

HLAISI MUNDAU
versus
MINISTER OF LOCAL GOVERNMENT, PUBLIC WORKS
AND NATIONAL HOUSING
and
FORTUNE CHARUMBIRA, SENATOR CHIEF CHARUMBIRA
and
FELENI CHAUKE, SENATOR CHIEF CHITANGA
and
CLEMENT MADZINGO
and
ATTORNEY-GENERAL OF THE REPUBLIC OF ZIMBABWE

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 8 AUGUST 2018 AND 6 SEPTEMBER 2018

Urgent Chamber Application

V Mojoko for the applicant
P Taruberekera for the respondents

MOYO J: This is an urgent application wherein the applicant seeks the following interim relief:

“Pending final determination of this application or the application filed by the applicant under case number HC 2964/17, whichever will earlier occur, the respondent be and is hereby interdicted and prohibited from holding himself out as a chief in respect of wards 17, 26, 28 and 29 Chiredzi District or as Chief Neromwe, in any ward in the Chiredzi District.

2. The second respondent shall not permit the attendance of the fourth respondent in any meeting or assembly of chiefs for the Masvingo Provincial Assembly pending final determination of this application or the application in HC 2964/17 whichever will earlier occur.”

The applicant in this matter is the 12th Chief Tshovani he has issues with fourth respondent attending meetings of chiefs and holding himself out as chief Neromwe yet according

to applicant, fourth respondent has not been so appointed. Second and third respondents also aver that they are not aware of fourth respondent's chieftainship and that if he indeed was appointed a chief they would know as such appointment would go through their recommendations and provincial chiefs' sittings. The facts of the matter are that it is alleged that fourth respondent allegedly attended a meeting that should only be attended by chiefs and yet he is not a chief. That applicant is contesting the recommendations of fourth respondent's appointment as a chief in HC 2964/17 as he believes that the area meant to be given to fourth respondent as Chief Neromwe in fact falls under his jurisdiction and that it was forcibly taken away from him during the colonial era and that he has since sought a resuscitation of his chieftainship over that area.

Respondents oppose the application on the basis that the matter is not urgent as the issues between the parties date back to 2006. That applicant has no *locus standi* as the land over which the dispute of the chieftainship relates is acquired land and is therefore governed by section 29 (1).

a) "After consultation with the rural district council and the chief of the area concerned, the Minister may, by notice in the gazette, declare that any area of resettlement land shall fall under the authority of such chief as he may specify in the notice."

Respondent's counsel contends that applicant has no *locus standi* as the area being a resettlement area falls under the cited section and the Minister has the prerogative to declare it to be falling under any chief.

Respondents' counsel contends that such assignment to a chief of resettlement land, should be done in consultation which the Minister has not done. The consultative process is as per the constitution. Applicant's counsel further contends that section 3 of the Traditional Leaders Act [Chapter 29:17] provides that (1) subject to subs (2) the President shall appoint chiefs to preside over communities inhabiting communal land and resettlement areas."

The prerogative to appoint chiefs thus vests in the president and applicant contends that fourth respondent has not been so appointed and that his attendance in meetings of the council of chiefs may lead to the invalidation of the proceedings held therein.

It opposes that if one looks at what propelled the applicant into action, the requirement of urgency in so far as the time frame is concerned seems to me to have been met. It is the other leg of urgency that seems to be problematic in my view. The establishment of a right that is under

imminent threat or harm by applicant. Applicant seems to be offended by fourth respondent's appearance at chief's meetings. Respondent purporting to be chief Neromwe. Applicant avers that fourth respondent has not been so appointed to his knowledge. Applicant does not seem to have first sought to clarify the issue of whether or not indeed second respondent has been so appointed. Applicant avers that if indeed respondent has been so appointed the appointment is irregular and unlawful as it flouts the provisions of the constitution.

However, applicant seems to be worried mainly about the appearance of a non-chief (to his knowledge) at chiefs' council meetings. The problem with applicant's case is that it is not clear because he has thrown everything in, on one hand he appears to be aggrieved by the mere attendance of fourth respondent a non-chief at the chief's meetings. While on the other hand, he seems to be aggrieved by the fact that fourth respondent is being wrongfully imposed as a chief in his area, hence the basis of the application is not really clear. I say so for the two are district issues that should be addressed separately, if the cause for complaint is the attendance of a non-chief at the provincial assembly of chiefs we then proceed to ask, what harm applicant personally suffers as a result for he has not said that he is representing the provincial council of chiefs in his papers. He is acting in his own right. On the other hand, if he is fighting the appointment of fourth respondent, he is the one who avers that fourth respondent has not been appointed hence no harm there.

Let us say for arguments' sake if the proceedings are flawed perhaps as a result of fourth respondent's presence in the meeting and if we argue that for arguments sake, applicant's interests of regular proceedings in a panel he sits on is adequate show of a right or interest, we will still get stuck on whether or not respondent has been as of fact appointed a chief or not, albeit irregularly. Fourth respondent's counsel argues that fourth respondent has indeed been appointed by the President as a chief and that that is the reason why he is attending the mentioned meetings. Applicant for his part has not confirmed with the relevant authority fourth respondent's appointment or otherwise. This was a crucial step in applicant's case in that, if fourth respondent was confirmed as not being appointed then a proper factual foundation would be laid for the applicant's case on a non-chief attending meetings. If on the other hand, fourth respondent has been appointed unprocedurally, then applicant would file an application seeking

to set aside the appointment, citing the relevant respondents and then filing an urgent application for the staying of such appointment pending the determination of the lawfulness or otherwise of the appointment. As matters stand, I have an application who argues that fourth respondents has not been appointed a chief but irregularly attends chiefs councils meetings, and a respondent who says no I was indeed appointed a chief and I am therefore entitled to attend such meetings. That is a factual dispute which even applicant has not sought verification from the authorities that be as at 1st August 2018, to establish if indeed fourth respondent has been appointed or not. Applicant seems to have taken this approach as a result that for as long as the appointment (which could be in existence), by passed the provincial council of chiefs and its assembly, it is not lawful and therefore fourth respondent is not a chief. However, if fourth respondent has been “appointed” a chief, such appointment dispute irregularities visiting same would be operative until set aside or suspended by a court of law.

Applicant has the onus to prove a case for the relief he seeks that is;

- 1) that fourth respondent is not a chief and therefore cannot be attending the purported meetings.

This has not been proven in light of the averments made by the respondent’s counsel.

I accordingly hold that applicant has not made a case for the relief sought.

I accordingly decline the provisional order sought and the application is thus dismissed with costs.

Messrs Majoko and Majoko, applicant’s legal practitioners
Civil Division, Attorney General’s Office, respondent’s legal practitioners