

GOLDEN MOYO

Versus

STEPHEN MKOBA

And

**DISTRICT ADMINISTRATOR FOR
MIDLANDS PROVINCE**

And

GOVERNOR OF MIDLANDS PROVINCE

And

**MINISTER OF LOCAL GOVERNMENT,
PUBLIC WORKS & URBAN DEVELOPMENT**

And

PRESIDENT OF REPUBLIC OF ZIMBABWE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 26 AUGUST 2011 & 19 JANUARY 2012

Advocate H. Zhou with Ms C. Bhebhe for the applicant
J. Mubengegwi for 2nd – 5th respondents

Opposed Application

NDOU J: There are two matters in this case. The first matter HC 1369/09, is for the confirmation or discharge of a provisional order granted by this court on 10 September 2009. The second, which is the main matter under case number HC 1410/09, is for the rescission of the decision to appoint the 1st respondent as substantive Chief Bunina. In the latter matter the applicant also seeks that the matter be remitted to the office of the 2nd respondent for the reconvening of selection meeting of all interested parties for the fresh selection of a candidate for appointment as Chief Bunina. The background facts of the matter are the following. The applicant is the first born son of Jackson Moyo, the last Chief Bunina of

Lower Gweru, who died sometime in June 2003. In turn, the late Jackson Moyo had taken over the chieftainship as substantive Chief Bunina from his late father, Mantiya. After the death of Jackson Moyo the applicant was appointed acting Chief Bunina in May 2004 and his term as acting Chief was set to expire and did expire in May 2006. Meanwhile meetings were conducted between Ministry of Local Government officials and the Bunina family to select the substantive Chief Bunina where the 1st respondent emerged as a claimant to the throne. It is common cause that the late Chief Bunina had more than one family, i.e. he had different wives, the eldest of which was the mother of Mantiya, applicant's grandfather who also ruled as Chief Bunina. 1st respondent's father Mkoba was one of the sons of Chief Bunina's wives. 1st respondent's claim to the chieftainship does not seem to be based on a recognizable Ndebele system of succession, custom or tradition of the clan but merely on some kind of election or poll conducted by Local Government officials. This is captured in the memorandum dated 28 August 2006 from the Midlands Provincial Administrator to the Minister of Local Government, Public Works and Urban Development. In this memorandum the Provincial Administrator states:

- “1. Subject to the Traditional Leaders Act Chapter 29:17 section 3 the President shall appoint Chiefs to preside over Communal and Resettlement areas.
2. Subject to subsection 2, the President shall give due consideration to the prevailing customary principles of succession, if any application to the community over which the chief is to preside, and the administrative needs of the communities in the area concerned in the interest of good governance.
3. The last incumbent in the Bunina Chieftainship was Golden Moyo whose acting term has since expired. In line with the requirement of Circular No. 38 of 2004, the District Administrator held a selection meeting on the 21st of June 2006. The meeting was chaired by D.A. Kwekwe Ms Muzenda assisted by D.A. Gweru Mr Maguma with the Provincial Administrator and Mr Mukwaira (Traditional Support Services Director). Though there was no succession among the family, what sufficed was that Stephen Mkoba, was chosen by the majority of the houses. The decision to appoint Stephen Mkoba from the families, though non-procedural and non-congruent with either the bilateral or collateral system was welcome by this office in the best interest of the Chieftainship as continued squabbles derail the operations of Chiefdom.
4. This office support [sic] the nomination of Stephen Mkoba I.D. 29-063837 B 29 as substantive Chief Bunina premised on the above-mentioned light. ...” (Emphasis added)

The applicant protested this nomination of the 1st respondent to the President's office resulting in the selection process being reopened. The Minister of Local Government gathered stakeholders in 2007 and advised them to consult among themselves promising to return to finalise the process. Before the above-mentioned recommendation was sent to the Minister, there was a selection meeting held on 21 June 2006. In this meeting the Mantiya family, Mkoba family, Lugwalo family and Mpabanga family were represented. The applicant, the 1st respondent, 2nd respondent attended the meeting. A total of twenty-two persons represented the above-mentioned family. At this meeting the Mantiya family traced their chieftainship as having come with Bunina from Matojeni with a group of followers who came and settled in the Lower Gweru. According to them, the chieftainship did not cascade across to the brothers but to the sons i.e. bilateral system of succession. In this regard, Mavu's descendents, being the eldest wife, were eligible to the throne. The Mantiya family highlighted the fact that although the Bunina's were of Rozvi origin, their ancestors inherited the Ndebele customs and culture following their defeat by the Ndebele in the pre-colonial era. Accordingly, in terms of the Ndebele system of succession their chieftainship was passed from father to son. The Mkoba version was contrary to that of the Mantiya family. The Mkoba version enjoyed the support of Lugwalo and Mpabanga families. Their version was that there was a battle between the whites and the Bunina community which resulted in the latter being victorious and ultimately being appointed Chief by government of the day. As is to be expected, the meeting was acrimonious and hotly debated. After all these processes and debates a recommendation was made by the Minister of Local Government, Public Works and Urban Development (4th respondent) to the President of the Republic of Zimbabwe (5th respondent). In exercise of his powers the President appointed the 1st respondent the substantive Chief Bunina on 7 May 2007. This appointment is in accordance with the Rozvi principles of succession. The President in his wisdom and discretion did not follow the Ndebele system of succession. It is this appointment really that resulted in these two matters. This appointment was done in terms of section 3 of the Traditional Leaders Act [Chapter 29:17] ("the Act") which provides-

“3. Appointment of Chiefs

- (1) Subject to subsection (2), the president shall appoint Chiefs to preside over communities inhabiting communal and resettlement areas.
- (2) In appointing a chief in terms of subsection (1), the President –
 - (a) Shall give due consideration –
 - (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 interest 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 sub-paragraph (i) of paragraph (a):
Provided that, if the appropriate persons concerned fail to nominate a candidate for appointment as chief within two years after the office of chief became vacant, the Minister, in consultation with the appropriate persons, shall nominate a person for appointment as chief ...”

I have highlighted above that the most contentious issue is whether the Ndebele or Rozvi system is applicable in determining the succession battle for the Bunina Chieftainship. It is trite that although chiefs are envisaged as hereditary holders of office it is only official recognition by the President that carries with it the title of Chief. In practice the President frequently appoints the person holding traditional title to the chieftainship, but he is not obliged to do so. Section 3(2) of the Act obviously implies that the President “should give due consideration to the customary principles succession if any applicable to the community over which the Chief is to preside, as investigated by Ministry of Local Government officials in particular the 2nd respondent. But, once the investigation has been made, the President is free to act as he thinks best in the interests of good governance of the community – *Muwungani v Minister of Native Affairs* 1957 R & N 298 (FC) at 300E; 1957(2) SA 544(FC) and *Ruzane v Paradzai & Anor* 1991 (1) ZLR 273 (SC) at 280G – 281F. In the latter case MANYARARA JA at 280H to 281A had this to say-

“The clear meaning of the provision is that the President is required to “give due consideration to the customary principles of succession”, not to follow them in making his choice.” In other words, section 3 of the Act provides the President with an unfettered discretion in the appointment of a chief. The President has exercised this discretion and appointed the 1st respondent as substantive Chief Bunina. The President exercised this discretion after supporters of rival candidates were consulted through the 2nd, 3rd and 4th respondents. This exercise of executive powers by the President cannot be reviewed.

Accordingly, the applicant’s case should fail. I therefore order as follows:

- (1) That the provisional order granted by this court on 10 September 2009 under HC 1396/09 be and is hereby discharged with costs.
- (2) That the application filed under HC 1410/09 be and is hereby dismissed with costs.

Coglan & Welsh, applicant's legal practitioners

Joel Pincus Konson & Wolhuter, 1st respondent's legal practitioners

Civil Division, Attorney-General's Office, 2nd, 3rd, 4th and 5th respondents' legal practitioners