

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

**2024/HP/1451**

**HOLDEN AT LUSAKA**  
(Civil Jurisdiction)



**BETWEEN:**

**EVARISTO CHIYANGA  
TONEY KAMELA KATOKA  
MALANJI MUZEYA**

**1<sup>ST</sup> PLAINTIFF  
2<sup>ND</sup> PLAINTIFF  
3<sup>RD</sup> PLAINTIFF**

**AND**

**FORDSON MUHINJI MALISHINYI  
SENIOR CHIEF SAILUNGA  
CHIEF KAKOMA  
CHIEF KANYAMA**

**1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT  
3<sup>RD</sup> DEFENDANT  
4<sup>TH</sup> DEFENDANT**

**Before the Honourable Mrs. Justice R. Chibbabbuka on the 30<sup>th</sup> day of  
April, 2025**

For the Plaintiffs: Mr F. Zulu, Messrs MPM Legal Practitioners

For the Defendants: Mr. W. Simutenda, Messrs TMB Advocates (Standing in  
for Messrs K Tembo & Advocates)

---

**RULING**

---

**Cases referred to:**

1. *American Cyanamid Company vs Ethicon Limited* (1975) A.C 396
2. *Harton Ndove vs National Educational Company of Zambia Limited* (1980) Z.R 184
3. *Shell and B.P Zambia Limited vs Conidaris and Others* (1975) ZR 174
4. *Turnkey Properties vs Lusaka West Development Corporation & Another* (1984) ZR 85
5. *Doctor J.W Billingsley vs J.A Mundi* (1982) ZR 11
6. *Beatrice Muimui vs Sylvia Chunda* SCZ/50/2000 (unreported)
7. *Mukumbuta Mukumbuta & Others vs Nkwilimba Choobana & Others* SCZ/8/2003

**Legislation referred to:**

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

*The Rules of the Supreme Court of England, (Whitebook) 1999 Edition.*

**1.0 Introduction**

This ruling pertains to the plaintiffs' application for an interim order of injunction, which was filed on 9<sup>th</sup> October, 2024, by summons made pursuant to *Order 27 of the High Court Rules, High Court Act, Chapter 27 of the Laws of Zambia* as read together with *Order 29 of the Rules of the Supreme Court of England, 1999 edition.*

**2.0 The Plaintiffs' Affidavit in Support**

The plaintiffs filed an affidavit, of even date as the summons, which they collectively deposed to. The plaintiffs aver that they have commenced an action to challenge the continued masquerading of the 1<sup>st</sup> defendant as Senior Chief Musele of the Lunda people of Kalumbila District in the North-Western Province of the Republic of Zambia. That the 1<sup>st</sup> defendant was purportedly selected and installed as Senior Chief Musele on 21<sup>st</sup> and 22<sup>nd</sup> June, 2024 respectively by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants in a manner that is contrary to the customs and traditions of the Musele Royal Establishment. Following the death of the Senior Chief Musele, Felix Muzeya Ndonga on 11<sup>th</sup> July, 2022, the Musele Royal Family and the Caretaker Chief ought to have decided when the selection meeting for the new Senior Chief Musele was to be held.

Contrary to the foregoing, it was the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants who called for the selection meeting by a letter dated 24<sup>th</sup> May, 2024, contrary to the Musele Royal Establishment customs and traditions. The Musele Royal Family protested against the call for the selection meeting by a letter dated 4<sup>th</sup> June, 2024, which was ignored. There was no Caretaker Chief, who is pivotal to the selection of the Senior Chief Musele, to host and handover the instruments of power to the 1<sup>st</sup> defendant. That there was no installation of the 1<sup>st</sup> defendant as the instruments of power that symbolize the office of Senior Chief Musele were never given to the 1<sup>st</sup> defendant. The matter of the Caretaker Chief is before Honourable Madam Justice M.C. Mulanda in the Ndola High Court under cause number 2022/HN/311 in the matter of Fordson Museya and 4 others vs Felix Njapawu and 13 Others where trial is yet to commence.

As per the Musele Royal Establishment Customs and Tradition, there can never be any selection and installation of Senior Chief Musele without the participation and involvement of the Caretaker Chief, and members of the Musele Royal family from the Katayi, Chimbumbu and Nyamuchinga royal families' lineages and a selected few senior Headmen of the Musele Chiefdom. The 1<sup>st</sup> defendant is not an eligible person to be selected as Senior Chief Musele as he does not come from any of the eligible Royal Families. The lineage for Senior Chief Musele is matrilineal. The 1<sup>st</sup> defendant is the stepson to the late Senior Chief Musele II, Mr. Muhangu Mulishinyi and his mother does not come from any of the Musele Royal families for him to ascend to the throne of Senior Chief Musele and he does not come from either the Katayi, Chimbumbu or Nyamuchinga Royal families. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants do not have powers to install Senior Chief Musele. The installation can only be done by the Caretaker Chief who hands over the instruments of powers to the Senior Chief Musele.

During the purported selection process, persons that intended to be considered for the selection as Senior Chief Musele were not allowed to address the meeting contrary to Musele Royal Establishment Customs and Traditions. The 1<sup>st</sup> defendant is masquerading as Senior Chief Musele and if he continues to do so will he will cause irreparable damage to the office of Senior Chief Musele and the chiefdom. The 1<sup>st</sup> Defendant's action will be detrimental to the interests of the chiefdom and that payment of damages resulting thereof may not be adequate to compensate the chiefdom and the Royal Family. The total wellbeing of the Senior Chief Musele will suffer greater inconvenience should the 1<sup>st</sup> defendant be allowed to continue to masquerade as Senior Chief Musle. The 1<sup>st</sup> defendant has informed members of the Musele Royal Family, among them the plaintiffs, who are not supporting his selection as Senior Chief Musele to leave the Musele Royal Village and has informed them that he will soon remove and destroy all their houses, and properties, which acts cannot be adequately compensated for by an award of damages.

## **2.1 The Plaintiffs' Skeleton Arguments**

The plaintiffs filed skeleton arguments in support of their application wherein counsel argued that it is trite law that injunctive reliefs are given at the discretion of the court and that the applicant must satisfy the court that they have a clear claim and that their claim is not frivolous or vexatious, that is to say that there is indeed a serious

question as regards that right to be tried and considered at the trial of the main cause. Counsel relied on the case of **American Cyanamid Co. V Ethicon Limited**<sup>1</sup> to support the argument. Counsel argued that an injunction is a remedy in personam as the remedy affects individuals and not the property, and that in considering an application of an injunction, the court must consider public interest and public policy. That the court is however, not called upon to decide on the rights of the parties but the court should merely be satisfied that there exists a serious question to be tried at the hearing and that on the facts before the court, there is a probability that the applicant may be entitled to relief as per the holding in the case of **Harton Ndove vs National Education Company**.<sup>2</sup> That the principle reason for an interim injunction is to maintain the status quo while pending the determination of the rights of the parties by a competent court as was held in the **Harton Ndove** case.

Counsel argued further that the court is also called upon to look at the extent of the damage the applicant may suffer. That the fact that a monetary sum could easily be assessed to compensate damage is no reason for withholding the injunction. The court must grant an injunction not based on the size of the perceived damage which if minimal the respondent would easily accept and pay for but on the fact that it is an infringement on the rights of the applicant. An injunction as a remedy is there to protect the rights, duties and obligations of the applicant, and by so doing keeping the status quo so that matters may not be destroyed or changed to the detriment of the plaintiffs herein. Counsel referred to the case of **Shell BP Zambia Limited vs Conidaris and others**<sup>3</sup> wherein the Supreme Court held inter alia 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 applicant from irreparable injury, mere inconvenience is not enough.”*

Counsel argued that where there is irreparable injury and inadequacy of remedy of damages, the court ought to grant an injunction to the applicant. Counsel argued that *Order 27 rule 1* of the *High Court Rules*, and *Order 29 rule 1* of the *Rules of the Supreme Court of England* give this court the power to grant the order sought. That there is a serious issue to be tried as the plaintiffs contend that the purported selection process and installation of the 1<sup>st</sup> defendant by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants as Senior Chief Musele was contrary to the Musele Royal Establishment Customs and Traditions. That the continued masquerading of the 1<sup>st</sup> defendant as Senior Chief Musele, if not

stopped, he will cause irreparable damage to the Musele chieftom and the office of Senior Chief Musele. Counsel prayed that the 1<sup>st</sup> defendant be enjoined from masquerading as Senior Chief Musele, and that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants be restrained from interfering with the office of Senior chief Musele.

### **3.0 The Defendants' Affidavit in Opposition.**

The 1<sup>st</sup> defendant filed an affidavit in opposition on 8<sup>th</sup> November, 2024 wherein he avers that his name is Fordson Malishinyi Musele and not Fordson Muhinji Malishinyi as stated in the plaintiffs' originating process. That the Caretaker Chief is appointed by the Kayayi, Chimbumbu and Nyamuchinga Royal families for exclusively one year, which is the mourning period. The Caretaker Chief does not possess the authority to determine the timing of the selection meeting, installation of the Senior Chief Musele or facilitate the handover of the instruments of power. The Caretaker Chief's powers are limited to administrative and oversight functions. Madam Justice M.C Mulanda in a ruling under cause no. 2023/HN/311 held that the tenure for the caretaker chief had expired since it only lasts for one year.

The Kayayi, Chimbumbu and Nyamuchinga Royal families nominate three candidates for the position of Senior Chief Musele which names are presented to the Lunda Chiefs that is Senior Chief Musokantanda, the 2<sup>nd</sup> defendant, 3<sup>rd</sup> defendant and 4<sup>th</sup> defendant on dates approved by the said chiefs. The said Lunda chiefs preside over the selection and installation of the Senior Chief Musele. Senior Chief Musokantanda who is situated in the Democratic Republic of Congo is the paramount and supreme chief of the Lunda people and the primary custodian of the instruments of power. The matter under cause no. 2023/HN/311 was concluded and the court held that the caretaker's tenure had expired as per exhibit "FMM2". The electoral college for the selection of Senior Chief Musele was constituted in accordance with the custom and tradition of the Musele Royal Establishment.

The lineage for Senior Chief Musele can be either patrilineal or matrilineal due to the traditional practice of Senior Chiefs marrying their cousins. He is the biological son of the deceased Senior Chief Musele II who had married his cousin, the deponent's mother, thereby maintaining the royal lineage within the family. The 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs were not selected as preferred candidates while the 1<sup>st</sup> plaintiff is not a member of any of the three royal families. No irreparable damage has been occasioned by his selection and installation as Senior Chief Musele. The granting of the order sought will cause

irreparable damage as the Musele Chieftainship will have no chief during the duration of these proceedings, and no Caretake Chief as the caretaker chief's tenure expired.

### **3.1 The Defendants' Skeleton Arguments**

The defendants filed skeleton arguments in support of the affidavit in opposition, wherein counsel argued that the principles established in the **American Cyanamid** case have not been satisfied. On whether there exists a serious question to be tried, counsel relied on the **Harton Ndove** case in arguing that it is not enough for the plaintiffs to show that they have an arguable case but that they must also demonstrate a clear right to the relief sought, which counsel argues the plaintiffs herein have not shown. Counsel argues that the plaintiffs intend to restrain the 1<sup>st</sup> defendant from acting as Senior Chief Mulele which will go against the ruling of the court under cause no. 2023/HN/311 by allowing the caretaker whose tenure was held to have expired to continue acting as Senior Chief Musele. Counsel argued that where there are two competing equitable interests, the general rule of equity is that the person whose equity attached to the property first will be entitled priority over the other. Where the equities are equal and neither claimant has the legal estate, the first in time prevails.

Counsel relied on the **Shell & BP** case in arguing that the granting of the order sought will cause irreparable damage to the 1<sup>st</sup> defendant and the Musele chieftom which will be left without a leader. That no injury will be occasioned to the plaintiffs which cannot be atoned for by an award of damages. Counsel argued that the balance of convenience tilts in favour of not granting the order of interim injunction as no injury will be occasioned to the plaintiffs. Counsel referred to the case of **Turnkey Properties vs Lusaka West Development Corporation & Another**<sup>4</sup> for the argument that the core of injunction law is the preservation of the status quo pending the determination of the parties' rights. Counsel argued that there is no status quo that needs to be preserved on the plaintiffs' part but there is a status quo to be preserved on the defendants' part which is the maintenance of the 1<sup>st</sup> defendant as chief so as to prevent leaving the chieftom vulnerable without leadership. Counsel prayed for the dismissal of the application with costs.

### **7.1 The Plaintiffs Affidavit in Reply**

The plaintiffs filed an affidavit in reply on 25<sup>th</sup> November, 2024 wherein they restated their averments as contained in their affidavit in support of the application. They add that the caretaker does not only have administrative and oversight powers in the

chieftdom but also has decision making power, while acting with the Musele Royal Family, regarding succession and installation of the new Senior Chief Musele. The matter under cause no. 2023/HN/311 has not been concluded and the exhibit 'FMM2' is a ruling on an injunction and not the final judgment of the court.

That indeed the names of the nominated candidates for Senior Chief Musele are selected from the Katayi, Chimbumbu and Nyamuchinga Royal families and may be given to the Lunda Chiefs including the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants. No decision was made that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants should preside over the selection and installation process. Senior Chief Musokatanda is not the custodian of the instruments of power upon the death of Senior Chief Musele but that the same are held by the Caretaker Chief. The candidates selected for chieftainship were not chosen by the rightful members of the Musele and Chimbumbu Royal families. The position of Senior Chief Musele is only for persons from the matrilineal lineage.

#### **4.1 The Plaintiffs Skeleton Arguments in Reply.**

The Plaintiffs filed skeleton arguments in reply wherein counsel reiterated the principles that govern injunctions. Counsel argued further that this matter and the one under cause no. 2023/HN/311 are different on the basis that the plaintiffs herein have not raised the issue of the Caretaker Chief's appointment and tenure.

#### **5.0 The Hearing**

The parties relied on their respective documents filed in support and opposing the application.

#### **4.0 The Decision of the Court**

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 affords to a claimant to prevent irreparable injury pending the determination of the main matter. 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** 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**<sup>5</sup> 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.”*

The plaintiffs by this application are seeking an injunctive order of this court to stop the 1<sup>st</sup> defendant from purportedly masquerading as Senior Chief Musele. 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 plaintiffs have not demonstrated what prejudice will be occasioned to them should the 1<sup>st</sup> defendant remain as Senior Chief Mulele pending the determination of this action. Their allegation that the 1<sup>st</sup> defendant has threatened to eject them from the Chieftdom and destroy their properties is unsubstantiated. There is however prejudice that will be occasioned to the chieftdom if it is left without leadership especially in light of the fact that the period within which the chieftdom should be under a Caretaker Chief had expired as per the ruling of my learned sister Madam Justice M.C Mulanda under cause no. 2023/HN/311 at pages R17 to R18. This is clearly not an appropriate case in which an injunction can be granted.

In addition to the above, I have carefully examined the claims in this matter against those under cause no. 2023/HN/311 which appear distinct on the face of it but which on proper scrutiny reveals that the desired outcome in both matters is essentially the same. The plaintiffs are claiming, among others, the following reliefs under this cause:

- (i) An order for the declaration that the 1<sup>st</sup> defendant was not duly selected as Senior Chief Musele on the 21<sup>st</sup> June, 2024 and he is not the rightful heir to the throne of Senior Chief Musele.

- (ii) An Order for the declaration that the selection and installation of the 1<sup>st</sup> defendant as Senior Chief Musele is null and void for being in violation of the Musele Royal Establishment customs and traditions for the selection of Senior Chief Musele.

Under cause 2023/HN/311, the plaintiffs therein are claiming, among other claims, the following:

- (i) A declaration that Chief Musokantanda and Chief Kakoma have no role in the process and selection of a caretaker or even the installation of the Chief.

Before the issue of whether the cited chiefs have a role to play in the process of installation of a chief could be determined by the court under cause no. 2023/HN/311, the plaintiffs herein commenced this action seeking to have the installed chief declared to have not been properly selected and installed on the basis that the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants herein had no authority to select and install the 1<sup>st</sup> defendant as Senior Chief Musele. This act by the plaintiffs is tantamount to forum shopping which is sternly frowned upon by the courts. The act of forum shopping is the worst form of abuse of court process as it wastes the court's time and aids in formation of backlog. The Supreme Court in the case of **Beatrice Muimui vs Sylvia Chunda**<sup>6</sup> held that:

*“Once a matter is before court in whatever place, if the process is properly before it, that court should be the sole court to adjudicate all issues involved, all interested parties have an obligation to bring all issues in that matter before that particular court without resorting to forum shopping in other courts. This is abuse of court process which should not be accepted.”*

Chief Kakoma who has been cited under cause no. 2023/HN/311 is the 3<sup>rd</sup> defendant herein. The plaintiffs herein have in the affidavits in support and reply to this application also made reference as to Chief Musokantanda's lack of authority in the process of selecting and installation of Senior Chief Musele. The 2<sup>nd</sup> plaintiff, 3<sup>rd</sup> plaintiff and 1<sup>st</sup> defendants are also parties to cause no. 2023/HN/311. In determining whether the 1<sup>st</sup> defendant was correctly selected and installed as Senior Chief Musele, this court will have to make pronouncements on the selection and installation process. Similarly, to determine whether or not the cited chiefs under cause no. 2023/HN/311 have a role to play in the process of installation of the chief, the court will have to make pronouncements on the selection and installation process. It follows therefore that the

trial of the issue relating to the selection and installation process of Senior Chief Musele in two separate courts may lead to the courts, who are of equal jurisdiction, to make conflicting pronouncements on the same issue. The action under cause no. 2023/HN/311 is still subsisting and as such all issues relating to the selection and installation of Senior Chief Musele must be tried under that cause.

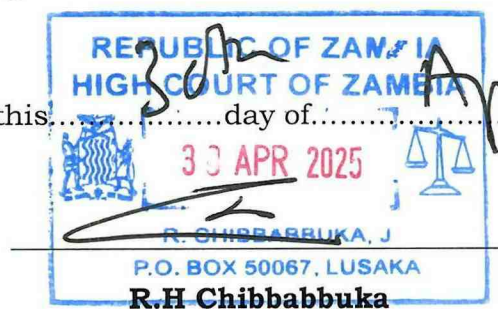
Further, while the reliefs under this cause do not refer to the Caretaker Chief, the assertions in the statement of claim, and even in the affidavits in this application, clearly reveal that this court will be called on to make declarations as to the powers of the Caretaker Chief. The issues relating to the extent of the Caretaker's authority have to be determined under cause no. 2023/HN/311.

The net result of this application is that the application for an order of injunction fails, and this entire cause of action is dismissed for being an abuse of court process. The Supreme Court in the case of **Mukumbuta Mukumbuta & Others vs Nkwilimba Choobana & Others**<sup>7</sup> strongly admonished counsel for deliberately and consciously forum shopping resulting in the courts making conflicting decisions on the same subject matter, and held that it was counsel to be punished in costs for the act. Counsel for the plaintiffs herein ought to have advised against commencing this action while there is already an existing matter on the same issue before another court.

Costs of the injunction application and the entire action are awarded to the defendants, to be taxed in default of agreement and paid forthwith. The costs are to be borne by the plaintiffs and their counsel in equal proportions.

Leave to appeal is hereby granted.

Dated at Lusaka this ..... day of ..... 2025



**HIGH COURT JUDGE**