father to elder son) should be used --- she concluded by saying the team would use the Act which also govern the ruling of the chief."

"The Provincial Administrator suggested that the candidate be nominated from the Pariti chieftainship."

(The underlining is all mine)

One then may rhetorically ask: Just who in this unfolding drama was conducting the nomination? In my view it was the Provincial Administrator. She rejected the views of the family, foisted her own principles and finally concluded that the candidate should come from the Pariti family.

There can never be a clearer example of interference in the process of nominating a chief and a more defining example of what civil servants should not do when it comes to the nomination of a chief. The law expects them to facilitate the process and to allow the appropriate family members to debate and come up with a candidate of their choice in line with their prevailing customary principles of succession.

In casu the community was cajoled into settling for a candidate not of their choice by an impatient official who had been foisted on them in breach of a court order. It is the kind of interference which cannot be allowed to perpetuate.

I do not agree with Mr *Mubengegwi* for the second and third respondents that what was done at the meeting of 24 February 2011 was in compliance with the court order or that it was done because the meeting of 16 June 2010 had ended in a stalemate. Nothing can be furthest from the truth as clearly that meeting had ended with a resolution that was achievable.

Neither do I agree with Mr *Tshakalisa* for the first respondent that the meeting of 16 June 2010 was not properly constituted and that it pursued a wrong agenda by trying to open a chieftainship wrangle dating back a century. In my view that is the whole essence of nomination of a candidate in accordance with customary principles of succession of the relevant community.

Mr *Sibanda* for the applicant submitted that one Simon Muleya, the incumbent District Administrator, should be excused from presiding over the nomination process because he is biased. The alleged bias is located in the fact that he allowed the meeting of 24 February 2011 to go ahead when he was aware that the process had already started. I am unable to find any bias there. In fact Simon Muleya was overruled by the third respondent who appointed a new team. On the day of the meeting he was relegated to giving introductions before Ms Dlamini took over the show as chair.

In the result, I make the following order; that:

1. It is hereby declared that the meeting presided over by the Provincial Administrator for Matabeleland North, Ms. L. L. Dlamini on 24 February 2011 at Beitbridge in order to nominate a person as Chief Sitaudze and the subsequent nomination is null and void and of no effect.
2. The second respondent shall continue convening meetings for the nomination of a candidate for appointment as Chief Sitaudze in compliance with the High Court Order of 17 February 2010 in case number HC 2424/10.
3. In arranging such meetings the second respondent shall have regard to the minutes of the meeting held by the appropriate persons in the community concerned on 16 June 2010.
4. Each party shall bear its own costs.

Job Sibanda and associates, applicant's legal practitioners

W. Tshakalisa first respondent's legal practitioners

Civil Division of the Attorney General's Office, 2nd & 3rd Respondent's legal practitioners