

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

2024/HP/0368



BETWEEN:

NSANZI FIASON KASENDA
(also known as Senior Chief Kanong'esha)

PLAINTIFF

ELFORD CHAKAMISHA
AND

INTENDED INTERVENOR

JESMAN SAMBAULU

DEFENDANT

RODGERS MAKWAYANGA

2ND INTENDED DEFENDANT

MICHEAL KAWANGU

3RD INTENDED DEFENDANT

KENNEDY SELEYI

4TH INTENDED DEFENDANT

CLIVE KAKOMA

5TH INTENDED DEFENDANT

DEBORAH MUSENGU

6TH INTENDED DEFENDANT

SAM WISHIKOTI

7TH INTENDED DEFENDANT

KERRIES KAKISA

8TH INTENDED DEFENDANT

DOMINIC KANEMA

9TH INTENDED DEFENDANT

HARRISON KAKISA

10TH INTENDED DEFENDANT

HONEST KANGUYA

11TH INTENDED DEFENDANT

KINGSLEY MATOKA

12TH INTENDED DEFENDANT

BEFORE: HONOURABLE, LADY JUSTICE G. C. CHAWATAMA
IN CHAMBERS ON THE 13TH MAY, 2025

*For the Plaintiff :
For the Defendants':*

*Mr. S. Siyamalambo from Messers KBF & Partners.
Miss. M. Kaunda of Messers Mbambara Legal
Practitioners Mr. K. Kalumbwe of Messers Charles
Siamutwa Legal Practitioners*

RULING

CASES REFERRED TO:

1. *American Cynamid V Ethicon Corporation Limited (1975) AC 386*
2. *Hondling Xing Xing Building Company Limited v Zamcapital Enterprises Limited (2011)*
3. *Shell and BP Zambia Limited v Conidaris and Others (1975) ZR 174*
4. *ZIMCO Properties Limited v LAPCO Limited (1988/89) Z.L.R 174*
5. *Preston v Luck (1884) 27 Chancery division 497*
6. *Turnkey Properties v Lusaka West Development Corporation and Another (1984) Z.R 85*
7. *Ndove v National Educational Council Limited (1980) Z.L.R 184*
8. *Re Msiska (1983)*
9. *Hubbard v. Vosper (1972) 2 Q. B. 84at 96*

LEGISLATION AND OTHER WORKS REFERRED TO:

1. *The High Court Rules Chapter 27 of the Laws of Zambia*
2. *The Rules of the Supreme Court (Whitebook) 1999 Edition.*

1.0 INTRODUCTION

1.1 The delay in delivering this Ruling is deeply regretted and is mainly due to the numerous interlocutory applications pending before this Court. Be that as it may, this is a composite Ruling on the Plaintiff's application for an Order of interim injunction and the intended Intervenor, 2nd to 12th intended Defendant joinder application.

1.2 I shall render this Ruling in the manner the applications were filed, beginning with the interlocutory injunction filed by the Plaintiff on the 14th March, 2024. The joinder application was filed by the intended intervener on the 16th April, 2024, and the 2nd to 12th intended Defendant filed on the 31st May, 2024.

2.0 THE PLAINTIFF'S APPLICATION FOR AN INJUNCTION

2.1 The application for an Order of interim injunction was made ex parte by the Plaintiff. This Court directed that it may be heard inter partes. By this application, the Plaintiff sought

the intervention of this Court to retrain the Defendant, whether in person or by his servants, agents or otherwise from claiming, holding himself out and or preventing himself as Senior Chief Kanong'esha or acting Senior Chief Kanong'esha and receiving visitors, tribute and all dealings in the name of Senior Chief Kanong'esha pending the hearing and determination of this matter.

2.2 The application for an interim injunction was made by way of summons pursuant to **Order 27, Rule 1 of the High Court Rules and Order 29, Rule 1 of the Rules of the Supreme Court of England 1999 Edition**. The said provides that:

Order 27 rule 1 *“In any suit in which it shall be shown, to the satisfaction of the Court or a Judge, that any property which is in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, it shall be lawful for the Court or a Judge to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, or to give such order, for the purpose of staying and preventing him from wasting, damaging or alienating the property, as to the Court or a Judge may seem meet, and, in all cases in which it may appear to the Court or a Judge to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the Court or a Judge to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the*

management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court or a Judge may seem proper”.

Order 29 rule 1 *“An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party’s writ, originating summons, counterclaim or third party notice, as the case may be”.*

2.3 The summons was accompanied by an affidavit in Support and Skeleton arguments.

3.0 AFFIDAVIT EVIDENCE

3.1 The affidavit in support of the summons for an order of interim injunction was sworn by the Plaintiff himself. It was deposed that between December, 2022 and February, 2023 after the death of the then Senior Chief Kanong’esha, the Plaintiff received a call from the Defendant, the care taker of the Kanong’esha throne, or traditionally called Mwambayilun’ga, the Defendant arranged for a meeting with Itun’gi Yamukala or Chief maker and family head Mr. Johns Chilengi, and the Plaintiff in Solwezi.

3.2 It was the deponent further averment that at the meeting the Defendant introduced the Plaintiff as the great grandson to Nyamukwatu the elder sister to Mr. Johns Chilengi and the wife to Dayamba Otela Kasenda and proposed to Mr. Johns Chilengi that he believed the Plaintiff could also be

considered among others if any to ascend to the Kanong'esha throne and Mr. Johns Chilengi as Itun'gi Yamukala or Chief Maker and family heard had no objection to the Defendant's proposal and went ahead to state that it was agreed that the Plaintiff would ascend to the throne.

- 3.3 That the Defendant would, after every fortnight, call the Plaintiff to the village to familiarize the Plaintiff with the people and the chiefdom, and the Defendant, together with Mr. Johns Chilengi would take the Plaintiff around the market place, the clinic and government offices introducing the Plaintiff as the new Senior Chief Kanong'esha.
- 3.4 Further that around April, 2023, the Defendant, by phone call, told the Plaintiff that a budget was needed to be prepared by the Plaintiff, Mr. Johns Chilengi and the Defendant for the Plaintiff's installation as Chief in Mwinilunga, but the Plaintiff failed to travel. The Defendant sent his son Vin Sambaulu and Nathaniel Kasapato to follow the Plaintiff to Kabwe to tell the Plaintiff to prepare the budget of K70,000. The Plaintiff was also asked by the Defendant to submit an application so as to show transparency and avoid Court action, which was, however, not necessary under the tradition and culture.
- 3.5 It was further averred that the Plaintiff bought most of the items that were drawn on the budget and travelled to Mwinilunga where the Plaintiff handed the items and gave money for the purchase of cows to be slaughtered on the installation day to Mr. Johns Chilengi but during the

Plaintiff's stay, the Defendant said it was raining and the Plaintiff couldn't be installed Chief during that season until the rains were over as per tradition and culture of the Lunda people.

- 3.6 That around May, 2023, the Plaintiff received a call from the Defendant telling him to travel for preparations for the Plaintiff's installation and between May and June, 2023 the Defendant advised Plaintiff to go round to meet and introduce himself to the other Chiefs in Mwinilunga and Ikelengi district and that the Plaintiff visited about 4 Chiefs.
- 3.7 It was averred that the Kanong'asha Royal Establishment set the 28th June, 2023 as the date for the selection and installation of Senior Chief Kanong'asha, but postponed the program due to financial constraints. That an electoral college set up by the Defendant took over the program from the Kanong'asha Royal Establishment and demanded a payment of K3000 from the Plaintiff and other candidates which the Plaintiff paid.
- 3.8 That the Electoral college set another date the 29th day of July, 2023 as a date for selection and installation. That on this day the Plaintiff sat on a mat together with the other candidates and in attendance were senior district government officials. That candidates were called to narrate how they were related to the throne and the Plaintiff spoke last which per tradition means the last one to speak is the chosen candidate.

3.9 It was further deposed that after the Plaintiff spoke to Mr. Johns Chilengi, together with the electoral college, went a place referred to as Kafotu, but after some time, noise erupted and due to the commotion, the gathering dispersed. That within a week afterward, the Plaintiff got a call from the deputy chairperson of the electoral college whom the Plaintiff met at the District Commissioners' office in the company of the electoral college secretary, Mr. Johns Chilengi, and a member, Mr. William Kamwana. That the Plaintiff was informed by the deputy chairperson that the Plaintiff was elected as Senior Chief Kanong'esha. The report and declaration for the position of senior chief Kanong'esha were exhibited and marked "NFK1".

3.10 That after the news reached Chief Chibwika (the deputy senior chief kanongesha) that a chief was chosen, he summoned Mr. John Chilengi who later told the Plaintiff that he had been summoned by Chief Chibwika who the Plaintiff met on or about the 19th August 2023 in the presence of Mr. Johns Chilengi who explained that the Defendant employing intimidation and violence was delaying the Plaintiff's installation.

3.11 It was averred that on or about 20th August, 2023, the Plaintiff met with Chief Nyakaseya and Chief Chibwika were the two chiefs gazetted agreed that the Plaintiff's installation as Senior Chief Kanong'esha by chief Nyakaseya would take place on 22nd August 2023. That on or about 22nd August, 2023, the Plaintiff was duly installed as Senior Chief

Kanong'asha by Chief Nyakaseya in Mwinilunga district of North Western Province following the due process of being proposed by the care taker or traditionally called Mwambayilun'ga Mr. Jesman Sambaulu the Defendant and based on the Plaintiff being a member of the Kanong'asha royal family tree particularly under the Ndumba Chikolokoso family line, and subsequently approved by the Chief Maker and family head, Mr. John Kings Chilengi. The minutes for the installation of Senior Chief Kanong'asha were exhibited and marked "NFK2".

3.12 It was averred that despite the Plaintiff's installation, the Defendant, as caretaker, has continued to hold himself as acting Senior Chief Kanong'asha and has refused to surrender the instruments of power that remain in his position. That the Defendant is receiving tribute and visitors to the Chieftom under the guise of being Senior Chief Kanong'asha thereby undermining the Plaintiff's appointment authority, which situation is likely to breed strife and disunity in the chieftom unless this Court restrains him.

3.13 That the Plaintiff was advised by his Counsel and believe the same to be true that the Defendant should not be allowed to continue masquerading, misrepresenting or holding himself out in whatever way as Senior Chief Kanong'asha whether to the people of Kanong'asha Chieftom or the general public as allowing him to continue in that manner will defeat the

efficacy of any judgment that this court will make in this matter.

4.0 SKELETON ARGUMENT

- 4.1 Counsel began submission of their skeleton argument by citing **Order 27, Rule 1 of the High Court Rules and Order 29, Rule 1 of the Supreme Court Rules** reproduced above. Further that the law relating to injunctions was aptly summarized by the House of Lords in the case of **American Cyanamid V Ethicon¹**, wherein four prerequisites were established as being important before an application for an injunction can succeed. The first requirement is that the applicant should satisfy the court that there is a serious question to be tried. In order to satisfy this requirement, it has to be established by the applicant that their claim is not frivolous or vexatious. Also, that the applicant has to satisfy the court that they have prospects of succeeding at the trial.
- 4.2 It was submitted that, if it is shown to the satisfaction of the Court that the applicants have a serious question to be tried, that is to say, their application is not frivolous or vexatious and that they have prospects of succeeding at trial, the applicant has to satisfy the second requirement. The second requirement is that the applicant should demonstrate to the satisfaction of the court that the damage they are likely to suffer if the injunction is not granted cannot be atoned for by damages if they succeed in establishing their claim at the trial. The case of **Hondling Xing Xing Building Company Limited v**

Zamcapital Enterprises Limited², the learned trial judge observed that if the claimant would be adequately compensated by an award of damages if he succeeded at the trial, and the defendant would be able to pay for them, no injunction should be granted however, strong the claimant's case. Also, the case of **Shell and BP Zambia Limited v Conidaris and Others**³, wherein it was held that a court will not generally grant an interlocutory injunction unless the right to relief is clear and unless the injunction is necessary to protect the Plaintiff from irreparable injury; mere inconvenience is not enough. Irreparable injury was said to mean "injury which is substantial and can never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired".

4.3 The cases of **ZIMCO Properties Limited v LAPCO Limited**⁴ was also cited wherein it was held that "we must make it clear that the question of balance of convenience between the parties only arises if the harm done will be irreparable and damages will not suffice to recompense the plaintiff for any harm which may be suffered as a result of the actions of the defendant which it is sought to restrain". Also, the case of **Preston v Luck**⁵ regarding the need to preserve the status quo, it was held that "to keep things in status quo so that if at the hearing the Plaintiffs obtained a judgment in their favour the defendant will have been prevented from dealing in the meantime with the property in such a way as to way make that judgment ineffectual". Furthermore, in the case of **Turnkey Properties v Lusaka West Development Corporation and Another**⁶, the Supreme

Court said, among other things, that an interlocutory injunction is appropriate for the preservation or restoration of a particular situation pending trial.

4.4 It was then submitted that the Plaintiff has a serious case and a high likelihood that he may succeed because he has exhibited that he was duly elected and installed as senior chief Kanong'esha. That the damage that the Plaintiffs may suffer if an injunction is not granted cannot be atoned for by an award of damages. The privileges that are available to an individual by virtue of being a chief are innumerable, and it is difficult to quantify in terms of the loss that the Plaintiff prevented or disrupted from his position, risks incurred. That the damage to the Plaintiff's reputation and respectability in this regard are matter which this Court should consider as not being able to be adequately atoned for by damages and thereby occasioning irreparable injury.

4.5 Furthermore, that the Defendant is giving out portions of land and engaging in dealings that may precipitate a situation where developments in the Chieftom arise that frustrate the Plaintiff's intended purposes for his subjects in the chieftom when a number of bona fide purchases for value without notice acquire rights to parcels of land which will most certainly terribly inconvenience the Plaintiff.

5.0 AFFIDAVIT IN OPPOSITION

- 5.1 In opposing the interim injunction, the Defendant on the 12th April, 2024 filed an affidavit in opposition, list of authorities and skeleton argument.
- 5.2 It was deposed that following the demise of the late Mathews Sweta-Senior Chief Kanong'asha of the Kanong'asha Chieftdom in Mwinilunga district, the Defendant was duly selected by the royal families as the caretaker Chief (Mwambayilunga) of the Kanong'asha Chieftdom in 2022.
- 5.3 That according to the Tradition and Chieftdom Constitution of 1999, the Defendant duties as caretaker chief include among others to adopt the powers of the chief for the duration of the appointment; to carry out projects left by the late chief in order to enhance development in the chieftdom; to oversee and facilitate the selection of the new chief and introduce the Chief to the public. A copy of the constitution was exhibited, marked "JS1".
- 5.4 It was averred that the Defendant never arranged a meeting with the Plaintiff, nor did the Defendant meet the Plaintiff at any time in the period between December, 2022 and February 2023. That at no point was it ever suggested or agreed that the Plaintiff should ascend to the throne as the new Senior Chief Kanong'asha, owing to the fact that there is a strict procedure and tradition which is followed in the selection process of Senior Chief Kanong'asha. That being the

custodian of the said tradition as caretaker chief, the Defendant is duty-bound to ensure that there is strict adherence to the traditional procedure.

- 5.5 That on no occasion did the Defendant ever introduce the Plaintiff as the new senior Chief Kanong'esha to anyone, and that as per custom, the responsibility of the caretaker chief is to receive all guests of the chiefdom, including but not limited to the Plaintiff.
- 5.6 That the Defendant never called the Plaintiff to prepare any budget, nor did the Defendant ever send his son Vin Sambaulu to meet with him. That, as per tradition, the Defendant invited the royal families to bring forward their interested candidates to submit applications for consideration by the electoral college. A copy of the meeting minutes of the Kanong'esha royal families, where it was resolved that royal families submit the name of one candidate to the Defendant, was exhibited and marked "JS2".
- 5.7 That indeed in the tradition of the Kanong'esha Chiefdom, a new chief cannot be installed during the rainy season, however contrary to the Plaintiffs assertion there has been no selection or installation of any new chief owing to internal wrangles among the royal establishment members who have failed to come up with a suitable heir to the throne. A copy of a letter from Chief Mwiniyilamba postponing the installation of Senior Chief Kanong'esha was exhibited and marked "JS3".

5.8 It was averred that Plaintiff could not be installed as chief, because no formal or legitimate procedure had been followed in selecting him as the new Chief. That, as far as the Defendant knows, no new chief has been selected, and the purported selection of the Plaintiff is a complete sham. The defendant denied ever calling the Plaintiff to travel for any installation as the Chief.

5.9 The Defendant accepted that the Kanong'asha Royal Establishment did set the 28th June, 2023 as the date for the selection of Senior Chief Kanong'asha, seeing that till this point there had not been a selection process by the royal families and electoral college. That the said date was postponed to the 29th July, 2023, due to financial limitations. As per the tradition of the Kanong'asha Chiefdom, the selection process for the new Senior Chief Kanong'asha is carried out by the royal families and the electoral college.

5.10 It was averred that contributions in the sum of three thousand kwacha towards the selection and installation of Chief Kanongesha were agreed upon by all the royal families, and each candidate, including the Plaintiff, did pay the said amount. A copy of the minutes of Chiotola Chalunda royal place held on 1st July, 2023, resolution was exhibited and marked "JS4".

5.11 That the selection process of the new senior Chief Kanong'asha commenced on the 29th July, 2023, and many were in attendance. That, however, contrary to the Plaintiff's

assertion, there is no custom or tradition in the Kanong'asha Chiefdom which stipulates that speaking last during the interview process has any bearing on the outcome of the selection process, nor does it dictate that the person is the chosen candidate.

5.12 It was averred that at no point did the Defendant threaten violence or employ any means of intimidation on the Plaintiff. That both Chief Chibwika and Chief Nyakaseya have no authority whatsoever in the Kanong'asha Chiefdom to install a new chief.

5.13 That the tradition and procedure of selecting a new Senior Kanong'asha was not duly followed in the purported installation of the Plaintiff as Chief, if at all, there was such a section and installation. A copy of the letter outlining the procedure to install of Senior Chief Kanong'asha was exhibited and marked "JS5".

5.14 It was deposed that the Plaintiff is not the legitimate or lawful Senior Chief Kanong'asha. That the Royal families and the electoral college, including the royal establishment, are not aware of the Plaintiff's purported selection, and as it is, there is no Senior Chief Kanong'asha.

5.15 That the selection will only resume after the rains in accordance with tradition. A copy of the minutes of the Kanong'asha royal families held on 12th September, 2023, a report on the failed selection of Senior Chief Kanong'asha

dated 12th September, 2023, and a letter from the interim royal establishment chairperson dated 12th October, 2023, were exhibited and marked JS6-8.

5.16 It was averred that seining that there is no legitimate senior Chief Kanong'esha, it is necessary that the Defendant continue to carry out the responsibilities as the caretaker chief of the Kanong'esha Chieftdom in the best interest of the Kanong'esha Chieftdom.

5.17 That until the formal and legitimate process of selecting and installing a new senior chief Kanong'esha is effected, the Defendant must continue to carry out the duties as caretaker of the Kanong'esha Chieftdom. That if this Court grants the application, the people of the Kanong'esha Chieftdom will be greatly prejudiced as there will be no proper figure to settle disputes peacefully in the community, safeguard the land, and enhance peace and order, which will result in undue turmoil. That there will be no facilitation of the selection of the new chief and the people of Kanong'esha Chieftdom will be deprived of their rights to have a Chief selected in accordance with their traditions.

5.18 In the skeleton argument filed, the case of *American Cyanamid v Ethicon*¹ cited above. On the question of serious questions to be tried, it was argued that a party seeking redress by means of an interim injunction must substantively have argued the case on merit. In support the case of *Ndove v National Educational Council Limited*⁷ where it was held that “”

although the court is not called upon to decide finality on the rights of the parties, it is necessary that the court is satisfied that there is a serious question to be tried at the hearing and on the facts before it there is a probability that the Plaintiff is entitled to the relief". That the Plaintiff has not put forward an arguable case in his claim, and that there is overwhelming evidence which clearly reveals that he is falsely holding out as the new Chief Kanong'esha.

5.19 On the question of where damages will not be sufficient, it was submitted that it is trite law that if the Defendant can show that damages can adequately compensate the Plaintiff for the alleged wrong he has suffered, then no injunction should be granted. The cases of *Re Msiska (1983)*⁸ and *Shell and BP Zambia Limited v Conidaries*³ were cited in support. It was argued that the Plaintiff has falsely held out as the new Senior Chief Kanong'esha without having been legitimately selected or installed as such, therefore creating an inconvenience for himself, as he has no access to the instruments of power to enable him to continue to portray himself as such. That the Plaintiff has at all material times been aware that he is not the rightful senior Chief Kanong'esha and that the alleged selection process alluded to in the Plaintiff's affidavit was a sham, fictitious and an affront to the Lunda of the Kanong'esha tradition and culture. That the Plaintiff has been caught in the path of his own deceit and has brought this Court a complaint of his own fabrication.

5.20 It was submitted as regards the balance of convenience that if the Plaintiff is awarded an interim injunction preventing the Defendant from carrying out his duties as caretaker Chief of the Kanong'esha Chiefdom, the people of the Kanong'esha chiefdom will suffer prejudice as there will be no legitimate figure to govern the important affairs of the Chiefdom and they will be deprived of their right to have a proper Chief installed in accordance with their traditions and customs. That should this Court grants the Plaintiff the injunction, it will unduly delay the selection process of a legitimate new Senior Chief Kanong'esha, likely resulting in uncertainty and distress for the people of the Kanong'esha Chiefdom.

5.21 As regards preserving the status quo, the case ***Turnkey Properties v Lusaka West development Company Limited and Others***⁶. That the Defendant, as caretaker chief, has and continues to carry out his duties in the best interest of the people of Kanong'esha Chiefdom and he is eager to see the same to completion when she finally hands over the instruments of power to the duly elected new chief. That this status quo must be maintained. That if the Plaintiff is allowed to stop the Defendant from carrying out his duties, pending the determination of this matter, the people of the Kanong'esha chiefdom will be greatly prejudiced as there will be no proper figure to settle disputes peacefully in the community, safeguard the land and enhance peace and order, which will result in undue turnmoil.

6.0 ANALYSIS AND THE DECISION OF THIS COURT ON THE INJUNCTION APPLICATION

6.1 I have considered the application for an interim injunction before me. I think it is necessary, before I proceed to consider the issues that arise for determination in this application, to examine briefly the more important general principles of law that govern the grant or refusal of an interlocutory injunction.

6.2 An interlocutory injunction is granted before the trial of an action, and its primary object is to keep matters in status quo until the question at issue between the parties can be finally determined by the court. In granting the application, there are certain basic factors which the courts need to consider in deciding whether or not an interlocutory injunction should be granted. The remedy of injunction is discretionary, and each case must be considered as a whole based on fairness, reasonableness, and judiciousness. The more important of the issues the courts usually consider before deciding whether or not to issue an order of interlocutory injunction are as follows:

- (i) Applicant's real prospect of success.***
- (ii) Balance of convenience.***
- (iii) Status quo.***
- (iv) Conduct of the parties.***
- (v) Inadequacy of payment of damages.***

- 6.3 Therefore, the court, on the question of the Applicant's real prospect of success in the claim must, at the outset, be satisfied that the Plaintiff's claim is "not frivolous or vexatious" and that "there is a serious question to be tried at the hearing of the substantive suit." This first ingredient is a fundamental requirement to be established by an applicant for an order of interlocutory injunction. Where the Plaintiff fails to satisfy this basic requirement, this in effect will automatically bring to an end, and defeat, his application. Once this requirement is established, the governing consideration must be the balance of convenience. If the balance of convenience does not clearly favour either party, then the preservation of the status quo will be decisive.
- 6.4 Although I must state that on an application for an interlocutory injunction in aid of a Plaintiff's alleged right. The court, in appropriate cases, may wish to consider the conduct of the parties and whether the Applicant's case is so clear and free from objection on equitable grounds.
- 6.5 In the current case, I shall be guided by the above principles of law. At the same time, being mindful that the grant or refusal of an order of interlocutory injunction is in the absolute discretion of the court, which discretion must be exercised judiciously, having regard to all the facts and circumstances of each and every case. Though of persuasive value, Lord Denning put it in *Hubbard v. Vosper*⁹:

"In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must

have regard not only to the strength of the claim but also to the strength of the defence and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until trial. At other times, it is best not to impose a restraint upon the defendant but leave him free to go ahead”.

6.6 I will now consider the issues formulated by the Plaintiff for determination in this application against the background of the said general principles of law and the facts of this case. The totality of the affidavit evidence of the plaintiff before me was that the Plaintiff was, by exhibit “NFK1 and NFK2 being report and declaration for the position of Senior Chief Kanong’esha and minutes for installation,” appointed the Senior Chief Kanong’esha. That later, after his installation, the Defendant, as caretaker, has continued to hold himself acting Senior Chief Kanong’esha and has refused to surrender the instruments of power.

6.7 At this stage, I must point out that the Plaintiff has a legal right of claim by evidence of Exhibit “NFK1 and NFK2”. The pertinent question to ask here, in the light of the prevailing evidence on record in this instant case, is whether there is a legal right to protect via injunction. It is my firm view that there are triable issues at the trial of the main suit. In effect, I hold that the first requirement for the granting of an injunction had been satisfied in the instant case.

6.8 I must point out at this stage that I should be mindful not to make any pronouncements on anything that would tend to prejudice the main issues for determination in the substantive suit at the trial. In deciding applications of this

nature, the court, as much as possible, must try not to delve into or predetermine the issues to be tried in the substantive case. This court, in this type of situation, must do and must only confine itself to those issues necessary for the disposal of the application for an injunction without more. It is for this reason that I must only state that the Plaintiff's claim cannot be described as frivolous or vexatious or that there is no question to be tried in the substantive action.

6.9 As already stated above, it is not the only requirement that for the plaintiff to succeed, the court in an application for interlocutory injunction should find a case which would entitle him to relief. Having stated that there is a substantial question to be investigated, this matter ought to be preserved in the status quo until that question can be finally disposed of. On this aspect, I agree with counsel on both sides in their submission when they cited the case of *Preston v. Luck (1884) 27 Ch.497 C.A.*

6.10 In this matter the the issue in the substantive claim is the alleged legitimate appointment and installation of the Plaintiff as Senior Chief Kanong'asha. The next question to consider is the issue of the balance of convenience. The balance of convenience that this Court ought to protect in this matter is not the personal self-importance of an applicant but a substantial right that is fit for legal protection. What is in issue in the present case is the appointment of the plaintiff as the Senior Chief Kanong'asha. This, in my view, is a substantial issue fit and deserving of legal protection. The

Defendant has spiritedly refuted the Plaintiff's appointment and installation. At the same time, the Defendant has maintained that his merely a caretaker until the substantive Senior Chief Kanong'asha is appointed. I further note that according to Plaintiff's affidavit, evidence when the electoral college went to Kafotu to choose the senior Chief Kanongesha, noise erupted and there was commotion, the gathering was dispersed. This fact is confirmed by the Defendant that the meeting was postponed and that no Senior Chief Kanong'asha was appointed.

6.11 In the face of this finding, the balance of convenience in the present case cannot be said to be in favor of the Plaintiff. In my view, the nature of the injury, which the Plaintiff, on the one hand, might suffer if the injunction was not granted would be far less than that which the Defendant, on the other hand, whose evidence of appointment as caretaker Chief of the Kanong'asha throne (is not in dispute) before the court, would sustain if the injunction was granted.

6.12 The preservation of the status quo in this matter is decisive. The phrase, status quo simply means the situation or position prevailing before the Defendants' conduct complained of by the Plaintiff.

6.13 It is my considered view that in the instant case, the question in this matter, being the appointment of Plaintiff as Senior Chief Kanong'asha and the surrender of the instruments of power for the Kanong'asha throne. The application for

injunction here is being made by a person who believes he has been appointed and wants to restrain the Defendant from harassing the Plaintiff or interfering with the Plaintiff's Chieftaincy as Senior Chief Kanong'esha and further restraining the Defendant from claiming, holding himself out and presenting himself as Senior Chief Kanong'esha or acting Senior Chief Kanong'esha. I need to emphasise here that I have used the phrase 'a person who believes that he has been appointed' since this is the issue for determination in the substantive suit. I have taken this precaution since this is an application for an interlocutory injunction, and taking into consideration also the fact that one of the reliefs claimed in the writ of summons in the substantive suit is a declaration that the Plaintiff is the legitimate and duly installed and presiding Senior Chief Kanong'esha.

6.14 In view of the above, I decline to grant the Plaintiff the application for an injunction sought. In my view, it is the appointment of the Plaintiff as Senior Chief Kanong'esha that is in question pending the final determination of the substantive suit, and I so find. I am fortified by the case of *Turkey Properties v Lusaka West Development Company*⁵ that:

“An injunction should not be used to the advantage of one party but to keep the status quo until the matter is decided at trial without prejudicing either party's right”.

6.15 The status quo must be preserved in this matter, the Defendant is to continue to act as caretaker for the

Kanong'esa throne until the final determination of this matter or any other orders of this Court.

7.0 APPLICATION FOR JOINDER

- 7.1 I will now consider the application for joinder filed by the intended Intervenor and the intended Defendant.
- 7.2 In the first application filed on the 16th April, 2024, the application was premised on **Order 14 rule 5(1) of the High Court Rules**. In the affidavit in support filed, the intended intervenor deposed that he is the heir apparent to the throne of Senior Chief Kanong'asha of the Lunda people of Mwinilunga and Ikelenge districts following the death of Senior Chief Kanong'asha on the 20th May, 2022.
- 7.3 That following his death, the Chikeza royal clan elders selected the intended intervenor as heir apparent to the vacant throne in accordance with the Lunda culture and tradition in the succession of Senior Chief Kanong'eshas. That the deponent was informed by the late David Ntana, former senior headman Kabanda, advisor to senior Chief Kanong'asha, and also Lunda spokesperson for Kanong'asha chieftom, David Ngiya, senior headman Chikeza, senior headwoman Chibala, and others that the intended Intervenor was duly selected for the purposes of ascending to the throne.
- 7.4 It was averred that in terms of the customs, traditions, and practices of the Lunda people of Mwinilunga and Ikelenge

districts, the position of Senior Chief Kanong'esha is exclusively from the Chikeza clan, and that is where the intended intervenor hails from.

- 7.5 It was deposed that the Lunda Chieftainess all fall under the Mwata-yav Mushid II, who is the emperor of the Lunda people, and the Mwant-yav Mushid II did endorse and confirm the intended intervenor as the rightful successor and heir to the throne. A copy of the advice letter from Mwanti-yav Mushid II to the members of the Kanong'esha Chieftainship Chikeza royal clan was exhibited and marked "" EC3".
- 7.6 That the late senior chief Kanong'esha (Matias Sweta Mulumbi Datuma II) handed over the instruments of authority, which are the Kanong'esha Chieftainship constitution, to the emperor Mushid II
- 7.7 It was averred that the Plaintiff and the Defendant in this matter are impostors who have no legitimate claim to the throne of Senior Chief Kanong'esha. That the Plaintiff and the Defendant have no instrument of authority since it was handed over to the emperor by the late senior Chief Kanong'esha. That is what the Defendant has are Government trophies, including a Zambian flag, Senior Chief Kanong'esha date stamp, and three Government retainers.
- 7.8 Furthermore, according to the affidavit in support filed by the 2nd intended Defendant, it was deposed that in view of the

upcoming selection process, on the 26th May, 2023, the 2nd intended Defendant sent an application to contest as senior Chief Kanongesha addressed to the Defendant. A copy of the application letter was exhibited and marked "RM1". That the 2nd Intended Defendant comes from the Makwayanga Nyawuvuzhi family of Kanong'esha village, which, according to the deponent, makes him eligible to contest as a candidate for the position of senior chief Kangong'esha.

7.9 The 3rd Intended Defendant also deposed that he hails from the Nyaluhana family and sent an application expressing his interest to contest for the Kanong'esha chieftainship.

7.10 The 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th Intended Defendant deposed that they hail from Mulumbi-Nyalukamba, Mulumbi, Chikeza, Nyampasa Sayimbunji, Kazhinga, Chikolokosu respectively, claim contested for the position for Senior Chief Kanong'esha to by sending application letters to the Defendant and that the selection process failed as there was no selection.

7.11 In opposing the on the 11th June, 2024, the Plaintiff filed a composite affidavit whose sum total was that there is no dispute which the intended Intervenor and the 11th Intended Defendant should be joined as by the Electoral College duly formed by the Defendant and properly so constituted convened and evaluated all candidates who included the Intended Intervenor, the 11 Intended Defendants and the

Plaintiff was duly elected as Senior Chief Kanong'esha and its task was successfully completed.

7.12 In reply, the intended Defendant maintained that the electoral college was unsuccessful in its selection of a new chief on the 29th July, 2023, and that at no point did it select the Plaintiff.

8.0 DECISION OF THIS COURT ON THE JOINDER APPLICATION

8.1 I have considered the application. The application has been brought pursuant to **Order 14 Rule 5 of the High Court Rules**. **Order 14 Rule 5 of the High Court Rules** states that:

"5. (1) If it shall appear to the Court or a Judge, at or before the hearing of a suit, that all the persons who may be entitled to, or claim some share or interest in, the subject-matter of the suit, or who may be likely to be affected by the result, have not been made parties, the Court or a Judge may adjourn the hearing of the suit to a future day, to be fixed by the Court or a Judge, and direct that such persons shall be made either Plaintiffs or Defendants in the suit, as the case may be...

Furthermore, **Order 15/6/8 of the Rules of the Supreme Court, 1999 Edition**, on the other hand, provides that:

"Generally, in common law and Chancery matters a plaintiff who conceives that he has a cause of action against a Defendant is entitled to pursue his remedy

against that Defendant alone. He cannot be compelled to proceed against other persons whom he has no desire to sue”.

- 8.2 Under this rule, a person who is not a party may be added as the defendant against the wishes of the Plaintiff either on the application of the Defendant or on his intervention, or in rare cases by the Court of its own motion. The jurisdiction of the court under this rule is entirely discretionary".
- 8.3 In the application for joinder before me, the gist of the application for joinder by the intervenor and the intended Defendant is that there are applied for the position of Senior Chief Kanong'asha and that the selection was unsuccessful and no senior chief was elected.
- 8.4 In objecting to the application for joinder, the Plaintiff in the affidavit in opposition states that indeed the intervenor and the intended Defendant were candidates, but that the Plaintiff was elected as Senior Chief Kanong'asha.
- 8.5 The rationale for joinder of interested parties is explained in

Order 15/6/8 of the rules of the Supreme Court, 1999 Edition as:

- "(a) To prevent multiplicity of actions and to enable the Court to determine disputes between all parties to them in one action, and***
- (b) To prevent the same or substantially the same questions or issues being tried twice with possibly different results, these objects are achieved by enabling a person not a party to be joined as a third party;***

8.6 It is on that basis that I allow the joinder of the intended interveners and the intended Defendants, even though the Plaintiff has objected to the said joinder. It is my considered view that the intended intervener and the 2nd to the 12th Intended defendants have sufficient interest in the matter and are unlikely to be affected by the outcome of this case.

8.7 In this regard, therefore, I direct that the Plaintiff is granted leave to amend the writ and statement of claim to address the interests of the intervener and the 2nd to 12th Defendant, if any, within fourteen days from today. The Intervener and 2nd to 12th Defendants shall, within 14 days thereafter, file their defence and counterclaim if any, and a reply shall be settled within fourteen days after the defence and counterclaim are filed. Discovery and inspection shall be done within fourteen days after the reply, if any, and the Plaintiff and Defendant shall file their respective bundle of documents, bundles of pleadings, and documents, if any, within fourteen days of the discovery and inspection.

8.8 The matter shall come up for a status conference on 1st July, 2025 at 09:00hrs.

8.9 I make no Orders as regards costs of this matter.

DELIVERED AT LUSAKA THIS 13TH DAY OF MAY, 2025.


G.C. CHAWATAMA
HIGH COURT JUDGE

R30

