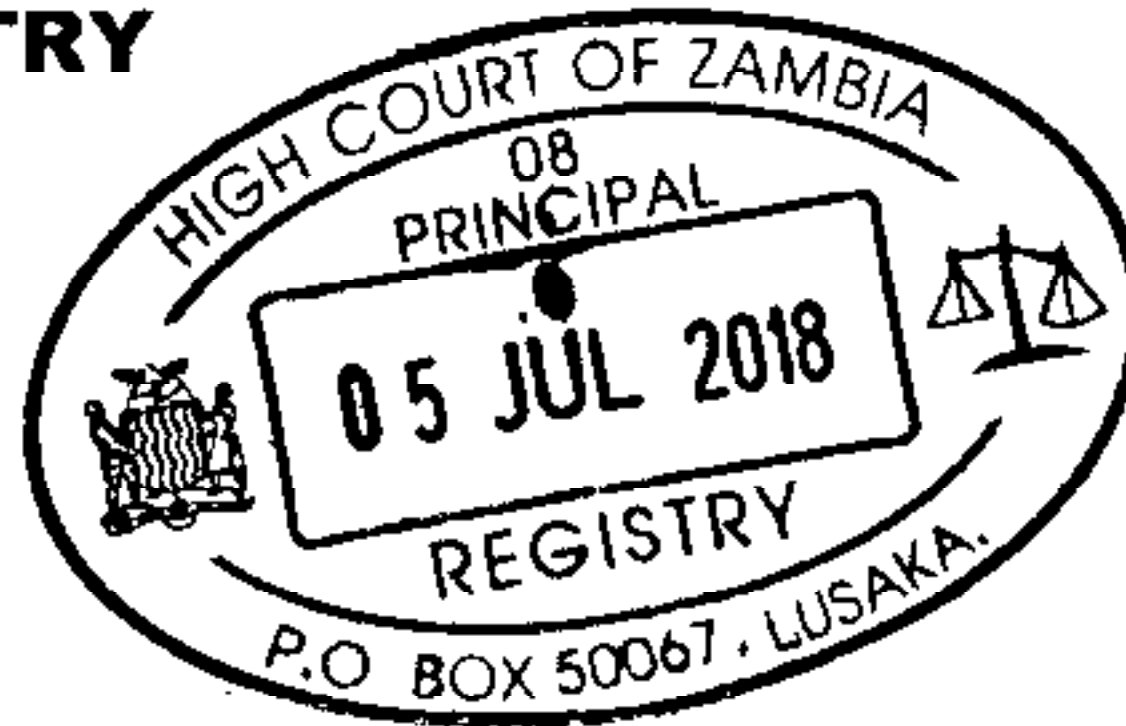


**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
AT LUSAKA  
(Civil Jurisdiction)**



**2013/HP/1399**

**B E T W E E N:**

**MATHEWS MUSONA**

**LINGSON PATAMA**

**JACKSON SHAKULYA NYANGU**

(ALL THE PLAINTIFFS SUING ON THEIR OWN  
BEHALF AND ON BEHALF OF THE KASHIMBI  
ROYAL FAMILY)

**AND**

**HEADMAN MUSANSHIKA**

**AMON CHIKWELETI**

**ACTING HEADWOMAN KABANDI**

**KENNETH CHIPUNGU**

(THE 1<sup>ST</sup>, 2<sup>ND</sup>, 3<sup>RD</sup> AND 4<sup>TH</sup> DEFENDANTS SUED  
IN THEIR CAPACITIES AND AS REPRESENTATIVES  
OF THE MULONGA ROYAL FAMILY)

**KAUSA MACHINDALO**

**FELIX KANDOLO**

(THE 5<sup>TH</sup> AND 6<sup>TH</sup> DEFENDANTS SUED IN THEIR  
INDIVIDUAL CAPACITIES AND AS REPRESENTATIVES  
OF THE TUBI/KALIFU ROYAL FAMILY)

**FICKSON CHIKWELETI**

**1<sup>ST</sup> PLAINTIFF**

**2<sup>ND</sup> PLAINTIFF**

**3<sup>RD</sup> PLAINTIFF**

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

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

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

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

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

**6<sup>TH</sup> DEFENDANT**

**7<sup>TH</sup> DEFENDANT**

**Before the Hon. Mrs. Justice M. S. Mulenga on the 5<sup>th</sup> day of July, 2018**

For the Plaintiffs	:	Mr. R. Ngulube Messrs Tembo, Ngulube and Associates
For the 1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> 4 <sup>th</sup> and 7 <sup>th</sup> Defendants	:	Mr. F. Besa of Messrs Besa Legal Practitioners
For the 5 <sup>th</sup> and 6 <sup>th</sup> Defendants	:	Mr. S.C. Mwanashiku of Messrs M And M Advocates

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# J U D G M E N T

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## Cases referred to:

1. **Zambia Railways Limited v Pauline S Mundia, Brian Sialumba (2008) Z.R. 287 Vol. 1 (S.C).**
2. **Kojo v Bonsie (1975) 1 WLR 1223**
3. **Ted Chisavya Muwowo Alias and Chief Dangolipya Muyombwe v Abraham Muwowo Alias Temwanani and Winston Muwowo SCZ Appeal No. 115 of 2014**

The Plaintiffs commenced this action on 24<sup>th</sup> September, 2013 and by way of an amended Writ of Summons they claim the following reliefs:

1. *An order for mandatory injunction restraining the defendants by themselves or their agents from interfering with the process of installing the new chief Bundabunda and from going ahead with the installation of a new chief Bundabunda until the determination of this matter or until order of the Court;*
2. *An order setting aside the purported installation of Fickson Chikweleti as the new Chief Bundabunda for being contrary to and in disregard of the Soli Shamifwi tradition for ascendancy to the throne on rotational basis among the three eligible royal families being the Kashimbi Royal Family, Mulonga Royal Family and Tubi/Kalifu Royal Family under the supervision of Government Officials and in the presence of Senior Chieftainess Nkomeshya Mukamambo II of the Soli People;*
3. *A declaration that the installation of the new chief Bundabunda must be in accordance with the Soli Shamifwi tradition on rotational basis among the three eligible royal families being the Kashimbi royal family, Mulonga royal family and Tubi/Kalifu royal family under the supervision of Government officials and in the presence of Senior Chieftianess Nkomeshya Mukamambo II of the Soli people;*
4. *An Order that the new Chief Bundabunda must come from the Kashimbi Royal Family in accordance with the Soli Shamifwi*

*tradition on rotational basis among the three eligible royal families since the last Chief came from the Mulonga Royal Family;*

*5. An order that costs of and incidental to the proceedings be borne by the Defendants.*

In the statement of claim the Plaintiffs averred that they are all members of the Kashimbi royal family in chief Bundabunda's Chiefdom. The 1<sup>st</sup> to 4<sup>th</sup> and the 7<sup>th</sup> Defendants are all members of the Mulonga royal family and the 5<sup>th</sup> and 6<sup>th</sup> Defendants are members of the Tubi/Kalifu royal family in Chief Bundabunda's chiefdom. By Soli Shamifwi custom, succession to the throne of Chief Bundabunda is the preserve of a nominee of a member of one of the three royal families. The Soli Shamifwi custom also dictates that as among the three royal families, succession to the throne of Chief Bundabunda must be on the rotational basis.

The Plaintiffs averred that the position of Chief Bundabunda was previously held by one Patrick Mambo Chakalashi from the Mulonga Royal Family until his demise on 23<sup>rd</sup> February, 2013. And that succession to the throne of Chief Bundabunda was supposed to be taken up by the Kashimbi Royal Family in accordance with the Soli Shamifwi custom. Therefore, the selected person from the Kashimbi Royal Family is supposed to be installed as Chief Bundabunda under the supervision of Government officials and in the presence of Senior Chieftainess Nkomeshya Mukamambo II of the Soli People.

On 31<sup>st</sup> August, 2013, the Plaintiffs and the Defendants in the company of other members of their respective royal families met for the purposes of selecting a new chief in accordance with the customs and traditions of the Soli Shamifwi people. However, instead of following the customs and traditions of selecting the next heir to the throne of Chief Bundabunda on rotational basis, the Defendants and other members of their respective royal families proposed that selection be based on votes from all the headmen under the Chief Bundabunda chiefdom. However, the process of voting as proposed never went ahead because of unruly youths who were allegedly hired by 1<sup>st</sup> to 4<sup>th</sup> Defendants and other members of the Mulonga royal family to disrupt the meeting for fear that their preferred candidate would lose the elections.

As a result of the confusion, the process of selecting the next Chief Bundabunda was postponed to a later date. It then came to the attention of the Plaintiffs that the 1<sup>st</sup> to 4<sup>th</sup> Defendants and other members of the Mulonga royal family had capriciously decided that the installation of the next Chief Bundabunda was to take place on 28<sup>th</sup> September, 2013. This was notwithstanding that the next Chief Bundabunda was to be chosen on rotational basis and in particular from the Kashimbi royal family. Hence, the actions of the Defendants in disregarding and interfering with the customs and traditions of the Soli Shamifwi people was inimical to the continued existence of the Bundabunda chiefdom and would continue to cause irreparable injury and prejudice to the Plaintiffs and the whole Kashimbi royal family.



And that since the commencement of these proceedings, the 1<sup>st</sup> to 4<sup>th</sup> Defendants have since proceeded to purportedly install one Fickson Chikweleti (7<sup>th</sup> Defendant) from the Mulonga royal family as the new Chief Bundabunda contrary to the Soli Shamifwi custom.

The 1<sup>st</sup> to 4<sup>th</sup> Defendants equally filed their defence in which they denied the Plaintiffs' claim and averred that there is and has always been one royal family namely the Mulonga royal family. Traditionally and since time immemorial the ascension to the throne of Chief Bundabunda has always been from the Mulonga royal family. Therefore, that the successor of the late Chief Bundabunda was to come from the Mulonga royal family as has been the practice in the Shamifwi custom. Further, that traditionally, the selection of Chief Bundabunda has never been through elections and thus the Defendants could not and did not initiate any such elections. And that in accordance with Soli Shamifwi customs, the new Chief Bundabunda had already been installed.

In the defence and counterclaim filed by the 5<sup>th</sup> and 6<sup>th</sup> Defendants it was averred that they were not aware of the Kashimbi royal family in Chief Bundabunda's chieftdom and that by Soli Shamifwi custom, succession to the throne of Chief Bundabunda is from one of three royal families, being Malunga royal family, Tubi/Kalifu royal family and Nyansenga royal family (Mulonga royal family). It was averred that in the instance at hand, succession was actually supposed to rotate to the Tubi/Kalifu royal family.

Further, that at the meeting held to determine the successor to the throne, all parties present including the Plaintiffs consented to depart from past custom and tradition by agreeing to vote for the next chief Bundabunda as they even proposed a candidate for the said electoral process. However, the process of voting was disrupted.

The 5<sup>th</sup> and 6<sup>th</sup> Defendants thus went on to counterclaim the following:

1. *A declaration that the installation of the new chief Bundabunda must be in accordance with the Soli Shamifwi tradition on rotation basis among the eligible royal families being the Malunga royal family, Tubi/Kalifu royal family and the Nyasenga royal family (Mulonga royal family).*
2. *Costs*
3. *Any other relief that the court might deem fit.*

In reply to the 1<sup>st</sup> to 4<sup>th</sup> Defendant's defence, the Plaintiffs stated that succession to the Bundabunda throne was not a preserve of one royal family but was on rotational basis among the three royal families. And that in accordance with the rotational succession, the person appointed by the Kashimbi royal family was supposed to be installed as the new Chief Bundabunda under the supervision of all the relevant authorities. That although traditionally the selection of Chief Bundabunda is not by elections, there was a precedent created by the Mulonga royal family when they previously cast votes to select the person to ascend the throne. Further, that the recent process of voting for the new chief was disrupted and any purported installation of

Chief Bundabunda was illegal and inimical to the interests and customs of the Soli Shamifwi people.

In reply and defence to the counterclaim of the 5<sup>th</sup> and 6<sup>th</sup> Defendants, the Plaintiffs stated that the Kashimbi royal family to which the chieftainship was supposed to rotate was a well known royal family and was eligible to ascend to the throne of Chief Bundabunda. And that the Malunga royal family is not included in the three royal families. Further, that the method of holding an election to chose the new Chief Bundabunda was adopted by the three royal families after the other two royal families resisted to let the throne rotate to the Kashimbi royal family and that this method of voting had been employed before. That the 5<sup>th</sup> and 6<sup>th</sup> Defendants were therefore not entitled to the reliefs sought.

Trial only commenced on 4<sup>th</sup> February, 2016 because of supervening circumstances, of note are the protracted committal proceedings. The Plaintiffs called a total of seven (7) witnesses to aid their case. PW1 was Mathews Musona, the 1<sup>st</sup> Plaintiff, who testified that the chieftainship of Bundabunda was supposed to be inherited by his clan, the Nyangu clan, whose origin was the Kola of Luba Lunda Kingdom. He narrated that Mukunkutiwa was the woman who bore a daughter named Lutangu. Lutangu had three daughters among these was Tubi the ancestral mother to the Tubi/Kalifu royal family, the second daughter was named Nyemba, the ancestral mother to the Kashimbi royal family and the third one was Nsungwe, the ancestral

mother to the Mulonga royal family. That these are the three royal families that inherit or are entitled to the Bundabunda chieftaincy.

PW1 testified that under Soli custom the matrilineal lineage inherits chieftaincy and that there was a rotational system of inheritance between the three family trees. PW1 added that based on information he got from his grandfather, there had been ten (10) Chiefs on the Bundabunda throne. The first chief was Mboshi from Mulonga family and he was succeeded by Chimapepe from Kashimbi family. When Chimapepe died, the third chief was Shakanda from Mulonga family who was succeeded by Mubamba from Tubi/Kalifu family. The fifth chief, Kacheta, was also from Tubi/Kalifu family. When Kacheta died the sixth Chief, Selemani came from Mulonga family and was succeeded in 1951 by Lufwaneti Matukutuku, also of Mulonga family. In 1973, another member of the Mulonga family, Jackson Chipungu became chief. He ruled until 1980, when his younger brother Benard Chipungu became chief. On Benard Chipungu's demise in 1999, Patrick Mambo Chakalashi became Chief also from the Mulonga family. When he died in 2013 the current succession dispute arose.

In reference to page 17 of the Plaintiff's Supplementary Bundle of Documents which depicts the Kashimbi family tree, the witness stated that the document was prepared by the Kashimbi royal family and that some of the issues tabulated in the document happened before he was born but as was the norm in traditional issues, they were passed on orally from one generation to the other. That he had been given



the said information by his grandfather, Thomo Kasamba, who died a long time ago.

PW1 stressed that in the past the succession to the chieftainship used to rotate among the families and where the family which was supposed to take over had no suitable candidates, they would ask the other families to proffer a candidate for the throne. Following the death of Chief Chakalashi, the chieftaincy was supposed to go to the Kashimbi royal family. The selection process of the Chief is done by the family which is taking over the throne while the installation of the selected Chief is done in the presence of neighbouring Chiefs, Senior Chieftainess Nkomesha and Government officials.

Under cross examination, PW1 reiterated the origin of the Nyangu clan and clarified that the fourth Chief Bundabunda, Mubamba, was from Tubi/Kalifu and not from Mulonga. Further, that the Tubi/Kalifu family were fully aware of the Kashimbi clan. PW1 said that he had heard of one Nkobama as being Chief Bundabunda at some point. A total of seven names on the list of individuals that had reigned as Chief Bundabunda were from the Mulonga family. PW1 added that from 1951 when Selemani died there has been no rotation in the Chieftaincy amongst the three families because of intimidation and greed.

In relation to the installation of the purported Chief Bundabunda, Fickson Chikweleti, PW1 stated that he attended the succession meeting as a member of Kashimbi royal family. The traditional

procedure was not followed in that a voting system was introduced and the purported Chief was not placed in the shrine. Further still, that the clan that installs Chiefs, the Chamakamba, did not install him. That despite it not being the Soli culture, the absence of Government officials also made the installation irregular.

In continued cross examination PW1 testified that Malunga was from the Mulonga family and was the mother of Mboshi. It was PW1's position that members of the patrilineal family were not entitled to inherit the Chieftaincy. He also added that the recognition of the Chief elect by the Government was very cardinal.

In re-examination PW1 testified that he was from the matrilineal line as Musowe was his grandmother. PW1 added that through inter family successions, such as inheriting names of dead relatives, the Kashimbi are part of Tubi Kalifu and Mulonga families in that they were all relatives, but that in terms of family lineage the Kashimbi were separate from the Tubi Kalifu and Mulonga families. That the three families are from one mother, Lutangu, who had three daughters who in turn had their own children giving rise to three family trees or royal families forming the Nyangu clan. That among the past chiefs only Chimapepe had hailed from the Kashimbi family to be Chief Bundabunda.

PW2 was Patson Mwachikota, the village headman of Shatubi village. He testified that he was from Bena Nkalamu clan and was a grandchild to the Nyangu clan. His duties as grandchild and shrine

keeper were to ensure that the shrine was in good condition and to oversee the three royal families of the Nyangu clan being Mulonga, Tubi/Kalifu and Kashimbi families. He relayed that there are clay pots and spears representing chiefs that reigned in years past which are kept in the shrine consisting of two houses called Intungu.

He narrated that he knew that Mboshi from Mulonga family was the first Chief and he was succeeded by Chimapepe from the Kashimbi family. Chimapepe was succeeded by Kacheta from Mulonga family. According to PW2, there were currently twelve clay pots and spears signifying the chiefs that had been on the Chief Bundabunda throne.

PW2 outlined the process that is followed when installing a Chief. This entailed the neighboring Chiefs organizing the family members from the Nyangu clan who select the chief. Bena Mpande in turn are tasked to present the selected Chief to Bena Nkalamu. The Bena Nkalamu with other invited Chiefs then take the selected Chief to the Intungu where he is shown the clay pots and spears and some rituals are done. Failure to do so means that such a one is not properly installed as Chief. PW2 mentioned that the 7<sup>th</sup> Defendant was not so taken to the shrine and that there were no other people who could take him to the shrine apart from Bena Nkalamu clan.

Under cross examination PW2 stated that he could not recall which family tree all the Chiefs that were on the Chief Bundabunda throne were from but that they all came from Mukunkutiwa. He added that from the beginning Bena Nkalamu were grandchildren and that one



member from the Bena Nkalamu cannot validly install a Chief. PW2 testified that every Shatubi village headman becomes the head of the Bena Nkalamu clan. And that the Chamakamba were from the Bena Mpande clan who are tasked to get hold of the selected Chief and present him to Bena Nkalamu. PW2 added that the 7<sup>th</sup> Defendant was not validly installed as Chief as no one took him to Bena Nkalamu to install him and no other witnesses were present.

PW3 was Daniel Mwape, the deputy village headman of Shatubi village of Rufunsa District and the Secretary of the Soli Cultural Association. He testified that as secretary of the Soli Cultural Association he monitors the culture of the Soli and oversees traditional ceremonies. Bena Nkalamu, to whom he belonged, were traditional cousins of the Bena Nyangu clan where candidates for Bundabunda chieftaincy hail from. Under Bena Nyangu, the matriarch, Mukunkutiwa, gave birth to Lutangu. Lutangu in turn bore three daughters, Nyemba where the Kashimbi family originated from, Tubi Kalifu where the Tubi Kalifu family originated from and Nsungwe from where the Mulonga family came from. PW3 listed the ten (10) chiefs who had ascended to the Bundabunda throne as stated by PW1 and that of the ten (10) chiefs, two came from Tubi Kalifu family and one from Kashimbi family and the rest from Mulonga family.

It was PW3's testimony that the chieftaincy rotates between the three families of the Nyangu clan and the inheritance is matrilineal in nature. There was a discrepancy in the number of chiefs hailing from each of the three families because where a family had no suitable



candidate for chieftaincy, at the time the vacancy arose, they passed on the chieftaincy to a family with a suitable candidate.

PW3 narrated that at the chief's palace there are two shrines. One shrine is open and only has a roof and is taken as a grave. It currently contains twelve (12) clay pots signifying Chiefs who had reigned before. The other shrine is enclosed and has a bow and ten (10) arrows signifying Chiefs that had been on the throne. The people who tend to the shrine are Bene Nkalamu. PW3 explained that there was a discrepancy in the total number of clay pots and arrows because two chiefs, Chibuye and Malambo, had died while acting as chiefs (caretaker chiefs). Therefore, the said two had graves in the shrine but no arrows as they were not confirmed or installed as Chiefs.

PW3 testified that he had witnessed an installation of a chief and the process involved the three families of the Nyangu clan sitting and selecting a chief who is later taken to the shrine by Bena Nkalamu.

When going to the shrine, they are accompanied by all Soli Chiefs. The selected chief is made to lie down and hold all the arrows in both hands so that the spirits of the deceased chiefs welcome him. Thereafter, he drinks a bit of beer from the clay pots and the names of the deceased chiefs are called out as a way of introducing the installed chief. A swearing in ceremony is then held and later the installed chief is introduced to the public. It was his evidence that Patrick Chakalashi was the last chief to be taken to the shrine. PW3 added that shrines are at the palace and when the Chief desires to shift the

palace, he informs the Bene Nkalamu clan to shift the contents of the shrine.

Under cross examination PW3 stated that there were other clans, that is the Bena Kongo (goats) and Bena Mpande (beads), who are also traditional cousins to Bena Nyangu and perform different functions. Bena Mpande keep the body of the chief when he dies and at the time of installation when the families choose a chief, Bena Mpande present the selected chief to Bena Nkalamu for the shrine rituals. As regards Bena Kongo, they maintain and repair the chief's graves and also prepare the beer that is kept in the shrine.

It was PW3's testimony that he had witnessed the installation of Benard Chipungu and had personally handled the installation of Patrick Chakalashi. He added that despite the last six chiefs being from one family, the proper way was to rotate the chieftaincy.

In re-examination PW3 testified that he was sure about the number of chiefs that had sat on the throne because he goes in the shrine and knows that each arrow and clay pot represents a specific chief from a named family.

PW4 was Jim Kaliwa a village headman of Mwamulondo Village who testified that his duties as headman and member of Soli Cultural Association were to preserve the Soli customs which are passed on from one generation to the next. He belongs to Bena Mpande clan who are tribal cousins to Bena Nyangu, the clan entitled to chieftaincy.

That the Bena Nyangu clan comprises of Mulonga family, Kashimbi family and Tubi Kalifu family and that the succession to the chieftaincy is supposed to be on rotational basis among the three families. He narrated that the first Chief was Mboshi from Mulonga family, the second chief was Chimapepe from Kashimbi family and the third chief was Shakanda from Mulonga. The fourth chief was Mubamba from Tubi Kalifu, the fifth was Kacheta whose other name was Nkobama also from Tubi Kalifu. The last five chiefs, Selemeni, Lufwameti, Jackson Chipungu, Benard Chipungu and Chakalashi were all from Mulonga family.

It was PW4's testimony that the duties of his clan were to take the body of a chief upon his death and at the time of installation of another chief they are tasked to bring the selected chief to Bena Nkalamu to carry out the installation. This tradition has not been changed because Bena Nkalamu call the spirits of all the deceased chiefs when the new chief is being installed. PW4 said that as the Soli Cultural Association Chairperson, he was not told that there was an installation of a chief when Fickson Chikwelete was being installed. This was contrary to Soli Culture in that PW4's clan was in charge of the installation process and it summons all the other soli chiefs and the Government officials to attend the installation. PW4 added that the Plaintiffs were from Kashimbi family which is part of the royal clan.

In cross examination PW4 stated that he had only witnessed and taken part in the installation of one chief, the late Patrick Chakalashi,



who was from Mulonga family. Further, that from Selemani to the last Chief, all hailed from Mulonga family and there has been no rotation contrary to the practice adopted earlier.

PW5 was Judge Edward Luputa Musona and he testified in his capacity as a member of the Kashimbi royal family. He narrated that he had chaired a technical committee meeting in 2015 on the royal family tree. The agenda of the meeting was to analyze the family tree and identify the families eligible to ascend to the throne of Chief Bundabunda. Following the meeting, PW5 compiled a family tree as depicted at page 17 of the Plaintiff's bundle of documents. According to the family tree, Mukunkutiwa was the mother of Lutangu who had three daughters, Nsungwe, the originator of the Mulonga family, Nyemba also known as Mulilwa, the originator of the Kashimbi family and Kalifu the originator of the Tubi Kalifu family.

PW5 stated that the 5<sup>th</sup> Defendant comes from the Tubi Kalifu royal family and that the alleged Malunga family was non-existent. He stated that Malunga was an individual who belonged to Mulonga family and was the mother of Mboshi the first Chief Bundabunda. Further, that the 5<sup>th</sup> Defendant had appended his signature to the memorandum dated 29<sup>th</sup> August, 2013 by Kashimbi and Tubi Kalifu families shown at pages 21-22 of the Plaintiff's supplementary bundle of documents which identifies the three families as Mulonga, Kashimbi and Tubi Kalifu. The purpose of the memorandum was to show that the principle of rotation should continue among the three



families. In reference to the report by the Chiefs Affairs Officer from Chongwe Municipal Council on the succession proceedings dated 3<sup>rd</sup> September, 2013 at pages 1-15 of the Plaintiff's supplementary bundle of documents, PW5 reiterated that only the Mulonga, Tubi Kalifu and Kashimbi families can ascend to the throne of Chief Bundabunda.

PW5 added that he learnt that ascension to the throne was on rotational basis among the three royal families. When a chief dies, the next chief is not supposed to come from the same family but from any of the other two families. He explained that Mboshi was from Mulonga family and when he died the chieftaincy moved to Kashimbi family when Chimapepe ascended the throne. Shakanda also known as son of Nyansenga, from Mulonga family succeeded Chimapepe. Mubamba from Tubi Kalifu ascended the throne after the death of Shakanda, further demonstrating the principle of rotation. That prior to the demise of the last Chief, the Mulonga family had held the throne on seven occasions and Tubi Kalifu family on two occasions while the Kashimbi family only held the throne on one occasion. That this was the basis of the Plaintiff's claim.

PW5 relayed what transpired at the succession meeting by stating that the Kashimbi family were claiming the throne based on the principle of rotation but the Mulonga family wanted to retain the throne. That even the Tubi Kalifu lay claim to the throne. Arising from the meeting, it was decided that since the three families had failed to agree on one candidate, an election was to be held. He added that in the past an election was held to select a chief. The electoral

college was to be composed of village headmen. All the three families agreed to contest the election and each fielded a candidate but the election process was disrupted by Bernard Chipungu, Stephen Chipungu, Fackson Chipungu and others unknown from the Mulonga family who feared defeat at the election.

That the Kashimbi family selected David Musona to ascend the throne in line with the traditions and customs which require that he must be a matrilineal member of the royal family selected by the family itself. And that since the Kashimbi royal family had held the throne for the least number of times, the Court should declare David Musona as the only eligible individual to ascend to the throne.

In cross examination, PW5 testified that the technical committee on the chieftaincy sat on 29<sup>th</sup> June, 2013 after the death of Chief Bundabunda Chakalashi. The purpose of the technical committee was to scrutinize the royal family tree and identify which family was to ascend to the throne and it was not for purposes of selecting a chief. In attendance were headmen and headwomen from the three royal families.

In reference to the family tree on page 17 of the Plaintiffs bundle of documents, PW5 said that it was drawn by the Kashimbi family and is a universal family tree covering the other two families as well. He acknowledged that the said family tree was not signed or endorsed by the Tubi Kalifu family. PW5 admitted that he had never witnessed any rotation of the chieftaincy but the technical committee found out that

ascensions should have been on rotational basis. PW5 stated that he was among the elders of Kashimbi family but this was the first installation of a chief that he was witnessing.

PW5 narrated that Lumina was the son of Nyemba who happened to be the daughter of Musowe from Munuka village while the Tubi Kalifu family came from Shangobeka village and Mulonga family from Kabandi village. The first headman of Munuka village was Thomo Kasamba. Further, that the Kashimbi family was not an appendage of the Tubi Kalifu family as it is a distinct family, independent from the other two royal families.

In continued cross examination PW5 maintained that succession to the throne was on matrilineal basis and that if the Kashimbi family were descendants of the patrilineal lineage, they would be disqualified from ascending the throne and the memorandum signed with Tubi Kalifu would have no relevance. In reference to the recommendations in the Chongwe Council report on page 8 of the Plaintiff's supplementary bundle of documents, to the effect that there was lack of well documented family tree and clear relationship of the contending families to previous chiefs, PW5 stated that although he had relied on the report, he did not agree with the recommendations and conclusion.

PW6 was David Musona from the Kashimbi family. His testimony with regard to the three royal families and the previous Bundabunda chief was similar to that given by the other Plaintiffs' witnesses.



PW6 further narrated that when Chief Bundabunda Chakalasi passed on, the process of selecting a new chief started on 21<sup>st</sup> August to 31<sup>st</sup> August 2013, but there was a deadlock as the Mulonga family were refusing to rotate claiming that they were the only ones who could ascend the throne. On 30<sup>th</sup> August, 2013, Senior Chieftainess Nkomeshya and Chieftainess Shikabeta sat to listen to the respective claims of the three families and it was confirmed that the three families were eligible to the throne. In the meeting, the Mulonga family did not dispute that the other two families qualify but they refused to rotate the chieftaincy. The two Chiefs then decided that the deadlock should be broken or settled by having an electoral college of headmen to decide who would ascend to the throne as was done in the past by the Mulonga family. On 31<sup>st</sup> August, the three families selected PW6 (Kashimbi), the 5<sup>th</sup> Defendant (Tubi Kalifu) and the 7<sup>th</sup> Defendant (Mulonga) as respective contenders for the throne. However, the elections were not held because as soon as the meeting was convened, individuals from Mulonga family disrupted the process by threatening violence. The Mulonga family on their own later selected the 7<sup>th</sup> Defendant and purported to install him by flouting the tradition requiring that the installation be done in the presence of senior Chieftainess Nkomeshya, other senior Chiefs and all the families.

PW6 said that he was a signatory to the memorandum dated 28<sup>th</sup> August, 2013 between the Kashimbi and Tubi Kalifu families which was also signed by the 5<sup>th</sup> Defendant representing the Tubi Kalifu family. PW6 averred that the next chief to ascend the throne must be



from Kashimbi as the other two families have had occasion to reign more than once.

In cross examination, PW6 stated that he agreed with the Government report on the succession only to the extent that each family had its version of the family tree but disagreed with the recommendations made. PW6 conceded that there had never been an election where the three families had fielded candidates as proposed in 2013. However, there was a precedent on elections by the Mulonga family.

It was PW6's further testimony that he had witnessed the installation of Patrick Chakalashi as Chief Bundabunda and that the Kashimbi family did not indicate their claim at that point because of the intimidation, mainly to do with witchcraft threats, that the Mulonga family had been making every time there was a succession gathering. That after Selemani there has been no rotation of the chieftaincy and Chimapepe was the only chief from the Kashimbi family.

PW6 added that selection of an individual to be chief was the responsibility of the elders of the family. And that the Kashimbi family was a separate royal family as explained and they are from Munuka village. The first headman of Munuka village was Munuka and that it was a total fabrication to say the village was established in 1987.

PW7 was Chikondi Banda, the Chiefs Affairs Officer for Chongwe Municipal Council. He testified that he was appointed as Chiefs Affairs Officer on 17<sup>th</sup> September, 2012 and his principle duties were

chiefdom profiling, writing reports on the welfare of chiefdoms and succession issues. He recalled having prepared the report at pages 1 to 15 of the Plaintiff's supplementary bundles of documents regarding the succession of Chief Bundabunda from information gathered from the Bundabunda chiefdom.

He narrated that initially there were six families that came up to contest the succession to the throne but these were later streamlined to three families. The three families were Mulonga, Kashimbi and Tubi Kalifu families. That Mr Kausa Machindalo (5<sup>th</sup> Defendant) represented the Tubi Kalifu, Mr. Musona (PW6) represented the Kashimbi while Mulonga were represented Fickson Chikweleti (7<sup>th</sup> Defendant). There was a direction to hold elections after the parties reached a deadlock but the process of election was disrupted by three people from the Mulonga family.

In cross examination, PW7 stated that he gathered the information as he was witnessing the proceedings of the succession meeting. Apart from the burial of the deceased Chief, he attended a total of four (4) succession meetings. The six families that were claiming the throne were not mentioned in his report which was before Court. PW7 confirmed that Kashimbi was the smallest family as revealed by the registrations conducted at the beginning of each meeting. Mulonga was the biggest family and the last five previous Chiefs were from Mulonga family. PW7 stated that through the brief backgrounds given by each family, it was clear that there was rotation of the throne in the beginning but this later stopped. He further confirmed making the

recommendations indicated at page 8 of the Plaintiff's supplementary bundle of documents.

In re-examination PW7 testified that he was of the view that there was lack of documented family tree because each family had a different family tree.

This marked the close of the Plaintiff's case.

The 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Defendants called two (2) witnesses. DW1 was the 1<sup>st</sup> Defendant, Kenneth Chipungu, the senior headman Kasumba, who testified that he belonged to Bena Mpongo clan who are traditional cousins to the Bundabunda clan. He was the oldest son in the Mulonga family and had held the chairmanship of the Shamifwi Royal Family between 1990 and 1999 as well as being the founding member and president of the Soli Cultural Association in 1985. His duties involved looking after the Chief, overseeing activities within the palace, taking care of the shrine where the traditional clay pots are kept and the royal graves as well as participating in the installation of Chief Bundabunda. He stated that his clan generally assists the Chief in matters assigned to them. As the chairman of the royal family establishment he had helped the two Chiefs, Mr. Benard Chipungu and Patrick Chakalashi to run the affairs of the chieftdom.

DW1 stated that the cultural association was established in 1985 to revive the traditional ceremonies in order to preserve the Soli culture and to enforce unity not only in the chieftdom but in Chongwe and



Kafue districts. That after the burial of the last Chief Bundabunda, Senior Chieftainess Nkomesha instructed the royal family members to identify one person to run the affairs of the chiefdom whilst waiting for the installation of Chief Bundabunda. Senior headman Kabandi from the Mulonga family was identified and he conducted the affairs of the chiefdom for six (6) months. When it was time to install the Chief, two other families, Kashimbi and Tubi Kalifu also contended for the throne.

DW1 testified that growing up, he lived with the then Chief Lufwaneti, who was succeeded by Jackson Chipungu and later Benard Chipungu who were younger brothers to his father, Dickson Chipungu. Further, that successors to the throne hail from Kabandi Village. He refuted that the other two families were entitled to ascend the throne but agreed that they were related to the Mulonga family. He emphasized that there is only one family which is entitled to ascend the throne as succession to the throne followed the matrilineal lineage.

It was DW1's testimony that Mukunkutiwa gave birth to the first Chief Bundabunda, Mboshi who had other siblings, Shakanda, Mubamba and Nkobama. Mboshi's sister, Lutangu had two daughters Nyemba and Nsungwe. Chief Selamani was the son of Nyemba. Nsungwe produced the Mulonga family which included Chiefs Lufwaneti, Jackson Chipungu, Benard Chipungu, Patrick Chakalashi and the recently installed Chief, Fickson Chikweleti.

DW1 related that when they chose Patrick Chakalashi to be the next chief, another person lay a claim to the throne. To resolve the dispute, elections were held and Patrick Chakalashi won. Both contenders were members of the Mulonga royal family. DW1 stated that succession to the throne was on rotational basis within the same Mulonga royal family. He listed the names of the past nine (9) successive chiefs as Mboshi, Shakanda, Mubamba, Nkobama, Selemani, Lufwaneti, Jackson Chipungu, Benard Chipungu and Patrick Chakalashi. DW1 disputed that Chimapepe was ever a chief or that Mubamba was from Tubi Kalifu family. He stated that the Mulonga family has held on to the throne as it is their entitlement. Further, that the Mulonga family refused to heed the advice of senior Chietainess Nkomesha imploring the three families to discuss the issue of succession.

DW1 further averred that he had witnessed the installation of Jackson Chipungu, Benard Chipungu, Chakalashi and the disputed installation of Fickson Chikweleti. In all these installations the Kashimbi and Tubi Kalifu families were not present and did not play any role. That Fickson Chikweleti was chosen by the Mulonga royal family based on his lineage and the fact that the family he hails from had never been on the throne. Installation formalities such as preparation of traditional drinks, invitation of traditional cousins, Chiefs and headmen from the other chiefdoms as well as government officials were conducted. The beating of the drums was done the whole night and on 28<sup>th</sup> September, Fickson Chikweleti was brought to the

throne by traditional cousins. That the failure by government officials to attend was not the fault of the Defendants.

It was DW1's testimony that the Mulonga family refused to have elections involving the three families because the other two contenders were not entitled to ascend the throne. That once the person to ascend the throne is identified, there is one traditional cousin, headman Chamakama who gets hold of the selected chief and brings him before the public and the rituals begin. That the installation of Fickson Chikweleti was correctly and culturally done as all the cultural norms were followed. That there was no law that prescribed that Senior Chieftainess Nkomesha was supposed to be at the installation of the Chief.

In cross examination DW1 stated he was not aware of the Nyansenga name or its connection to the Mulonga family. The Mulonga family has by their conduct unified the chiefdom and have been ruling for a long time although the Kashimbi and Tubi Kalifu families have not agreed with the position. That after Chakalashi died, his sister wanted to ascend to the throne but the Mulonga family decided that it should go to another family but from within the Mulonga royal family

DW1 admitted that senior Chieftainess Nkomesha and Government officials did not attend the installation ceremony of Chikweleti despite being invited and that it was not compulsory for them to attend. It was his testimony that Fickson Chikweleti was not gazetted because of the court action. He asserted that all past Chiefs were from



Mulonga family including Mubamba. Shakanda's mother was Mukunkutiwa and not Nyasenga. DW1 said that he could not explain Lumina's connection to the Mulonga family. DW1 testified that Lutangu had two daughters, Nsungwe and Nyemba whose descendants are the Mulonga who are entitled to succeed the throne. The origin of the Mulonga family is Mukunkutiwa whose line produced four chiefs and the families such as Sungwe and Nyemba are all interrelated. That Selemani hailed from the line of Nyemba. DW1 added that Mubamba was the daughter of Mukunkutiwa and not of Nyasenga and that Chimapepe was never a Chief.

Under further cross examination, DW1 stated that he could only remember three clans, Bena Mpongo, Bena Nkalamu and Bena Mphande. The Bena Mpongo keep the clay pots and clean the chiefs' grave site. The shrine keepers come from Bena Mpongo however, the current shrine keeper, headman Shatubi was not from Bena Mpongo. DW1 mentioned that there was another shrine keeper by the name of Elizabeth Maluya and that at any given time there is more than one shrine keeper. The shrine keeper takes care of the shrine huts where clay posts representing the former chiefs are kept and also looks after the graveyard of former chiefs. Further, that the shrine keepers were better placed to tell how many chiefs had ruled in Bundabunda chieftdom as they are more knowledgeable about the affairs in the shrine. That he had visited the shrine before and that Chimapepe was not represented by any clay pots as the total number of clay pot should be 10 including a pot for Chikweleti.

DW1 reiterated that the Kashimbi and Tubi Kalifu families were not part of the royal family. That of the many succession meetings held, he only attended one succession meeting presided over by Senior Chieftainess Nkomesha. At the said meeting the three families, Mulonga, Kashimbi and Tubi Kalifu all claimed the throne and it was agreed that each should float a candidate and the Mulonga family floated a candidate. That the election was ordered by Senior Chieftainess Nkomesha which advice was incorrect because the other election held was within the Mulonga family. And that the Mulonga family agreed to the course of action because they did not want to act contrary to the direction of the Senior Chieftainess.

In reference to the 5<sup>th</sup> Defendant's letter to Senior Chieftainess Nkomesha on succession wrangles, at pages 1 and 2 of the 5<sup>th</sup> and 6<sup>th</sup> Defendants bundle of documents, DW1 said that he was not aware of any threats of violence or beatings alleged. That the meeting on the election process was disrupted by unknown individuals although he admitted knowing the mentioned Bernard and Francis Chipungu as his young brothers.

DW2 was William Njeleni and he testified that he was from Bena Mpande clan, a grandchild to the Mulonga family, and that he was the only one in the Bundabunda chiefdom who installs Chief Bundabunda. He mentioned the other two clans as being Bena Nkalamu, Bena Mpongo or Bena Kasuba. The duties of Bena Mphande is to install the Chief and take the Chief and his family to a

place where they are taught the traditions. Bena Nkalamu's duty is to look after shrine pots and to tend to the graveyard. Bena Mpongo's duty is to brew the beer. The past chiefs Mboshi, Shakanda, Mubamba, Nkobama, Selemani and Lufwaneti were all installed by his uncle Musole Chamakamba. His uncle neither told him the year he installed Mboshi as chief nor how many years Mboshi sat on the throne and the same applied in the case with Shakanda and Selemani. DW2 said he had witnessed the installation of the sixth Chief Lufwaneti who ruled from 1951 to 1975 and thereafter personally installed the chiefs that followed. When Lufwaneti died, he installed Jackson Chipungu who ruled from 1975 to 1981 when the eighth chief Benard Chipungu took over the throne. After his death in 1999 Patrick Chakalashi was installed in 2000. Chakalashi ruled until 2012 when the tenth Chief Fickson Chikweleti was installed on 28<sup>th</sup> September, 2013. That there were nine (9) past Chiefs and that the list did not include Chimapepe. All past the chiefs came from Mulonga family and he had never heard of the two other families nor was there a mention of them by his uncle.

DW2 stated that PW2's duty was to take the chief elect for traditional lessons at the shrine and this happens after DW2 has finished his job of installation. That from 1951 to date, there have never been elections to elect the Chief and all the Chiefs that have been installed hail from Mulonga family.



In cross examination DW2 stated that he installed Fickson Chikweleti after the family had chosen him. At the installation ceremony, there was no attendance from Government officials and there was no representation from any other family apart for the Mulonga family. He did not know Kacheta or that he was from Tubi Kalifu family as he was not there at his installation. That what he knew was that Chief Mubamba was from Mulonga family. He admitted that it was the royal family's responsibility to talk about the family lineage as he was only given the person the family had chosen to be Chief.

DW2 admitted knowing Simon Njeleni, his elder brother, but that he did not know that his uncle, Musole Chamakamba, gave the authority or duty to the said Simon Njeleni to install chiefs. DW2 stated that at the time of the death of his uncle Musole in 1970, DW2 he was 24 years old and Simon Njeleni had never installed any Chief. Being from Bene Mphande clan, he hands over the Chief who has been installed to bene Nkalamu who introduce the Chief to the ancestral spirits. DW2 stated that the clay pots in the shrine represented deceased chiefs and that ordinarily, the pots are in the custody of the Chief and Bene Nkalamu are called in anytime an activity involving the pots is to be undertaken as they are the ones who go in the shrine and speak. DW2 testified that he had been to the shrine and there were ten (10) pots.

DW2 further stated that he succeeded headman Musole Chamakamba in 1992. There was no substantive headman from 1970 to 1992 and a caretaker headman used to conduct the duties of the headman.

DW2 reiterated that he installed the first chief in 1979 because the caretaker headman was sick. The second installation done in 1981 was equally conducted by him as by then the caretaker headman was paralyzed and could not perform his duties. DW2 stated that Simon Njeleni was supposed to be headman from 1970 to 1992 but could not do so as he had a spiritual disease from the forest and that he never performed any installation of chiefs

DW2 testified that he heard about Kashimbi royal family when Chakalashi was chief and that he knew about Mukunkutiwa and Nyemba.

This marked the end of the 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Defendants' case.

The 5<sup>th</sup> and 6<sup>th</sup> Defendants called four (4) witnesses. The 5<sup>th</sup> Defendant testified as DW3 and stated that he was from Tubi Kalifu lineage of the Shamifwi royal establishment and he belonged to the Nyangu clan. The family tree began with a woman named Chitambo who had three daughters, namely, Malunga, Tubi and Nyasenga. These three comprise the royal families that ascend to the Bundabunda throne. Malunga was the mother of the first Chief Mboshi. That Malunga only gave birth to one son and had no daughters. As a result, there were no other people to ascend to the throne from this line of family because the Shamifwi lineage is matrilineal. Tubi gave birth to the third Chief Mubamba, whose other names were Nkobama or Shikamilonga. Tubi had two other children, a daughter Chantola and a son Kacheta the fourth Chief. Chantola later had two daughters, Mayuka and Chiteo.

Chiteo gave birth to Nyemba who was the mother of the fifth Chief, Selemani while Mayuka gave birth to Lumina, the first headman of Shangobeka village and a daughter named Kalifu the name from which Tubi Kalifu is derived from.

DW3 explained that Nyasenga gave birth to Shakanda the second Chief. Nyasenga's other child was a daughter by the name of Sungwe who gave birth to Nyamalao, Mulonga, Kaluba and Mwanambo. Nyamalao gave birth to Lufwaneti the sixth chief and Mulonga gave birth to a daughter named Sambwa who was the mother to Jackson Chipungu, the seventh Chief. Mwanambo gave birth to Bernard Chipungu the eighth chief as well as a daughter named Mafuluza Muchepele who gave birth to Mwanamusa whose other name was Rabecca, the mother to Patrick Chakalashi the ninth Chief.

As regards the Kashimbi family, DW3 stated that Kashimbi fall within the Tubi family and are children from the male lineage. Lumina had a son by the name of Ngobeka and hence was called Shangobeka. Lumina's first grandson, Chipungu, married Musowe and had a daughter by the name of Kashimbi Lashemwa from whom the Kashimbi family hail. Under Soli custom, the Chiefs are supposed to hail from Kalifu the sister of Lumina because inheritance was matrilineal. That this was the reason behind the assertion that the Kashimbi family is not eligible to ascend to the throne.

Further, that Chimapepe was never Chief Bundabunda . The Chiefs from Tubi Kalifu family were Mubamba, Kacheta and Selemani.



Mboshi was the first Chief who brought the Soli people in Zambia because of a tribal war. That the sixth Chief Bundabunda up to the ninth Chief Bundabunda all came from Mulonga. This was because when Lufwaneti died, the Mulonga asked to be given the throne again and Jackson Chipungu became the seventh Chief. After the death of Jackson Chipungu, there were no proper discussions as families and the Mulonga proceeded to install Benard Chipungu.

DW3 referred to pages 16 and 17 of the Plaintiff's bundle of documents and said that it was a joint report or memorandum by the Tubi and Kashimbi families and the same also appeared on pages 20 to 21 of the Plaintiffs supplementary bundle of documents. He admitted having signed the memorandum despite it being contrary to his evidence because he wanted to prevent the installation of the new chief by the Mulonga family and to ensure that there was rotation of the throne. He could not recognize Fickson Chikweleti as Chief Bundabunda because the installation procedure was not followed and Senior Chieftainess Nkomesha had instructed that the three families were to sit and discuss the issue of the next Chief. When the discussions by the families failed to take off, a letter produced on pages 1 – 2 of the 5<sup>th</sup> and 6<sup>th</sup> Defendant's bundle of documents was sent to Senior Chieftainess Nkomesha.

It was DW3's further testimony that the 1<sup>st</sup> Plaintiff and PW5 had admitted hailing from Munuka village which came into being in 1987. The first headman was Tom Kasamba and it was thus surprising that

Chief Chimapepe was said to have come from Munuka village. The name Munuka comes from the great grandchild of Kacheta.

That on 29<sup>th</sup> June, 2013 there was a technical committee meeting chaired by PW5 to discuss the family tree of Bundabunda. PW5 instructed that there was no need to know about the history of the families but only the places of birth. Shocked by the instruction, DW3 and others wrote another letter of complaint to Senior Chieftainess Nkomesha and this caused DW3 to sign the memorandum with the Kashimbi. Further, that the graves of the Kashimbi family are in DW3's village which shows that they are in the Tubi family.

In cross examination, DW3 said he signed the memorandum because he agreed to lie because it was a strategy to defeat the Mulonga family. That there were currently two royal lineages or families, namely, Tubi and Nyasenga or Mulonga. The Malunga family was the third lineage but it came to an end when the first Chief Bundabunda, Mboshi, died because the lineage is matrilineal.

DW3 gave the names of Chiefs in the order of their ascension to the throne, as Mboshi, Shakanda, Mubamba, Kacheta, Selemani, Lufwameti, Jackson Chipungu, Bernard Chipungu and Chakalashi. That Chimapepe had never been Chief Bundabunda and there have only been nine chiefs in Bundabunda Chieftdom not 12 as stated by the Plaintiffs.

Under continued cross examination DW3 stated that at the technical committee meeting held on 29<sup>th</sup> June, 2013, the main agenda was to discuss the Chief Bundabunda family tree. He added that in line with the report at pages 10 to 15 of the Plaintiffs' bundle of documents, the meeting was supposed to ascertain which family was eligible to ascend the throne but they did not discuss the issue. He was in attendance including the members of the Mulonga and Kashimbi families. Senior headman Manchishi represented the Mulonga family.

In the meetings convened by Senior Chieftainess Nkomesha on 28<sup>th</sup> to 31<sup>st</sup> August, 2013, the Kashimbi name arose and the three families were given an opportunity to narrate their family tree. That the initial position was that the Kashimbi were on the same side as the Tubi Kalifu in fighting the Mulonga for the throne. However, it turned out that the Kashimbi had reneged on the agreement and had put forward a person of their own as successor to the throne.

DW3 stated that it was the responsibility of traditional cousins to look after the shrines and not the royal family members. That he had been informed that the clay pots represent the chiefs that have died and he only knew nine Chiefs and therefore it did not make sense to have ten clay pots when there have been nine chiefs. Further, that villages are formed with the approval of the Chief. The Kashimbi stayed in Chilimba and Chineya villages before they moved to Munuka village.

DW4 was Grace Namukoko Kanyanta in her capacity as Deputy Council Secretary for Chongwe Municipal Council. She testified that

she was aware of the chieftaincy wrangle and that the Council was the custodian of the records of all chiefdoms in the district. The chiefdoms include Senior Chieftainess Nkomesha Mukamambo II, Chief Bundabunda, Chief Mpasha, Chief Shikabeta and Chief Chiawa. In relation to Chief Bundabunda, DW4 stated that the Council had the family tree of Chief Bundabunda. That as custodian of records, the Council Secretary, Deputy Council Secretary and Administrator of the District are required to be the secretariat at the succession meetings. Upon selection of the Chief, the Council Secretary writes to the Permanent Secretary, submitting five copies of the family tree, minutes of the meeting and the vital statistics for the selected chief. The Permanent Secretary then starts the process of writing to the President to have the Chief recognized. Once the particular selected chief is recognized and the statutory instrument issued, the recognition is communicated by the Permanent Secretary.

When referred to the 5<sup>th</sup> and 6<sup>th</sup> Defendants' Supplementary bundle of documents, DW4 stated that the documents were the family tree for Chief Bundabunda. It showed the Malunga, Nyansenga and Tubi lineages. The first family tree was filed in 1972 and was verified and stamped while the second was filed in January, 2017. On the latter document, DW4 added that it was not verified and stamped because the Council had not yet verified the family tree with the families as per procedure.



That the family tree filed in 1972 does not reflect the Kashimbi family nor does it show that there was a chief Chimapepe. The second chief was indicated as Shakanda.

In cross examination DW4 stated that she did not know who filed the family tree in 2017 but from what she was told by her superior, it was someone from the Bundabunda family. The family tree filed in 1972 showed the three families but did not indicate where they originated from. It indicated that chiefs have been coming from the three families. DW4 pointed out that the 1972 family tree did not give the complete number of chiefs as from either that date or 1975. However, the Council's list of chiefs included Chakalashi who was recognized in 2009 under Statutory Number 20 of 2009.

Under continued cross examination DW4 said that she had been working for Chongwe Municipal Council since October 2016. Prior to that, she was based at Lusaka City Council. She stated that when a royal family submits their family tree to the Town Clerk or the Council Secretary, the Council investigates and verifies with the family members. Thereafter, the Council attends the succession meetings during which they record the minutes and get vital statistics of the chief elect. Where there is already a sitting Chief, the Council just verifies the family tree and then stamps it to show that it has been updated and verified. After verification, a report is supposed to be done for purposes of the record.

DW4 further testified that although she was not able to name any chief who had picked his successor, it was part of the Soli tradition for the incumbent chief to select his successor but on his death, the selection process or elections are still held to choose among the eligible candidates. That despite Chief Bundabunda's chieftom falling under the newly created Rufunsa District Council, the Chongwe Municipal Council still had conduct of the matter because at the time the court case commenced all the records were in the custody of Chongwe Municipal Council. Further, that Rufunsa District Council was not yet operational and had no Council Secretary, thus the documents could not be transmitted without following the laid down procedures. In reference to the report on the selection process at pages 18 to 20 of the Plaintiff's supplementary bundle of documents, DW4 confirmed that the report to Senior Chieftainess Nkomesha dated 29<sup>th</sup> August, 2013 was filed by Rufunsa District Council.

In re- examination DW4 stated that the family tree filed in 1972 had undergone verification process as was evident from the stamp and there was a report to that effect.

DW5 was Chiteu Elina Shatubi who listed the successive chiefs in their order of ascension to the Bundabunda Chieftaincy as Mboshi, Shakanda, Mubamba, Kacheta, Selemani, Lufwaneti, Jackson Chipungu, Bernard Chipungu and Chakalashi. It was her testimony that she had witnessed the installation of the chiefs beginning with Lufwaneti and onwards and that there had been a rotational succession system.

It was DW5's further evidence that the Kashimbi family were not eligible to ascend the chieftaincy because only descendants on the mother's side can inherit. DW5 clarified that the Kashimbis were on the paternal side of the family in that they were born from headman Lumina's son Ngobeka.

Under cross examination, DW5 narrated that Chitambo had three daughters, Malunga, Nyasenga and Tubi and the rotation of the chieftaincy was supposed to be between the three families. Mboshi came from Malunga, while Shakanda was from the Nyasenga. Mubamba and Kacheta were from the Tubi lineage.

DW6 was Felix Welek Kandolo, secretary to the Tubi royal family. He testified that the Shamifwi royal clan has three mothers namely Malunga, the mother to the first chief Mboshi, Nyasenga, the mother to the second Chief Shakanda, and Tubi, the mother to the third to fifth chiefs being Mubamba, Kacheta and Selemani, respectively. Thereafter, the sixth to ninth chiefs were from Nyasenga or Mulonga. That after the death of the last chief Chakalashi, no chief had been installed. There was a rotational system of succession between the Malunga, Mulonga and the Tubi lineages as evidenced by the chiefs listed. He however, added that currently only the Nyasenga/Mulonga and Tubi lineages are eligible to the throne which is matrilineal.

DW6 testified that the Kashimbi were not part of the Bundabunda royal establishment as they hail from the paternal side within the Tubi

lineage while the royal family hails from the maternal side. He denied that there was ever a chief by the name of Chimapepe from the Bundabunda royal establishment. He insisted that there had been nine past chiefs and therefore the clay pots in the shrine were supposed to be nine and not ten. He added that he had never entered the shrine.

It was his further testimony that in 2012, two members of the Kashimbi family, Edward Musona and David Musona were tasked to update the family tree of Chief Bundabunda by Chief Chakalashi. They updated the family tree and did not raise their claim to the throne at that time.

In cross examination, DW6 stated that the family tree was submitted by the royal establishment to Chongwe Municipal Council a long time ago, under Lufwaneti in 1972 and later in 2012 under Chakalashi. That the 2012 family tree was not stamped by the Council.

In reference to the report dated 29<sup>th</sup> August, 2013 on discussions between representatives from Tubi Kalifu and Kashimbi, DW6 insisted that the Kashimbi cannot ascend the throne because the first headman Lumina Shangobeka, who was eligible to ascend to the throne, bore the Kashimbi and their mothers were not from the royal family. Further, that ascension to the throne was reserved for descendants in the direct line of matriachs. DW6 added that the chief Selemani was from Tubi lineage and his mother was Nyemba. DW6 maintained that the representative from Tubi family may have signed



the memorandum document in haste and that in a meeting held on 29<sup>th</sup> and 30<sup>th</sup> August in the presence of four chiefs, officials from Chongwe Municipal Council and Rufunsa District Council, the Tubi rejected the contents of the document.

This marked the close of the trial.

I have duly considered the pleadings and evidence adduced. The facts which are not in dispute are that the last four consecutive chiefs, namely, Lufwaneti, Jackson Chipungu, Bernard Chipungu and Patrick Chakalashi were all from the Mulonga or Nyansenga family. The last chief, Chakalashi, died in 2012 after which the chieftainship wrangle ensued among the three contending families of Kashimbi, Tubi Kalifu and Mulonga.

Two lineages lay a claim to the Bundabunda chieftaincy, that is, the Kashimbi as Plaintiffs, and the Tubi Kalifu as the 5<sup>th</sup> and 6<sup>th</sup> Defendants. Their claims lie against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Defendants who hail from the Mulonga lineage and who maintain that they are the only lineage entitled to ascend to the throne. I note from the outset that in cases of this nature, the Court is invited to consider facts passed on by way of oral tradition and hearsay evidence is thus at the heart of the matter. It is hence incumbent on the Court to proceed cautiously so as to avoid the pitfalls akin to such evidence, such as distortion of facts, either on purpose or due to mere passage of time. This matter being a civil suit, the claimants to the throne, Kashimbi and the Tubi Kalifu, have to prove their claims on a balance

of probabilities as guided in a number of decided cases, noteworthy being **Zambia Railways Limited v Pauline S Mundia, Brian Sialumba<sup>1</sup>**.

The Kashimbi family's claim to the Bundabunda throne is based on the allegation that they are part of the three lineages entitled to proffer successors to the throne and that the succession is done on rotational basis. They claim that there have been a total of ten (10) chiefs and of these only one chief, Chimapepe, has hailed from the Kashimbi royal family, two from the Tubi Kalifu and the remaining seven have hailed from the Mulonga lineage. They reason that being the family with the least number of individuals who have reigned as Chief Bundabunda, a member of the Kashimbi family must ascend the throne to keep to the tradition and custom of rotation.

The Tubi Kalifu family claim to be entitled to the throne by virtue of being descendants of one of the three daughters of Lutangu the matriach. They claim that out of the three royal lineages, the Malunga lineage has since died out because Malunga only had one son, Mboshi, and no daughters to continue the line. The other two royal lineages are the Mulongas also known as Nyansenga and the Tubi Kalifu. Further, that the current successor to the throne must hail from Tubi Kalifu so as to uphold the tradition of rotating the throne amongst the eligible lineages.

The Mulonga lineage in defence maintained that members of the Kashimbi and the Tubi Kalifu families were not entitled to the Bundabunda chieftaincy because the Mulongas are the only royal

lineage and have produced all the past Chief Bundabundas. They admit to the tradition of rotating the throne but maintain that the rotation is intra the Mulonga lineage. The Mulongas dispute that Chimapepe was ever chief and add that the chiefs claimed to have been from Tubi Kalifu, were all from Mulonga lineage.

To determine this matter, I will consider the following questions:

1. Which lineages or royal families fall under the Bundabunda chieftainship or Nyangu clan and has there ever been rotation of chieftainship among the lineages?
2. Of the lineages that fall under the Bundabunda royal family, which lineage is entitled to proffer a successor or ascend to the Bundabunda throne following the death of Chief Chakalashi in 2012?
3. What is the status of the purported installation of the 7<sup>th</sup> Defendant Fickson Chikweleti?

In addressing the first question, the origins of the lineages have to be considered and I have thoroughly examined the evidence which was proffered by the parties. It is clear from the testimony of the witnesses that each advance varying origins of their lineages but they all agree that they have a matrilineal descent system. The Kashimbis assert that the first matriarch of the royal family was Lutangu who had three daughters, Kalifu, Sungwe and Nyemba, the producers of the three lineages. The Kashimbis claim to be matrilineal descendants of Nyemba.

The Mulongas mention Mukunkutiwa as the matriarch of the royal family and that she was the mother to the first chief, Mboshi, who had a sister by the name of Butangu. And that Butangu had two daughters, Nyemba and Nsungwe who was the matriarch of the Mulonga lineage. They however did not state the lineage of Nyemba and insisted that all the chiefs only came from their lineage under Nsungwe.

The evidence of the Tubi Kalifu family was that the matriarch of the royal family is Chitambo who had three daughters, Malunga, Nyasenga and Tubi the mothers of the three lineages. They added that the Mulongas were descendants of Nyansenga and that Tubi was the matriarch of Tubi Kalifu lineage.

These varying versions of origin advanced by the parties call for a determination regarding which of the three conflicting versions is, on a balance of probabilities, more likely to be the truth bearing in mind that all the three versions are products of information passed on by way of oral tradition. In the case of **Kojo v Bonsie**<sup>2</sup> the Privy Council at page 1226 addressed a similar situation regarding traditional history and stated as follows:

**“Where there is a conflict in tradition history, which has been handed down by word of mouth, one side or the other must be mistaken, yet both may be honest in their belief. In such a case demeanour of witnesses is of little guide to the truth. The best way is to test the traditional history by reference to the facts in recent years as established by evidence, and by seeing which of the two competing histories is the more probable.”**



I find this to be relevant in this instant case. In aid was the evidence of DW4 in her capacity as Deputy Council Secretary of Chongwe Municipal Council who produced a copy of Chief Bundabunda's family tree dated 17<sup>th</sup> April, 1972. DW4 testified that before the Council accepts the family tree as valid by stamping it with the official Council stamp, they conduct a verification exercise with the concerned royal family, in this case the Bundabunda royal family, to verify the information furnished in the family tree. Her evidence was that the 1972 family tree was verified and a report to that effect was on the Council file. In the same vein DW4 stated that the latest family tree that was provided to the Council during the reign of Chakalashi was not yet verified and hence was not stamped and there was no verification report in support. This evidence by DW4 was not challenged.

Thus, I find that the Bundabunda family tree dated 17<sup>th</sup> April, 1972 was so validated and a true depiction of what it communicates. The said family tree does not specifically state the ancestral matriarch of the Bundabunda family, but it tabulates the mothers of the first three chiefs as Malunga, Nyasenga and Tubi. It then tabulates some descendants in detail. A thorough scrutiny of the family tree indicates that it agrees materially with the version advanced by the 5<sup>th</sup> and 6<sup>th</sup> Defendants in that the names they allege to be the ancestral matriarchs of each lineage are akin to the names stated in the family tree. This in turn is contrary to the versions advanced by the Kashimbis and Mulongas in that some of the matriarchs stated by the

Plaintiffs' witnesses (Kashimbi) and those given by the 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Defendants (Mulongas) do not appear on the family tree produced by DW4 as such but, where they do appear, they appear as mothers to later Chiefs.

The family tree filed in 1972 shows the first three chiefs Mboshi, Shakanda and Mubamba as being from Malunga, Nyansenga and Tubi, respectively. This position supports the claim by both the Plaintiffs and 5<sup>th</sup> and 6<sup>th</sup> Defendants, that the Soli Shamifwi tradition on ascendancy to the throne of Chief Bundabunda has in the past been on rotational basis among the three eligible families. I thus find accordingly.

The 1972 family tree then shows the fourth and fifth chiefs as Kacheta and Selemani Chanyabweya separately on the side but below Tubi without indicating which of the three lineages they were from. The mother of Selemani is indicated as Nyemba. The document also separately outlines in detail the children of Nyamao, Kaluba and Mwanamsao who are referred to as the first, second and third house, respectively. It is apparent that the chief then, who is referred to as the present and sixth chief was Musona, the son of Nyamao. Nyamao is shown to have had only sons and thus had no daughters and it follows that there would be no successors to the throne from this line of first house after the demise of the sixth chief. This is due to the fact that the chieftainship is matrilineal.

The 1972 family tree also shows that Musona chose Thomo Maluku and Chimota as his first and second choice of successor. The mother to both Thomo Maluku and Chimota was Kaluba as the matriach of the second house. Kaluba had a total of six children who included two daughters, Mangeya and Nankole. Mwanamsao, the mother of the third house, is shown to have five children out of whom one was female, a daughter called Mukoka. It is however not clear from the evidence of the parties and from the family tree where the Mulonga or Nyasenga and Tubi families belong in terms of the second and third house.

I further find that the first six successive chiefs were Mboshi, Shakanda, Mubamba, Kacheta, Selemani Chanyabweya and Musona who was on the throne in 1972 when the family tree was verified and stamped by the then Rural or District Council. The common evidence of the parties is that from 1973/1974 to date, the chiefs who consecutively ascended to the throne were Jackson Chipungu, Bernard Chipungu and Chakalashi. It is also their common evidence that Jackson Chipungu took over from Lufwaneti. There is no mention of Musona, who is indicated as the chief who was on the throne during the period when the 1972 family tree was lodged. Nevertheless, it is clear that out of the three original lineages, the first one expired due to the fact that at some point, there were no female children to continue the lineage. This gives credence to the fact that there are currently two lineages that are eligible to ascend to the throne of Chief Bundabunda.

As regard the number of chiefs who have ascended to the chieftainship, it is apparent that when Musona, who is mentioned in the 1972 family tree, is counted among the acknowledged nine (9) chiefs, the total number of chiefs who have ascended to the throne of Chief Bundabunda would be ten (10). This would tally with the number of spears and clay pots in the shrine which have been acknowledged by both the Plaintiffs' and Defendants' witnesses who testified to that effect. However, in the case of the 1<sup>st</sup> to 4<sup>th</sup> Defendants, the position of their witnesses was that the tenth clay pot and spear represented the 7<sup>th</sup> Defendant. This assertion is untenable in the light of the general evidence that the clay pots and spears in the shrines represent deceased chiefs.

I now turn to consider the Plaintiffs' claim that the Kashimbi family is one of the three royal families that are eligible to ascend to the Chietainship and that Chimapepe, as one of their own, was the second Chief Bundabunda. The 5<sup>th</sup> and 6<sup>th</sup> Defendants have denied the Plaintiffs' claim or that Chimapepe was ever a chief and their position is that the Plaintiffs as Kashimbi family were from the paternal line of the Tubi Kalifu family being descendants of the son of Lumina and therefore, that their right to inherit ended at Lumina.

In line with the outlined chiefs that have ascended to the throne in the past, I find that the Plaintiffs have not proved to the required standard their claim that Chimapepe was ever a chief or that he ascended to the throne from the Kashimbi family. I wish to add that the Plaintiffs'



position was that out of all the past chiefs only Chimapepe was from Kashimbi family and hence the one upon whom they are basing their claim. It was their claim that Chimapepe was the second chief after Mboshi and was followed by Shakanda as the third chief. However, the 1972 family tree only mentions Shakanda as the second chief after Mboshi, the first chief, and there is no mention of Chimapepe. The Plaintiffs have therefore not proved to the required standard that the Kashimbi family is eligible to ascend to the Bundabunda chieftainship.

Therefore, as regards the first question regarding the lineages which fall under the Bundabund royal family, I find that the 5<sup>th</sup> and 6<sup>th</sup> Defendants have proved on a balance of probabilities that the three lineages under the Bundabunda royal family are the Nyansenga or Mulonga lineage; the Malunga lineage, which lineage has since expired as testified by DW3 and DW6; and the Tubi Kalifu lineage. It follows that the Kashimbi are currently not one of the lineages entitled to inherit the throne falling under the Bundabunda family, in fact as already stated above, they are not indicated in the 1972 family tree produced before this Court by Chongwe Municipal Council.

The second question as to who amongst the remaining two lineages are entitled to succeed the throne following the death of Chief Chakalashi is anchored on the aspect of the rotation of the throne from one lineage to the other asserted by the Plaintiffs and the 5<sup>th</sup> and 6<sup>th</sup> Defendants and as evidenced by the 1972 family tree. The 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Defendants maintained that the rotation of the throne is

within the Mulonga lineage only and asserted that all the individuals that have reigned as Chief Bundabunda have all hailed from the Mulonga lineage.

This position of the Mulonga lineage is at a marked variance with the family tree dated 12<sup>th</sup> April, 1972 which indicates that the first, second and third chiefs hailed from three different matriarchs which point to the fact that there was rotation amongst the three lineages. That said I cannot accept the 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Defendants' assertion of intra Mulonga family rotation as it is not supported by any other evidence. Further, DW1 and DW2 were not from the Mulonga lineage but from cousin clans to the royal clan and were also not convincing in their evidence that all the past chiefs have been from the Mulonga lineage. Further, still, having established that there were three lineages within the royal family and that there was rotation in the past as dictated by the Soli tradition and custom, it follows that the succession to the throne be rotational between the two remaining or existing lineages that are eligible to ascend to the throne.

The issue then is which lineage between the Mulonga and the Tubi Kalifu ought to provide a successor chief after the death of Chakalashi. The undisputed evidence is that Chakalashi and at least the past three successive chiefs before him hailed from the Mulonga lineage and the system of rotational succession dictates that the successor ought to now hail from the Tubi Kalifu lineage.

Having thus determined that the successor to the late Chief Chakalashi from Mulonga lineage should come from the Tubi Kalifu lineage, the answer to the third question on the status of the purported installation of Fickson Chikweleti from the Mulonga lineage is that the same is not tenable and can not to be recognized because it is clear that in Soli Shamifwi tradition and custom of the Bundabunda chieftaincy must rotate between the lineages in the royal family, in this instance, between the Mulonga and the Tubi Kalifu. In **Ted Chisavya Muwowo Alias and Chief Dangolipya Muyombwe v Abraham Muwowo Alias Temwanani and Winston Muwowo<sup>3</sup>**, the Supreme Court upheld the decision of the High Court Judge which annulled the recognition of a Chief by the President on the basis of failure to comply with the rotation process required by the Uyombe tradition and custom. The Supreme Court stated as follows:

**"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."**

This shows that even when a person has been gazetted or recognized as chief, the recognition can be annulled if it was done contrary to the tradition and custom. In this case, the purported installation of the 7<sup>th</sup> Defendant was not yet recognized under the Chiefs Act and it was, more importantly, contrary to the tradition and custom of rotation as proved. Hence, the dispute as to whether all the rituals were performed on the 7<sup>th</sup> Defendant as required becomes moot in light of the finding that the successor ought to hail from Tubi Kalifu.

In summary, the Plaintiffs' claim that the new chief Bundabunda must come from Kashimbi family has failed and is accordingly dismissed. The Plaintiffs' claim has only succeeded to the extent that the Soli Shamifwi tradition of ascending to the Bundabunda throne is on rotational basis. The 5<sup>th</sup> and 6<sup>th</sup> Defendants counterclaim has succeeded in the main and I order that succession to the Bundabunda chieftaincy must be on rotational basis between the Mulonga and the Tubi Kalifu lineages. Therefore, the purported installation of Fickson Chikweleti by the Mulonga lineage is hereby annulled for failure to adhere to the Soli tradition and custom of ascension to the throne. I further order that the Tubi Kalifu lineage must convene to choose the successor to the throne in line with the Soli Shamifwi tradition and custom of the Bundabunda chiefdom.

Due to the nature of the matter and the fact that the Plaintiffs have partially succeeded in their claim with regard to the requirement for rotation, I order that each party will bear its own costs of this action.

Leave to appeal is granted.

**Dated this 5<sup>th</sup> day of July, 2018.**



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**M.S. MULENGA**  
**JUDGE**