

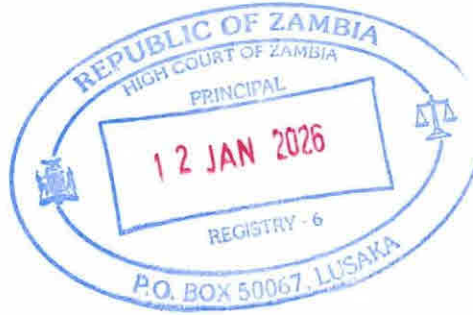
**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY**

2024/HP/0104

HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

SINAI BANDA



PLAINTIFF

AND

ESNART MWALE

DEFENDANT

Before the Hon. Mrs. Justice R. Chibbabbuka on the 12th day of January 2026.

For the Plaintiff: Messrs. Mosha & Company

For the Defendant: Ferd Jere & Company

RULING

Cases referred to:

1. *Owners of Cargo Lately Laden on Board the Siskina v Distos Company Naviera SA* [1979] AC 210
2. *Shamwana v Mwanawasa* (1993 - 1994) ZR 149 (HC).
3. *Shell & BP Zambia Limited v Conidaris & Others* (1975) Z.R. 174
4. *Landiden Hartog N v Seabird C Clean Air Fuel System Limited* (1975) FSR 502 504
5. *Hillary Bernard Mukosa vs Micheal Ronaldson* (1993 - 1994) Z.R. 26 (S.C.)
6. *Hina Furnishing Lusaka Limited v Maiseni Properties Limited* (1983) ZR 40
7. *American Cyanamid Company vs Ethicon Limited* (1975) 1 AALL ER 504
8. *Doctor J.W Billingsley vs J.A Mundi3 Shell & BP Zambia Ltd vs Conidaris & Others* (1975) ZR 174

Legislation referred to:

The High Court Act, Chapter 27 of the Laws of Zambia

Other works referred to:

Atkin's Court Forms, 2nd edition, Volume 22 (1), 1996 issue

1.0 Introduction

1.1 This ruling pertains to the plaintiff's application for an interim injunction, which was filed on 23rd January, 2024 by summons made pursuant to *Order 27 Rule 4* of the *High Court Rules, Chapter 27 of the Laws of Zambia*. The application is supported by an affidavit and skeleton arguments.

2.0 The Plaintiff's Affidavit in Support

2.1 The plaintiff deposes that according to the Nsenga and Chewa matrilineal set up, a Chief is selected from the "Vumo ikulu" that is, the first-born female issue in the lineage of the first family tree. If no one is deemed fit from the "Vumo ikulu," a Chief can be selected from the "Second Vumo" or Second born female issue. The first-born female issue of the first family at the time Chieftainess Nyanje the 6th died was Margaret Zulu whose children, including the plaintiff, were all minors and in school. She is the first female issue of Margaret Zulu from the "Vumo ikulu" family tree. At the time of Margaret Zulu's death, the family deliberated and unanimously agreed that Letiya Banda, Margaret Zulu's younger sister, should take over as care taker Chieftainess Nyanje the 7th until the children of Margaret Zulu became of age.

2.2 Around the year 2021, Letiya Banda and the family held a meeting to discuss the succession to the throne as the children to Margaret Zulu were now of age. The family of the "Vumo ikulu" were not invited as the meeting was held at night and in private. Later, sometime in September 2023, the defendant started operating as Chieftainess Nyanje without the knowledge of the family members of the "Vumo ikulu. Contrary to the tradition and procedure of the Nyanje Chiefdom, no meeting was convened by both the members of the "Vumo ikulu" and "Second Vumo" to appoint the defendant as Chieftainess Nyanje. The defendant is the younger sister of the late Chieftainess Letiya Banda who was from the "Second Vumo.

2.3 The defendant does not qualify to ascend to the throne as Chieftainess because she is not the first-born female issue of the First Family tree nor is she the daughter of the late Chieftainess, and in further disregard of the tradition, the defendant has acquired her own instruments of power. The defendant is illegally using the title of the Nyanje Chieftainess, illegally allocating land as well as signing documents on behalf of and to the detriment of the Nyanje Chieftainess. It has become necessary for an Order of Injunction to be granted as failure to do so, will result in further injustice and irreparable damage which cannot be atoned for by damages.

3.0 The Plaintiff's Skeleton Arguments

3.1 In the supporting skeleton arguments, counsel argued that the plaintiff herein is the Vumo Ikulu and hence the rightful heir to the throne of Chieftainess Nyanje of the Nyanje Chieftainess of Eastern Province. That the defendant has no right to ascend to the said throne and is thus illegally carrying herself out as Chieftainess of the Nyanje people. Counsel argued that it is trite, as held in the case of **Owners of Cargo Lately Laden on Board the Siskina v Distos Company Naviera SA**¹ that injunctions can only be granted where there is a substantive cause of action. That the plaintiff has commenced an action against the defendant with a clear cause of action against her and consequently, making this application very much in order. That ex-parte applications are meant for cases of real urgency as was held in the case of **Shamwana v Mwanawasa**²

3.2 Counsel relied on the **Shell & BP Zambia Limited v Conidaris & Others**³ case to argue that the courts will not generally grant interlocutory injunctions unless the right to relief is clear and unless the injunction is necessary to protect the plaintiff from irreparable injury. That the defendant has been illegally acting as Chieftainess Nyanje and hence must be urgently restrained. If not enjoined, the defendant is likely to cause irreparable injury. In

conclusion, counsel submitted that the plaintiff's application is meritorious and hence should be granted forthwith.

4.0 The Defendant's Affidavit In Opposition

4.1 The defendant filed an opposing affidavit dated 12th April, 2024 wherein she deposed that Chief Nyanje of the Nsenga People is one of the Chiefdoms under the Senior Chief Kalindawalo of the Nsenga people who plays an advisory role to other Nsenga Chiefs such as Chief Mwanjabantu, Chief Sandwe, Chief Ndaka & Chief Mumbi. To contextualize the issue, it is important to look at the history when the Chiefdom was established when Chief Gawa Undi's wife became the 1st Chieftainess Nyanje of the Nsenga speaking people in Sinda, Eastern province. Following her death, she was succeeded by her brother, Chief Nyanje Wa Maziba who became the 2nd Chief Nyanje. Following the demise of Chief Nyanje Wa Maziba, Chief Kalemba Zulu was installed as the 3rd Chief Nyanje. After the 3rd Chief Nyanje died, an acting Chief known as Chief Andelaya was appointed as the 4th Chief Nyanje until Chief Lawrence was appointed, who happened to be the nephew of Kalemba Zulu, the 3rd Chief.

4.2 Upon the demise of the 5th Chief Nyanje Lawrence, Yoram Zulu also known as Jola was installed as a caretaker Chief. Yoram Zulu also known as Jola was installed as a caretaker chief. Following the death of the acting Chief Nyanje Jola in about 1981, Latiya Banda, who had come of age, became Chieftainess Nyanje No. 7. Chieftainess Latiya Banda ruled for more than 40 years until her demise in 2021. It is not true that the succession is limited to selection of the first issue of Vumo Ikulu but rather that the power to appoint a successor is reposed in the Mbumbas, who are composed of the female members of the lineage and are at liberty to consider and select any member of the lineage. It is when there is a tie in the selection process, that the Mbumbas can use Vumo Ikulu as a criterion to select a Chief.

4.3 As per matrilineal tradition and custom, the families in the lineage proposed two names as possible successors, herself and the plaintiff. The proposal was made in August, 2021. The names were then forwarded to the Mbumbas, who traditionally are the Electoral College and mandated to appoint a successor before burying the chief. After consultation with herself and the plaintiff, who indicated her unwillingness to participate in the selection process, the deponent was appointed as a successor in August, 2021 and became Chieftainess Nyanje the 8th of the Nsenga people. Following her appointment, she led the procession of the burial of late Chieftainess Latiya Banda. Her coronation as Chieftainess Nyanje was held on 28th August, 2021. Following the coronation, she has been discharging her duties as Chieftainess including the administration of traditional land to her subjects as provided by law.

4.4 In September, 2021 she was introduced to Chief Kalindawalo by Chief Sandwe, at which meeting some people, excluding the plaintiff, protested. The plaintiff withheld vital information from the court including the fact that she is aware that the defendant was selected in August, 2021 and not September, 2023. It is not true that Latiya Banda was appointed as caretaker Chieftainess Nyanje after the demise of Margaret Zulu. Margaret Zulu never challenged and continued serving as a subject until her demise in 2014. The plaintiff is trying to obtain an injunction 4 years after her ascendance to the throne. The injunction will prejudice the people of Nyanje as it will create a vacuum in leadership.

5.0 The Defendant's Skeleton Arguments

5.1 The defendant also filed skeleton arguments in opposition wherein counsel argued that an injunction is serious and is thus only granted in exceptional and unique circumstances. That the purpose of an injunction is to maintain the position of the parties until full determination of the matter. Counsel

referred to the case of **Landiden Hartog N v Seabird C Clean Air Fuel System Limited**⁴ wherein the court held that an injunction is never lightly granted. That an injunction is only granted where there is real apprehension that if steps are not taken to preserve a party's interest, irreparable damage may be done. Counsel argued that the plaintiff herein is not under any real apprehension that if certain steps are not taken, she will suffer irreparable damage. That while it is not disputed that the plaintiff is indeed the first female issue of Margaret Zulu from the "Vumo Ikulu" family tree, the plaintiff's mother had never shown interest of succession to the throne, and was subject to the leadership of the 6th Chieftainess. The plaintiff's claim is not only unjustified but not supported by evidence. Counsel referred to the case of **Hillary Bernard Mukosa vs Micheal Ronaldson**,⁵ wherein the court said that an injunction will be granted only to a plaintiff who establishes that he has a good and arguable claim to the right he/ she seeks to protect. That the plaintiff's mother has surrendered the chieftainship to her younger sister and supported her rule. That the plaintiff has no basis her for claim to the throne.

5.2 That it is inappropriate to grant an injunction unless it is absolutely vital in order to protect the plaintiff's legitimate interests. That in the case of **Hina Furnishing Lusaka Limited v Maiseni Properties Limited**⁶ the court directed that one who seeks equity must come with clean hands. It is worth noting that in as much as the plaintiff claims that the defendant herein has been illegally acting as Chieftainess Njanje contrary to the tradition and procedure of the Chieftainship, the plaintiff has not disclosed what happened between August 2021 and September 2023. That does the plaintiff claim that there was a vacancy on the throne of the Chieftainess? That it is clear that the plaintiff has not made a full disclosure to this court. Counsel relied on the case of **Shell and BP Zambia Limited** which approved the decision in **American Cyanamid vs Ethicon Limited**⁷ in which principles and tests to be considered when deciding an injunction were set out. Counsel argued that the plaintiff has not met these

requirements. In conclusion, counsel prayed for the dismissal of the plaintiff's application with costs.

6.0 The Hearing

6.1 The hearing of this application was dispensed with in line with this court's authority under *Order 30 Rule 6A of the High Court (Amendment) Rules, 2020*.

7.0 The Decision of the Court

7.1 I am indebted to counsel for the arguments which I have carefully considered. It is well established that an order of interim injunction is a discretionary remedy that the court grants to a claimant to prevent irreparable injury pending the determination of the main matter. The authors of **Atkin's Court Forms, 2nd edition, Volume 22 (1), 1996 issue**, state at page 59 that:

"An interlocutory or interim injunction, whether granted unconditionally or on such terms as the court thinks just, may be granted if it appears to the court to be just and convenient to do so in order to safeguard the position of one of the parties until his rights can be finally determined at the trial of the action."

7.2 It is important to remember that an injunctive order is not awarded as a matter of right but is awarded judiciously having regard to all the facts and circumstances of each and every case. There are relevant principles and tests to be applied when a court is faced with deciding whether or not to grant an interim injunction which were set out in the **American Cyanamid Company vs Ethicon Limited** case. Notably, that the court should address the question of whether or not on the facts raised there is a serious question to be determined at trial, whether damages would be an adequate remedy and the defendant is in a position to pay, and lastly where the balance of convenience lies. Another important aspect for the court to consider is whether the

injunction application is being used by the parties as a convenient opportunity for the summary determination in finality of an entire suit. The Supreme Court in the case of **Doctor J.W Billingsley vs J.A Mundi**⁸ held that:

“The application for an injunction should be treated as such and should not be taken as a convenient opportunity for the summary determination in finality of an entire suit....the purported final determination of all the issues at that stage was premature and incompetent and accordingly a complete nullity.”

7.3 In *casu*, the plaintiff is seeking an injunctive order of this court to stop the defendant from carrying herself out as Chieftainess Nyanje of the Nyanje Chiefdom. By this court granting the order sought, it will in effect be summarily determining this matter which goes against the principle of injunctions. Further the plaintiff has not sufficiently demonstrated what prejudice will be occasioned to her or the Chiefdom should the defendant remain as Chieftainess Nyanje pending the determination of this action. There is however prejudice that will be occasioned to the Chiefdom if it is left without leadership during the subsistence of this action. This is clearly not an appropriate case in which an injunction can be granted and hence the plaintiff's application is dismissed. An order for directions will ensue.

The defendant is awarded costs, to be taxed in default of agreement.

Leave to appeal is granted.

Dated at Lusaka this..... day of 2026.


R.H Chibbabbuka
HIGH COURT JUDGE