

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

**2023/HP/0649**

**BETWEEN:**

**JONAS KANGWA CHANDA**  
(Suing in his capacity as Chief Mwenge Mando)



**PLAINTIFF**

**AND**

**PETER CHANDWA MWILA**  
(Sued in his capacity as Senior Chief Nkula)

**1<sup>st</sup> DEFENDANT**

**DICKSON CHILUBA**  
(Sued in his Capacity as Chief Kabanda)

**2<sup>nd</sup> DEFENDANT**

**Before the Honourable Lady Justice S. Chocho, in Chambers.**

*For the Plaintiff: No Appearance*

*For the Defendant: Mr. T. Kasweshi & Ms. M. Musengwa - Messrs Elis & Company*

*For 2<sup>nd</sup> defendant: No Appearance*

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## **R U L I N G**

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**Cases referred to:**

- i) *Salomon V Salomon And Company Limited (1897) Ac 22***
- ii) *Arnold Chengo V Chiluba Dickson Mwampanya 2020/HN/290***
- iii) *His Royal Highness the Litunga and 3 Others V The Attorney General 2020/CCZ/009***
- iv) *Webby Mulubasha V Attorney General Selected Judgement No. 13 of 2019***

**Legislation referred to:**

- i) *Order 14A Rules 1 and 2 of the Rules Supreme Court***
- ii) *Order 33 Rule 3 of the Rules of the Supreme Court.***

1. **INTRODUCTION**

1.1. This Ruling is in respect of the Defendant's application or Notice of motion to Raise P.I in lime. The 1<sup>st</sup> Defendant cites the following as issues to be determined.

1. ***Whether this Honourable Court can proceed to determine the Plaintiff's action when the High Court for Zambia has no jurisdiction to adjudicate on matters that emanate from the institution of Chieftaincy;***
2. ***Whether this Honourable Court can entertain the Plaintiff's action in the absence of any attempt by the Plaintiff to have the dispute resolved by traditional dispute resolution mechanisms;***
3. ***Whether this Honourable Court can proceed to determine this matter when the Plaintiff has no legal capacity to sue on behalf of a Chiefdom and the 1st and 2nd Defendants do not have the capacity to defend this action;***
4. ***Whether the action is not frivolous, vexatious and an abuse of Court process; and***
5. ***Whether the action ought not to be dismissed, with costs, on account of the above matters.***

1.2. The 1<sup>st</sup> Defendant's application is made pursuant to Order 14A Rules 1, Order 33 Rule 3, of the Rules of Supreme Court (White Book).

***"1. (1) The Court may upon the application of a party or its own motion determine any question of law or construction of any document arising in any case or matter at any stage of the proceedings where it appears to the Court that:-***

***(a) Such question is suitable for determination without a full trial of the action; and***

- (b) *Such determination will finally determine subject only to possible appeal, the entire cause or matter or any claim or issue therein.*
- (2) *Upon such determination the Court may dismiss the cause or matter or make such order of judgment as it thinks fit.*
2. *An application under rule 1 may be made by summons or motion or (notwithstanding order 32, rule 1) may be made orally in the cause of any interlocutory application to the Court."*

Further, in terms of Order 33 rule 3:

*"3. The Court may order any question or issue arising in a cause or matter, whether by fact or law or partly of fact and partly of law, and whether raised by pleading or otherwise, to be tried before at or after the trial of the cause or matter, and may give direction as to the manner in which the question or issue be stated."*

2. **BACKGROUND**

- 2.1. The background to this matter as per pleadings and evidence presented before this Court is that, the Plaintiff seeks a declaration that he is rightful Chief of Mwenge Mando, and further seeks a declaration that Mwenge Mando is a legitimate Chieftaincy and encroaching on his Chieftaincy land.
- 2.2. The 1<sup>st</sup> Defendant by defence entered 21<sup>st</sup> August 2023 submits that the Parties (Plaintiff and Defendants) have no legal capacity to sue and be sued. Further pleads to invoke Order 14 A of the Rules of the Supreme Court for dismissal of the action.

2.3. The 1<sup>st</sup> Defendant filed application by Notice citing that this Court has no jurisdiction to adjudicate on matters relating to the installation / recognition of Chiefs.

3. **AFFIDAVIT EVIDENCE**

3.1. The 1<sup>st</sup> Defendant avers that the dispute between the parties emanates from the institution of Chieftaincy, thereby must be settled by traditional dispute resolution mechanisms.

3.2. The 1<sup>st</sup> Defendant further avers that the parties (Plaintiff and Defendants) cannot as individuals, sue /be sued on behalf of Chieftom.

3.3. The 1<sup>st</sup> Defendant avers that the Ministry of Local Government and Rural Development confirms that there is no Chieftom known as Mwenge Mando.

3.4. The 1<sup>st</sup> Defendant avers that this Court does not have jurisdiction to hear and determine the Plaintiff's claims.

3.5. The application is opposed by the Plaintiff who in his affidavit filed on 18<sup>th</sup> June, 2024, avers that there is no traditional dispute resolution procedure as claimed but not named by the 1<sup>st</sup> Defendant.

3.6. The Plaintiff further avers that he and the 1<sup>st</sup> Defendant hail from different tribes and culture, therefore cannot resort to traditional dispute resolution.

3.7. The Plaintiff avers that the 2<sup>nd</sup> Defendant has since been declared by the Courts of law, not to be the rightful Chief Kabanda.

3.8. The Plaintiff further avers that as Chief Mwenge Mwando he has legal capacity to sue on behalf of his Chieftom and similarly the 1<sup>st</sup> Defendant as Senior Chief Nkula has legal right to defend on behalf of his Chieftom.

3.9. The Plaintiff avers that he is Chief Mwengo Mando and his Chieftom has been in existence from time in memorial. He exhibits 'JKC1' a letter from Senior Chief Kopa of the Bisa speaking people.

4. **THE LAW/SUBMISSIONS**

4.1. I have had occasion to review and consider the application, having heard counsel for the Plaintiff and 1<sup>st</sup> Defendant, read the parties affidavits, skeleton arguments and list of authorities for which I am grateful.

4.2. The 1<sup>st</sup> Defendant submits that this Court has jurisdiction to grant the application as filed by the 1<sup>st</sup> Defendant. Reference is made to Order 14A Rules 1 and 2 of the Rules Supreme Court and Order 33 Rule (3) of the Rules of the Supreme Court.

4.3. Granted this Court does have jurisdiction to hear and determine the 1<sup>st</sup> Defendant's application. The real questions to be answered are whether the 1<sup>st</sup> Defendant has shown cause for this Court to exercise said jurisdiction and grant the application/remedy sought.

4.4. The 1<sup>st</sup> Defendant submits that the parties (Plaintiff and Defendants) have no legal capacity to sue/defend as action such as this one. The 1<sup>st</sup> Defendant relies on Article 166 of the Constitution of Zambia and the case of **SALOMON V SALOMON AND COMPANY LIMITED (1897) AC 22<sup>1</sup>**. It is unclear to me how the 1<sup>st</sup> Defendant would suggest that a person cannot be sued/sue in one's capacity as a Chief. Article 166 of the Constitution of Zambia (as Amended by Act No. 2 of 2016) provides: -

***"The institution of Chieftaincy-***

***(a) is a corporation sole with perpetual succession and capacity to sue and be sued; and***

***(b) has capacity to hold property in trust for its subjects."***

- 4.5. It is trite that Chieftaincy sues and can be sued by the incumbent Chief/Chieftainess (hence the use of the term corporation sole). The Plaintiff is not suing in his personal capacity but as Chief Mwenge Mando & the 1<sup>st</sup> Defendant sued in his capacity as Senior Chief Nkula. The 1<sup>st</sup> Defendant does not dispute that he is Senior Chief Nkula.
- 4.6. The 1<sup>st</sup> Defendant further submits that there is no Chieftaincy by the name of Mwenge Mando and that this Court has no jurisdiction to hear this matter on basis that the Plaintiff has not attempted / referred the matter to a traditional dispute resolution mechanism.
- 4.7. I am extremely unsettled by the 1<sup>st</sup> Defendant submissions and interpretation of the case law and provisions cited. The Salomon V Salomon authority has truly been misinterpreted by the 1<sup>st</sup> Defendant. A Chieftaincy can sue and be sued and this is done by / against the head of the Chieftaincy. In casu, this denotes the Plaintiff and the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant by virtue of the judgment in the case of **ARNOLD CHENGO V CHILUBA DICKSON MWAMPANYA 2020/HN/290<sup>2</sup>**, is not rightful Chief Kabanda.
- 4.8. The 1<sup>st</sup> Defendant further submits that this Court has no jurisdiction to adjudicate on matters relating to the installation or recognition of Chiefs AND also that disputes such as in casu are to be settled by what the 1<sup>st</sup> Defendant terms – “.... by traditional dispute resolution mechanism.” The 1<sup>st</sup> Defendant does not state what mechanism this is nor the law/legal provisions that provides for removal of this Court’s jurisdiction. I find nothing, in Article 118 (2)(d) of Constitution of Zambia to suggest that the listed forms of Alternative Dispute Resolution, point to removal /limiting of this Court’s unlimited and original jurisdiction.
- 4.9. The 1<sup>st</sup> Defendant makes reference to the case of **HIS ROYAL HIGHNESS THE LITUNGA AND 3 OTHERS VS THE ATTORNEY GENERAL**

**2020/CCZ/009<sup>3</sup>** as an authority that this Court has no jurisdiction over this matter.

4.10. It is my considered opinion that the 1<sup>st</sup> Defendant has misinterpreted the decision of the constitutional Court in the cited case. The decision does not in any way withdraw this Court's jurisdiction. This Court has unlimited and original jurisdiction in civil and criminal matters – subject to Article 128 of the Constitution Court of Zambia. In the Litunga matter the Constitution Court held as follows: -

“We further declare that the traditional authority of the Litunga and Paramount Chiefs to recognize and install, discipline or dethrone a subordinate Chief shall continue to be exercised in accordance with the culture, custom and traditions of the people concerned and in accordance with the Constitution and the law as prescribed.”

I opine that in simple terms, the portion of judgement denotes that the Senior/Paramount Chief, recognize, install, discipline/ dethrone Subordinate Chiefs in line with the culture, customs and traditions of the particular Chieftaincy, people or Kingdom. The Constitutional Court underscored the position in the case of **WEBBY MULUBASHA V ATTORNEY GENERAL SELECTED JUDGEMENT NO. 13 OF 2019<sup>4</sup>** stated:-

***“It is for each particular Chieftom to follow their established customary system of selecting and removing a Chief.”***

Article 165(1) of the Constitutional provides for this. I further opine that this Court has jurisdiction to answer the question as to whether the said culture, custom and traditions of the people concerned, was followed/not. This in no way denotes that the Court usurps the jurisdiction of the Senior Chiefs.

4.11. The 1<sup>st</sup> Defendant further submits that the Ministry of Local Government and Rural Development, through the Permanent Secretary gives validity to the 1<sup>st</sup> Defendant's assertion that there is no Chief Mwenge Mando on their

records. The exhibit 'MM1' contains inaccuracies that cannot be settled in an interlocutory application.

5. **COURT'S DECISION**

- 5.1. I hereby find that the 1<sup>st</sup> Defendant's application on all grounds as stated in the Notice of Motion to raise preliminary issues in limine, is devoid of merit.
- 5.2. The 1<sup>st</sup> Defendant's application is dismissed with costs to the Plaintiff to be assessed in default of agreement.
- 5.3. I further order that the 2<sup>nd</sup> Defendant **BE** and **IS** hereby removed from the proceedings and substituted by the duly and lawfully appointed Chief Kabanda of the Bisa speaking people of Shiwan'gandu of Muchinga Province of Zambia.
- 5.4. Matter stands adjourned to 23<sup>rd</sup> August, 2024 at 8:00 hours for Scheduling Conference.

**Delivered at Lusaka on 24<sup>th</sup> July, 2024.**



**S. CHOCHO  
HIGH COURT JUDGE**

