

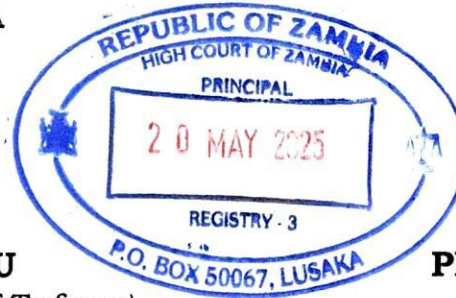
IT

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

2025/HP/0441

BETWEEN:

MATTHEW KAKUNGU
(Suing as Senior Chief Tafuna)



PLAINTIFF

AND

MAYBIN MWANSA

DEFENDANT

**BEFORE: HONOURABLE, LADY JUSTICE G. C. CHAWATAMA
IN CHAMBERS ON THE 29TH APRIL, 2025.**

For the Plaintiff : Mr. E. B. Kaluba and Mr. M. Sambo
both of Messers Emmanuel & Onesimus Legal
Practitioners.
For the Defendant : Miss. C. Sichinga of Messers Japhet Zulu Advocates

RULING

CASES REFERRED TO:

1. *American Cynamid V Ethicon Corporation Limited (1975) AC 386*
2. *Richard Mofya v Stanlyon Employment Limited and Eco Bank Limited (2014) ZR 382*
3. *Elias Mumeno and 43 others v Esau Phiri Jacob Phiri and Others Appeal No. 63 of 2017*
4. *Ubinga investments Limited v Teklemicael Menstab and Sember Transport and Mechanical Limited SCZ judgment No. 25 of 2014*
5. *Shell and BP Zambia Limited v Conidaris and Others (1975) ZR 174*
6. *ZIMCO Properties Limited v LAPCO Limited (1988/89) Z.L.R 174*
7. *Harton Ndovi v National Educational Company of Zambia (1980) ZR 184*
8. *Stripes Zambia Limited v Cinderella Investments Limited and Another Appeal No. 200 of 2012*
9. *Webby Mulubisha v Attorney General 2018/CCZ/0013*

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 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 restrain the Defendant, whether by himself, his agents or servants or otherwise from trespassing on the walamo tradition site, interfering whatsoever and however with the Plaintiff's, the Lungu Royal Establishment and the Walamo tradition committee's use of the walamo tradition ceremony site; demanding for or collecting money from the people operating from the site.

1.2 The application for an interim injunction was made by way of summons pursuant to **Order 27, Rule 4 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 4 *"In any suit for restraining the Defendant from the committal of any breach of contract or other injury, and whether the same be accompanied by any claim for damages or not, it shall be lawful for the Plaintiff, at any time after the commencement of the suit, and whether before or after judgment, to apply to the Court or a Judge for an injunction to restrain the Defendant from the repetition or the continuance of the breach of contract or wrongful act complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract, or relating to the same property or right, and such injunction may be granted by the Court or a Judge on such terms as to the duration of the injunction, keeping an*

account, giving security or otherwise, as to the Court or a Judge shall seem reasonable and just:

Provided that any order for an injunction may be discharged, varied or set aside by the Court or a Judge, on application made thereto by any party dissatisfied with such order”.

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”.

1.3 The summons was accompanied by an affidavit in support and skeleton arguments.

2.0 AFFIDAVIT EVIDENCE

2.1 The affidavit in support of the summons for an order of interim injunction was sworn by the Plaintiff himself. It was deposed that as the Senior Chief of the Lungu speaking people, one of the Plaintiff’s responsibilities is to preserve and protect the traditions, customs, and culture of the Lungu speaking people. That like many other tribes in Zambia, the Lungu people have long upheld the tradition of the walamo tradition ceremony, which is held annually on the last Saturday of September.

2.2 It was the deponent's further averment that the walamo ceremony takes place at the walamo tradition site, which is located at Ngwenya Market, in Mpulungu district.

- 2.3 That around the year 2022, the Mpulungu Town Council initiated a process to subdivide the land forming Ngwenya Market, including the site, to obtain a certificate of title in its name. In response, the Plaintiff, together with other members of the Lungu royal establishment, took out action against the council before the High Court of Zambia under cause No. 2020/HP/0557, challenging the subdivision process, which had the effect of disposing of the Lungu royal establishment of the site.
- 2.4 Further, on the 3rd October, 2021, the Council, through its Chairman, wrote a letter to the Plaintiff apologising for how they attempted to subdivide the land forming the site to create sub 2 of sub A of stand 606. In the letter, the Council also requested that the Plaintiff withdraw the matter from the Courts of law to allow for an out-of-court settlement. A copy of the letter of exhibited and marked "MK1".
- 2.5 It was further averred that after extensive deliberations with the Council and the Lungu Royal Establishment, the Plaintiff entered into a consent agreement with the Council to withdraw the action under cause No. 2020/HP/0557 before the High Court.
- 2.6 That after withdrawing the High Court matter, on the 27th November, 2023, the Plaintiff on behalf of the Lungu Royal Establishment and the Lungu people, entered into a consent agreement with the Council to share the land forming Ngwenya Market to leave the walamo tradition site in the

possession, custody, and care for the Lungu people. A site plan was drawn to this effect and attached to the agreement, to show a clear demarcation between the area left for traditional activities and given to the Plaintiff as the custodian and the area to be managed by the Council. A copy of the agreement was exhibited and marked "MK2."

2.7 It was averred that it was agreed that the remaining extent of Sub A of stand 606, in the site plan annexed to exhibit MK2, would remain for the Lungu people, while Sub 2 of Sub A of stand 606 would be retained by the Council.

2.8 That, according to clauses 2.2 and 2.3 of the agreement, the Council was granted exclusive use of the portion of the property allocated to it, while the Plaintiff, on behalf of the Lungu people, was granted exclusive use of the portion of land allocated.

2.9 It was further deposed that as a means of fundraising for the annual walamo ceremony, the Lungu Royal Establishment has, from time immemorial, allowed the Lungu people and others to trade at the walamo tradition site. The traders operate at the site to raise funds that are given to the walamo tradition committee to support the preparation and hosting of the ceremony.

2.10 That at the beginning of the year 2025, the walamo committee sent individuals to begin preparations for the ceremony scheduled to be held in September 2025. The Defendant has

been trespassing on the portion of land that, under the agreement reserved for the Lungu royal establishment and as the site for the walamo ceremony.

2.11 It was averred that on the 28th February, 2025 the Defendant along with his agents, threatened violence against the members of the walamo committee who were present at the site and physically dragged the Plaintiff's retainer, Mr. Thomas Muziya, away from the site claiming that they had no right to be on the site.

2.12 It was averred that through the Plaintiff's advocates, the Plaintiff sent a letter of demand to the Defendant, requesting that the Defendant cease to trespass on the walamo site, harassing the traders and interfering with the quiet possession of the site of the Lungu people and personnel who are required to prepare for the walamo ceremony. A copy of the letter of demand was exhibited and marked "MK3".

2.13 That on the 17th March, 2023, the Plaintiff's advocates received a letter from Homerights Undercover Investigations agency in response to the letter of demand where the author claimed the Defendant is the chairman at the walamo traditional ceremony site and as such, cannot be stopped from conducting himself in the manner he has been conducting himself. A copy of the letter was exhibited and marked "MK4".

2.14 It was averred that although the Defendant claims to be the chairman at the walamo tradition site, he has not been appointed by the Plaintiff, the Lungu royal establishment, the walamo committee, or any person with authority over the site, nor has he been appointed in any capacity at all.

2.15 That the Defendant is falsely holding himself out as chairman without any authority or authorization from any member of the Lungu royal establishment or the Plaintiff, as such, the Defendant's actions are illegal. That if the Defendant is not restrained from harassing and interfering with the activities of the walamo committee and the traders at the walamo site, the Lungu people will be unable to celebrate their traditional ceremony in September this year due to the fact that the majority of the funds for the ceremony are raised at the site and preparations for the ceremony also begins there at the start of the year.

3.0 SKELETON ARGUMENT

3.1 Counsel began submission of their skeleton argument by citing *Order 27, Rule 4 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 Ethicon*¹, wherein four prerequisites were established as being general principles governing the grant of an injunction. That the first question is whether or not there is a serious question to be tried. Second, whether the award of damages would be an

adequate remedy for the injured party; third is whether there is a good or at least an arguable claim; and fourthly, where the balance of conveniences lies.

3.2 Counsel cited the following cases on the question of whether or not there is a serious question to be tried.

1. ***Richard Mofya v Stanlyon Employment Limited and Eco Bank Limited***² wherein it was held that the two main primary issues to be addressed or considered at the outset are whether the claimant has demonstrated that his right to relief is clear and if irreparable damage will be occasioned to the claimant if the injunction was not granted.

2. ***Elias Mumeno and 43 others v Esau Phiri Jacob Phiri and Others***³ where the Court of Appeal held that:

“Therefore, the Court needs to be satisfied only that there is a serious question to be tried on the merits of the case before it. This means that the court is required to investigate the merits to a limited extent only to ascertain if there is a serious question to be tried. What needs to be shown is that the applicant’s case or cause of action has substance based on the facts. Beyond that, it does not matter if the applicant’s chance is 90 percent or 20 percent. If there is no serious question to be tried on the substantive claim, the application for an injunction should fail.”

- 3.3 It was submitted that the Plaintiff is the owner of the walamo tradition site, which has, since time immemorial, been used by the Lungu speaking people to celebrate their annual traditional ceremony. That there is a serious question for determination regarding the walamo traditional site of significant cultural and historical importance, preserved to maintain the heritage and traditions of the Lungu speaking people. It was argued that the Plaintiff has a legitimate right that he seeks to protect, namely his property rights over the walamo traditional site, as Senior Chief Tafuna, in support of this proposition, the case of ***Ubinga Investments Limited v Teklemicael Menstab and Sember Transport and Mechanical Limited***⁴ was cited.
- 3.4 On the question whether the award of damages would be an adequate remedy, the case of ***Shell and BP Zambia Limited v Conidaris and Others***⁵ and submitted that the dispute concerns land which is used as a traditional site and a heritage of the Lungu speaking people. No monetary compensation would be sufficient to remedy the loss suffered by the Plaintiff and the Lungu people if they are denied access to the traditional site and consequently prevented from conducting their annual traditional ceremony, which forms part of this country's existence.
- 3.5 As regards the question where the balance of convenience lies, the case of ***ZIMCO Properties Limited v LAPCO Limited***⁶ was also cited wherein Supreme Court observed 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 compensate the Plaintiff for any harm which may be suffered as a result of the Defendants action which is sought to be restrained. Counsel submitted that the potential harm to the Plaintiff and the Lungu speaking if the injunction is denied far outweighs any possible injury to the Defendant if the injunction is granted. The Defendant's actions threaten to disrupt the long-standing traditional practices of the Lungu-speaking people.

4.0 AFFIDAVIT IN OPPOSITION

- 4.1 In opposing the interim injunction, the Defendant on the 15th April, 2024, filed an affidavit in opposition, list of authorities and skeleton argument.
- 4.2 It was deposed that the Plaintiff is not the Senior Chief Tafuna of the Lungu speaking people and has failed to exhibit any Chief recognition order signed by the President as required by subsection 2 of section 3 of the Chief Act to show this Court that, if indeed he is Senior Chief Tafuna.
- 4.3 That the correct position is that the question of who should ascend to the throne of Senior Chief Tafuna is currently a subject of litigation before Madame Justice Newa under cause No. 2020/HP/0342. Copies of the defence and counterclaim were exhibited, marked "MM1-2".

- 4.4 It was averred that the Plaintiff did not give a full and frank disclosure of the material facts that there is currently a legal contest as to who should ascend to the throne of Senior Chief Tafuna, and that the Court has not yet declared who is the rightful Senior Chief Tafuna.
- 4.5 That the walamo ceremony is not an annual traditional ceremony as purported by the Plaintiff. The walamo ceremony is in fact an initiation or installation right for ascending to the throne of Senior Chief Tafuna, and it involves a Senior Chief Tafuna elect swimming from the Ngwenya shore of Lake Tanganyika to Mbita island on Lake Tanganyika while holding on to canoes paddled by helpers and returning to the shore. If the Senior Chief Tafuna elect makes it to Mbita island and back to the Ngwenya shore alive, then it is taken that the gods have accepted him to rule over the Lungu people, and it is only then that he ascends to the throne.
- 4.6 That the walamo ceremony was last held in 1935 during the installation of George Chivunde Tafuna as Senior Chief Tafuna. The Ngwenya site where the walamo ceremony is held during the installation of a Senior Chief Tafuna, in fact ordinarily operates as a fish market where fishermen dock and sale their fish to fish traders since time immemorial.
- 4.7 It was averred that the Plaintiff is not the Senior Chief Tafuna and therefore has no authority to enter into any agreement over the walamo area.

- 4.8 It was averred that Plaintiff's motive or intent is to illegally take over the Ngwenya site and turn it into a money-making venture by illegally collecting market levies from the marketeers for himself and his illegal servants or agents.
- 4.9 That the Defendant was advised by his lawyers and verily believes that under the Market and Bus Station Act No. 7 of 2017, the Plaintiff has no legal authority to operate a market or to collect levies from the Marketeers as he intends to do.
- 4.10 It was averred that the correct position is that the Plaintiff sent his servant or agents to start charging and collecting levies from the marketers and as one of the marketeers, the Defendant simply informed the Plaintiff's agents that the Plaintiff had no legal authority to take over the Ngwenya site and start collecting money from marketeers.
- 4.11 That this is not a proper case to grant the Plaintiff an injunction as he has no authority or *locus standi*, and that the Defendant believes the Plaintiff will only use the injunction to oppress fish traders who have traded from the Ngwenya site since time immemorial by collecting illegal levies.
- 4.12 In the skeleton argument filed, it was submitted that the Plaintiff's right to relief is not clear, and the Plaintiff has no real prospects of succeeding at trial. The case of **Harton Ndovi v National Educational Company of Zambia**⁷ where it was held that "before granting an interlocutory injunction, it must be

shown that there is a serious dispute between the parties and the Plaintiff must show on the material before court, that he has any real prospect of succeeding at trial". Also, the case of **Shell and BP Zambia Limited v Conidaris and Others**⁵ 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 means injury which is substantial and can never be adequately remedied or atoned for by damages".

4.13 It was then submitted that since there are two important questions in this matter, namely that:

1. *Since the Plaintiff has no chief's recognition order signed by the republican president as required by subsection 2 of section 3 of the Chiefs Act, can the Plaintiff be said to have locus standi when he is not recognized as Senior Chief Tafuna.*
2. *Since the succession dispute as to who should ascend to the throne of Senior Chief Tafuna is sub judice under cause No. 2020/HP/0342 can the Plaintiff claim to have legal authority of the affairs of the Lungu Chiefdom when the court has not declared him the rightful person to ascend to the throne.*

4.14 Counsel argued that the above questions raise serious issues which show that the Plaintiff lacks locus standi and as such

his right to relief is not clear and his prospects of succeeding at trial are deemed.

4.15 As regards the balance of convenience which according to the Defendant does not weigh in for the Plaintiff, the case of **Zimco Properties v Lapco Limited**⁶ was cited wherein the Supreme Court held that:

“Where the convenience favoured retaining the status quo in so far as it related to the subject matter of the issue to be tried upon, in such circumstances an interlocutory injunction was a proper way of protecting the parties’ interest”.

4.16 It was then submitted that the fishermen and fish traders have always traded at the Ngwenya site since time immemorial without any incident or disruption. That the Plaintiff, without any locus standi, has been attempting to disrupt the operations of the area by seeking to take over and start charging illegal levies. That if the Plaintiff is granted an injunction, he will disrupt the *status quo* that has existed peacefully until he came on the scene. That the balance of convenience does not weigh in favor of the Plaintiff but instead weighs in favor of many innocent fishermen and fish traders, such as the Defendant, whom the Plaintiff wants to be extorting money from, despite him not being the recognized Chief.

4.17 On the failure by the Plaintiff to give full and frank disclosure of material facts, the case of **Stripes Zambia Limited v Cinderella**

Investments Limited and Another⁸ was cited, where in it was held that:

“The party applying for the injunction must have ‘clean hands’, i.e they must have acted properly themselves. They must disclose all relevant facts to the court, including any matters favourable to the other side. This is important as a failure to do this can result in the injunction being set aside”.

4.18 It was submitted that the Plaintiff suppressed or failed to give a full and frank disclosure of the fact that he does not possess a Chief recognition order signed by the President and that as such he is not the recognized purported Chief. The Plaintiff suppressed or failed to give a full and frank disclosure of the fact that the issue of who is the rightful Senior Chief Tafuna is before the Court under cause No. 2020/HP/0342. Also, that the Plaintiff misled the Court by mischaracterizing the walamo traditional ceremony as being an annual event when it is a once-off initiation or installation right for ascending to the throne of senior Chief Tafuna, and when in fact, the last walamo ceremony was held in 1935 when George Chivunde Tafuna Sikazwe ascended to the throne of senior Chief Tafuna. That the Plaintiff failed to give a full and frank disclose of material facts particularly the fact that he does not have a chief recognition under in his favour and the fact that the question of who is the rightful senior Chieftainship Tafuna is *sub judice* and the Court has not declared the Plaintiff as the rightful Senior Tafuna. This Court was urged to deny the Plaintiff the equitable relief of an interim injunction as the Plaintiff to give a full and final disclose as the Plaintiff has not approached this court with clean hands.

5.0 AFFIDAVIT IN REPLY

- 5.1 In the affidavit in reply filed on the 22nd April, 2025, it was deposed that the Plaintiff is duly selected and installed as Senior Chief Tafuna and the only person recognized as such holding the instruments of power for the chiefdom of Senior Chief Tafuna. That from the time the Plaintiff was installed as Senior Chief Tafuna has been performing all the functions of Chief Tafuna, and the Plaintiff has been on the government payroll as Senior Chief Tafuna.
- 5.2 It was averred that the Plaintiff was duly selected as Senior Chief Tafuna in a meeting which was held on 29th August, 2018, at Sinamu Lodge in Kasama. The meeting was attended by all relevant stakeholders, including members of the House of Chiefs, Lungu chiefs, members of Lungu royal Families, and representatives of the government of Zambia. A copy of the minutes of the electoral colleague meeting was exhibited and marked "MK1".
- 5.3 That following the selection, the Plaintiff was installed as Senior Chief Tafuna at the walamo traditional ceremony, which took place from the 28th to 30th September 2018. That the event was attended by Lungu Chiefs, Tabwa Chiefs, government representatives, and members of the public. A copy of the programme for the 2018 walamo ceremony during which the Plaintiff was installed as Senior Chief Tafuna Chimwando II.

- 5.4 It was averred that following the Plaintiff's installation, the secretary of the tradition committee of the walamo ceremony wrote to the Ministry of Chiefs and Traditional Affairs to confirm the Plaintiff's installation as Senior Chief Tafuna. A copy of the letter to the Ministry of Chiefs and Traditional Affairs was exhibited and marked "MK3".
- 5.5 That following the Plaintiff's installation as Senior Chief Tafuna, the government proceeded to place the Plaintiff on the payroll as Senior Chief Tafuna. That following the placement of the Plaintiff on the payroll, the intended interested party in this matter, Bozzy Simutanda, attempted to challenge the Plaintiff's installation as Senior Chief Tafuna and placement on the payroll by the government in the Constitutional Court under cause number 2019/CCZ/001. This action was dismissed in favour of the Plaintiff. The copy of the judgment was exhibited and marked "MK4".
- 5.6 It was further stated that after the judgment of the Constitutional Court, the government reinstated the Plaintiff on the payroll and from that time the Plaintiff has been on the government payroll as Senior Chief Tafuna. A copy of a letter confirming this position was exhibited and marked "MK5".
- 5.7 That when the matter under cause number 2020/HP/0342 was commenced against the Defendant, the Plaintiff in that matter sought an order of injunction against the Plaintiff to restrain the Plaintiff from performing the functions of Senior

Chief Tafuna, but his application was dismissed. That by the ruling dated 22nd July, 2020, Justice Newa directed that the Plaintiff will remain on the throne and continue to discharge functions as Senior Chief Tafuna.

5.8 It was stated as regards the Defendant's claim that the Plaintiff does not have a recognition order from the President as supposedly required under section 3 of the Chief Act, the Plaintiff has been advised by his advocates and verily believe the same to be true that there is no requirement for a presidential recognition order to validate the Plaintiff's selection and installation as Senior Chief Tufuna as the provisions of sections 3,4,5,6 and 7 of the Chiefs Act have been struck down by the Constitutional Court for being unconstitutional and contrary to article 165 of the Constitution in the case of *Webby Mulubisha v attorney General*⁹. That the Constitutional Court guided that chiefs must be selected and installed in line with their culture, customs, and traditions, and any requirement for a recognition order from the president is unconstitutional. That this position was repeated by the Constitutional Court in the judgment under cause number 2019/CCZ/001.

5.9 That the matter under cause number 2020/HP.0342 does not involve the question of who should ascend to the throne of Senior Chief Tafuna. That the Plaintiff has already occupied the throne and the matter under cause number 2020/HP/0342 deals with the question of whether the Plaintiff was rightly selected and installed as senior Chief

Tafuna Justice Newa distilled this issue in clear terms in her ruling on the application for an order of interim injunction.

- 5.10 It was further stated that it is misleading for the Defendant to suggest that the Plaintiff's claims under cause number 2020/HP/0342 are still active. That the correct position is that Cosmas Sikazwe, the Plaintiff under cause number 2020/HP/0342, died in 2022; following his death, he was substituted for his administrators, and the administrators have discontinued all the Plaintiff's claims in that matter. A copy of the consent order was exhibited and marked "MK6".
- 5.11 That concerning the Defendant's claim that the walamo tradition ceremony is not an annual event and was last held in the year 1935, the defendant is ignorant of the culture, customs, and traditions of the Lungu speaking people, and particularly the significance and frequency of the walamo traditional ceremony.
- 5.12 It was averred that the walamo traditional ceremony is an annual ceremony and at the same time is celebrated as part of the installation ceremony for every newly selected Senior Chief Tafuna. That the event has been celebrated from time immemorial until some time after 1948 when it was halted due succession wrangles and reinstated in 2003.
- 5.13 That the last two successive walamo ceremonies to be performed by my predecessor were in the years 2003 and 2006. A copy of the programme for the walamo tradition

ceremony, which was held in 2006, and an extract from the book titled Ceremony, celebrating Zambia's cultural Heritage, which was co-authored and edited by Mulenga Kapwepwe and Mbikusita Lewanika was exhibited and marked "MK7". That the last ceremony was held in the year 2018, contrary to the Defendant's assertion that it was last held in the year 1935.

5.14 It was averred that it is not correct that the walamo traditional ceremony site operates as a fish market. That the correct position is that there was a dispute about the boundaries relating to the Ngwenya fish market and the walamo site. That led to the agreement between the Plaintiff and the Mpulungu Council by which the boundaries were well clarified. That the fish market side was retained by the Council, while the walamo site was given to the Plaintiff as Senior Chief Tafuna and is reserved for traditional activities as well as preparations relating to the same.

5.15 That it is not true that the Plaintiff wants to turn the walamo site into an illegal market. That the correct position is that the walamo site is private property, which is located next to Ngwenya market, operated by the Council. That some traders seek refuge and accommodation at the temporary facilities constructed at the walamo site, and the walamo traditional ceremony committee accommodates them upon paying a fee, which is directed towards financing the walamo traditional ceremony. That the Plaintiff personally does not collect or keep any such money, and the walamo site is not a market.

5.16 It was averred that it is in fact the Defendant who illegally interferes in the operation of the market, claiming that he is the market chairman and now extending those illegalities to the walamo site even after the Plaintiff have entered into an agreement with the Council to clearly demarcate the boundaries and separate the walamo site from the market.

5.17 That the Defendant has been threatening violence and using physical force to remove or evict members of the walamo ceremony committee he finds on the walamo site, and physically abused the retainer assigned by the government to guard the Plaintiff.

5.18 It was averred as regards the assertion that the Defendant was put in charge by the Lungu Chiefs to run the walamo site, that this was in 2016 at the time there was a vacancy on the throne of Senior Chief Tafuna, the Chief having traditional jurisdiction over the land involving the walamo site. That the previous Chief had died and the Plaintiff was not yet selected and installed as Senior Chief Tafuna. That, as the current senior Chief Tafuna, the Plaintiff has been recognized or approved the Defendant's purported appointment.

5.19 That the Plaintiff verily believes that since traditional land vests in the Chief, it was irregular for the Chiefs to have purported to appoint the Defendant to preside over a piece of land falling outside their respective Chiefdoms. That the walamo site falls under the Plaintiff's Chiefdom and the

Plaintiff is the only chief with traditional authority to administer the same.

5.20 It was averred that in the year 2023, a stakeholders' meeting was held to resolve the issues surrounding the walamo site and the market. The Defendant and the Plaintiff were in attendance. That the demarcation between the Market and the walamo site was clearly explained by the Council. That the Defendant was directed by the Council to stop holding out as the market chairman, so as to comply with the directive of the Ministry of Local Government and Rural Development, but he still continued to hold out as market chairman. That it is the Defendant who has been contravening the provisions of the Market and Bus Station Act despite the clear guidance of the Ministry of Local Government and the directive of the Council. A copy of the letter from the Ministry of Local Government and Rural Development and the letter from the Council directing the Defendant to stop operating the board at the Market was exhibited and marked "MK8".

5.21 That there has never been an intention to operate the walamo site as a fish market. That the Plaintiff believes that this is a proper case for the Court to grant an order of interim injunction. That, unless this is done, the Defendant will continue with his illegalities and interference with the organization of the walamo ceremony, which is supposed to take place in September. That the committee in charge of the ceremony needs adequate time to put up the necessary

facilities for the ceremony, such as shelters, a platform, and toilets, in preparation for the event.

5.22 The Plaintiff also filed skeleton arguments; I will not recast them, but consider them in my decision hereunder.

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. In this application the Plaintiff seeks to restrain the Defendant whether by himself, his agents or servants or otherwise from trespassing on the walamo tradition site, interfering whatsoever and however with the Plaintiff's, the Lungu Royal Establishment and the Walamo tradition committee's use of the walamo tradition ceremony site; demanding for or collecting money from the people operating from the site.

6.2 In the affidavit in opposition to the application, the Defendant has vehemently stated that the Plaintiff is not the Chief Tafuna and has not exhibited the recognition order as required under section 3(2) of the Chiefs Act. Secondly, that the contest as to who should be Senior Chief Tafuna is subject to litigation under cause number 2020/HP/0342, and thirdly, that the ceremony is not an annual ceremony and is in fact an initiation or installation right, to the ascending to the throne of Chief Tafuna. I shall address these peripheral issues raised by the Defendant as they affect the

Plaintiff's right to be protected by an injunction. As rightly submitted by Counsel for both parties, there are principles governing the grant of an injunction laid down in the **American Cynamid case**¹, the first and foremost is a question of whether or not there is a serious issue to be tried.

6.3 In examining whether the Plaintiff is not the Senior Chief Tafuna, the Defendant states that the Plaintiff has not produced in evidence his recognition order as required under section 3(2) of the Chief Acts. On the other side, the Plaintiff has argued that he is not legally obligated to satisfy this Court in producing the recognition order as the same was declared unconstitutional in the case of **Webby Mulubisha v Attorney General 2018/CCZ/0013**. I have carefully considered the decision of the Constitutional Court in the case involving **Webby Mulubisha v Attorney General 2018/CCZ/0013**. The Court pronounced itself that:

A reading of Article 165 of the Constitution as amended clearly shows a departure from the practice of recognition of a Chief by the President, as Article 165(2) (a), prohibits enacting legislation which confers on a person or authority the right to recognize or withdraw the recognition of a Chief. As earlier highlighted in our Judgment, the supremacy of constitutional provisions is beyond question. That being the case, any provision on our statute book which runs afoul of a provision of the Constitution such as Article 165(2) (a) is void to the extent of the inconsistency in question. Both parties to this matter are in agreement on the issue of constitutional supremacy. We too agree with the parties on this point. The question that calls for our consideration is whether sections 3,4,5,6 and 7 of the Chiefs Act, run afoul of Article 165 of the Constitution as amended.

“Section 3 in its entirety focuses on recognition of Chiefs within Zambia. This provision under the current constitutional order is, in our firm view, inconsistent with Article 165(2) (a) as the President no longer has the right to recognise chiefs and therefore the section is void.

It is for each particular Chiefdom to follow their established customary system of selecting and removing a Chief. In like manner, section 4 of the Chiefs Act, in our firm view, becomes otios as the right to recognise, in section 3 of the Chiefs Act, upon which it is anchored is void for inconsistency with the constitution as amended.

Regarding section 5 of the Chiefs Act empowering the President to appoint a person or persons to inquire into any question relating to the recognition of any person under the Act or the withdrawal of recognition accorded to any person, our view is that this section is equally, like in the case of section 4, premised on the right to recognise under section 3, which as we have already stated above is void for being inconsistent with Article 165(2) (a) of the Constitution as amended. It follows, therefore, that section 5 of the Chiefs Act is void on account of being inconsistent with the Constitution as amended, particularly Article 165 (2)(a).

Counsel for the petitioner argued that the institution of chieftaincy and traditional institutions exist in accordance with culture, customs and traditions of the people to whom they apply and that to empower the President to appoint by statutory order, any person to the position of deputy Chief as section 6 does, is a violation of Article 165(1) of the Constitution as amended. On the same section, Counsel for the respondent submitted that the powers outlined in sections 3,4,5,6, and 7 of the Chiefs Act made the President the ultimate authority in giving

legitimacy to any Chieftaincy before the amendment of the Constitution in 2016. That under the new constitutional order, Article 165 completely leaves the institution of Chieftaincy to the people to whom it applies.

We note both submissions by the parties on section 6 are in agreement with the position that the institution of chieftaincy exists in accordance with the culture, customs and traditions of the people to whom they apply.

We are of the firm view that to allow the President to appoint a deputy Chief who for all intents and purposes would likely assume the role of a Chief goes against the principle of non-involvement of the Presidency in the selection of Chiefs. We agree with the parties that section 6 runs afoul of Article 165(1) of the Constitution as amended and is therefore void.

Lastly section 7 of the Chiefs Act concerns the exclusion of a former chief or deputy Chief from a specified area. The section is premised on the power of the President to withdraw recognition under section 4 of the Chiefs Act or revoke appointment of a deputy Chief under section 6. As stated above, sections 4 and 6 of the Chiefs Act are void for their inconsistency with Article 165 of the Constitution as amended. That being the case, section 7 being premised on sections 4 and 6 equally becomes void.

In summing up, we declare sections 3,4,5,6 and 7 of the Chiefs Acts to be inconsistent with Article 165 of the Constitution as amended and are therefore unconstitutional and void”.

6.4 With the above guidance, I agree with the Plaintiff that he need not produce in evidence his recognition order signed by the President as the same is no longer legally required.

6.5 I shall deal with the second peripheral question that the Plaintiff claims of senior Chief Tafuna is subject to litigation under cause number 2020/HP/0342. I have taken judicial notice of the Ruling delivered by my learned sister Justice Newa on the 30th April, 2025, in cause 2020/HP/0342. Under cause 2020/HP/0342 the Plaintiff Mwansa Mwamnazi and Telesphore Tafuna Siakazwe suing as administrator of the estate of the late Cosmas Tafuna sued the Defendant herein and three others. Amongst the reliefs sought by the Plaintiff are:

1. *An order and or declaration that Cosmas Tafuna Sikazwe, being the Deputy Senior Chief Tafuna and who was appointed by the Lungu Royal Establishment as Acting Senior Chief Tafuna and who holds the instruments of power for Senior Chief Tafuna Chieftainship, is the only person who is on the throne of Senior Chief Tafuna, in accordance with the Lungu customs, traditions and culture until the Lungu Royal establishment appoints a successor in accordance with their tradition as agreed in writing in 1957 and 2006.*
2. *An Order and or declaration that the appointment of Mathews Kakungu Siame, as Senior Chief Tafuna, at the direction and or presence of the Republic of*

Zambia and without the consultation and or involvement of the Lungu Royal establishment, Chiefs, the custodians of the Lungu customs, tradition and culture and without following the 1957 succession agreement and as agreed in 2006, is null and void.

- 3 *An order and or declaration that the meeting that sat to allegedly select Mathews Kakungu Siame as Senior Chief Tafuna did not constitute the electoral college which is required to choose Senior Chief Tafuna.*

The Court held that:

“Mwansa Mwambazi and Telephore Tafuna have withdrawn their claims challenging Mathews Kakungu Siame’s election as senior Chief Tafuna. In the Ruling dated 2023, Justice Newa found that the personal claim by Cosmas Tafuna Sikazwe, alleging that he qualified to be elected as Senior Chief Tafuna, could not be carried on by his personal representatives, Mwansa Mwambazi and Telephore Tafuna Sikazwe, as it abated on his death. As Mwansa Mwambazi and Telephore Tafuna Sikazwe withdraw the claims challenging Mathews Kakungu Siame’s ascension to the throne of Senior Chief Tafuna entails that there is no Plaintiff before Court... in as much as trial has advanced in this matter, the proceedings cannot continue...”.

- 6.6 In view of the above I do not agree with the assertion by the Defendant that legal contest as to who should be Senior Chief Tafuna is under litigation in the cause 2020/HP/0342. Which therefore entails that the question whether the walamo ceremony is an annual ceremony or an initiation or

installation right for ascending to the throne of Chief Tafuna is of no legal significance.

- 6.7 It is my considered view that from the affidavit evidence on record from the Plaintiff, the Plaintiff has satisfied this Court on a mass of probability, of the ingredient of a clear right of relief for the grant of an interlocutory injunction.
- 6.8 It is my firm view that there exists in this matter a real issue to be inquired into by this Court at trial. The issue that needs to be determined is whether or not the Plaintiff has the right over the walamo traditional ceremony site or custodian of the walamo traditional ceremony site on behalf of the walamo traditional ceremony Committee and the Lungu Royal Establishment. This can only be properly addressed with the opportunity of the parties herein discharging their burden of proof at trial before this Court.
- 6.9 On the facts of this case and for the foregoing reasons, I find that this is a proper case in which to exercise my discretion under Order XXVII of the High Court Rules and I hereby grant the interlocutory injunction as prayed for by the Plaintiff. The Defendant is hereby ordered to restrain either by themselves or their agents or servants or otherwise from trespassing on the walamo tradition site, interfering whatsoever and however with the Plaintiff's, the Lungu Royal Establishment and the Walamo tradition committee's use of the Walamo Tradition Ceremony site; demanding for or collecting money from the

people operating from the site until the final determination of this matter or further Orders of the Court.

6.10I make no order as to costs.

6.11 The matter shall come up for a status conference on 27th June, 2025 at 10:15 hours for issuance of Orders for direction.

DELIVERED AT LUSAKA THIS 20TH DAY OF MAY, 2025.


G.C. CHAWATAMA
HIGH COURT JUDGE