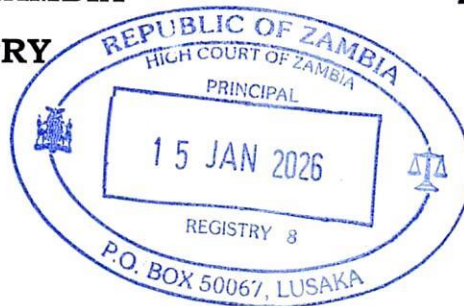


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2022/HP/0846



BETWEEN:

INNOCENT MUNYIKWA LUSHATO

PLAINTIFF

(Suing as Induna Matanda-Acting Mwanatete)

AND

JOSEPHINE KAMWILA LIMATA

DEFENDANT

(Sued in her capacity as Chieftainess Mwanatete)

**Before Honourable Lady Justice S. Chocho on January 15th, 2026 in
Chambers**

*For the Plaintiff: Major J. H. Mwaaba (Retired), Mr. A. M. Shilimi and
Mrs. A. M. Chilongoshi of Messrs Mwansa, Phiri,
Shilimi & Theu Legal Practitioners*

For the Defendant: Mr. J. Milambo of Messrs Dove Chambers

J U D G M E N T

Cases Referred to:

1. *Kausa Mwachindalo vs Matthews Musona SCZ No.1 of 2021.*

2. His Royal Highness The Litunga and 3 Others vs The Attorney General 2020/CCZ/009.

Legislation Referred to:

1. *The Constitution of Zambia (Amendment No. 2 of 2016)*

1 INTRODUCTION

1.1 This Judgment is in respect of the Plaintiff's claim against the Defendant. The Plaintiff by way of Writ of Summons dated June 2nd, 2022 (amended June 16th, 2022) and Statement of Claim, claiming the following;

- (i) A Declaration that the purported appointment of the Plaintiff as Chieftainess Mwanatete by the Barotse Royal Establishment in Luampa District is irregular, null and void as the Defendant does not belong to the Mwanatete family tree and further that Mwanatete is not a Chieftainship but an Indunaship;
- (ii) A Declaration that the Plaintiff Innocent Munyikwa Lushato is the rightful heir to and induna Matanda over Luampa District and the one who should be;
- (iii) An Order for an Injunction restraining the Defendant whether by itself, its agents, servants or employees from holding out as Chieftainess Mwanatete or conducting any functions in that capacity until this matter is adjudicated on by the honourable Court;
- (iv) Any other relief the Court may deem fit; and

(v) Costs.

- 1.2 In response, the Defendant entered appearance and filed Defence dated June 21st, 2022. By that Defence the Defendant disputes the Plaintiff's claims and avers that the Plaintiff does not trail from the Mwanatete lineage.
- 1.3 The Plaintiff joined issue with the Defendant's Defence by Reply dated October 3rd, 2022.

2. TRIAL COURSE

- 2.1 The matter was scheduled and trial heard on September 6th, 2024 and May, 19th, 2025. The Plaintiff called 3 witnesses and the Defendant called 4 witnesses in aid of their cases.
- 2.2 The Plaintiff's first witness was the Plaintiff himself Innocent Muniyikwa Lushato who testified on oath in Nkoya language and submitted witness statement dated November 18th, 2022. By reason of the content and for the sake of not losing content in translation and summary, I shall repost the said witness statement verbatim.
- 2.3 This is what I know about this case of our ancestors as regards the Mwanatete Title.
- 2.4 My great great great grandfather Polesha married a lady by the name of Hunina and the two had children in accordance with the family tree at page 1 of the Plaintiff's bundle of documents.
- 2.5 The children of Polesha and Hunina were Tete, Shungenu, Matanda and Mufweto. All whom had children of their own.

- 2.6 Tete the first-born daughter of Polesha and Hunina had her own village in Kahumbu under Mwene Mutondo Chieftdom.
- 2.7 When Tete died, her 1st born son Manjanji Mwanatete took over from the mother and called himself Mwanatete meaning the “son of Tete.” He was the first to be called Mwanatete.
- 2.8 When Polesha and Hunina died their four children parted ways and formed their own villages.
- 2.9 Tete formed her own village called “Tete” located in the Mankoya district then but currently Kahumbu area in Luampa District, Western Province as at page 51 of the Plaintiff’s bundle of documents.
- 2.10 Matanda went to Mwandanchengo area and formed Matanda village situated in Mwandanchengo area in Luampa District in Mutondo Chieftdom.
- 2.11 Shungeni was in Kanwnzi area also in Luampa district.
- 2.12 When both Shungeni and Matanda died their nephews Mapulanga took all members of the village to Katunda area in Luampa District. The two villages are separate but in the same Katunda area.
- 2.13 Tete remained in Kahumbu up until her death and her first born son Manjanji took over the leadership of the village.

- 2.14 When Manjanji took over from the mother he renamed himself as “Mwanatete” meaning the ‘son of Tete’.
- 2.15 Manjanji remained as Induna “Mwanatete” up until the missionaries came in the area in 1923. (see page 17 and 27 a letter from the Office of the President indicting Mwanatete as an Induna Chief Mutondo Chiefdom in 2007 and the Lawyers for Martin Fundedwa was not confirmed as chief Mwanatete by November 2014).
- 2.16 During the tenure Manjanji Mwanatete received the missionaries and even took them to His Royal Highness Chief Mwene Mutondo Kanyincha.
- 2.17 The said missionaries even requested a Nkoya man to be a pastor namely Josphat Malasha Shimunyika whose grave site is at the mission nearby the Evangelical Church of Zambia as per page 48 and 49 of the Plaintiff’s bundle of documents.
- 2.18 During the same period Dr. Jekeman, a missionary from Angola arrived in the area with two men namely Elisha and Kalyangu.
- 2.19 When Dr. Jekman saw that there were a lot of disputes such as land, beer drinking, smoking, marital issues, he went to Chief Mwene Mutondo and requested that the Chief establishes traditional Courts to be handling such matters.
- 2.20 Chief Mwene Mutondo appointed Mwelishenga as Court Induna and the said Induna worked with a Clerk Mesho in the traditional court.

- 2.21 In 1936 the British South African Company established the native Courts.
- 2.22 The British South African Company transferred Mwelishenga to the native Courts from the traditional Courts and Mesho continued in the same position as his clerk.
- 2.23 During the same period there was money that went missing at the native Court so Mwelishenga was relieved of his duties because he failed to account for the missing money. After Mwelishenga was fired Manjanji Mwanatete took over as Induna in charge.
- 2.24 When Mwelishenga and Mesho were fired in 1937 Manjanji Mwanatete was then made in charge of the native Court and his deputy was Luka and Kamboi.
- 2.25 1969 Mwanatete Manjanji became blind and the native courts changed to become Local Courts.
- 2.26 At the time Tauzeni Ntanyela Limata applied for the position of Local President and another individual by the name of Anderson Tewesha applied for the position of Local Messenger whose identity card is as per page 47 to 48 of the Plaintiff's bundle of documents.
- 2.27 Anderson Tewesha went to Namushekendi a school for "Kapasu" while Tauzeni Ntanyela Limata was station at Kahumbu as Local Court President.
- 2.28 At the time Tauzeni Ntanyela Limata became Local Court President, Luka had been transferred to Lukute area in current Kaoma District

while Kamboi remained at Kahumbu and continued to work with the Tauzeni Ntanyela Limata.

- 2.29 In the meantime, Jeremiah Mitelo Mwanatete the first-born son of Mwanatete Manjanji was in Kalumwange local court as a clerk of Court.
- 2.30 When his father Manjanji Mwanatete had become blind, Jeremiah Mitelo Mwanatete returned to Luampa District and took the whole family to stay with him at his farm in Kalumwange area where he was working.
- 2.31 Jeremiah Mitelo Mwanatete was being called Mwanatete in Kalunwangwe.
- 2.32 There was no Mwanatete in Luampa who was selected by the family.
- 2.33 Jeremiah Mitelo Mwanatete took care of his father Manjanji Mwanatete up until the death in 1989 at Kalumwange.
- 2.34 After the death of his father Manjanji Mwanatete, Jeremiah Mitelo Mwanatete took over as Mwanatete. However, he maintained his base in Kalumwange and did not shift to Luampa District.
- 2.35 Jeremiah Mitelo Mwanatete died in 2017 in Kalumwange as Mwanatete at the age of 91 on 23rd May 2017 at 21:00 hours.
- 2.36 At the time of the death of Jeremiah Mitelo Mwanatete, Doris Liyowa Mwanatete was the oldest surviving relative to Tete.

- 2.37 When the said Doris Liyowa Mwanatete approached me, I had already been appointed Induna Matanda (see at page 28 of the Plaintiff's bundle of documents) in the line of my Grandfather Matanda the brother to Tete.
- 2.38 Doris Liyowa Mwanatete hinted that in as much as I was Induna Matanda, the Mwanatete name was being used by none family members. It was better that even if we were cousins, I being part of the family would be better placed to be acting Mwanatete as we wait for the younger ones to grow old enough to take up the title.
- 2.39 Her reasoning was that she was too old to take up the Mwanatete Title in as much as she was the oldest surviving near relative to Tete.
- 2.40 After analysing the whole situation we went to Chief Mwene Mutondo in order to inform His Royal Highness the predicament Mwanatete family was having.
- 2.41 After seeking guidance and the family having selected me His Royal Highness Chief Mwene Mutondo then appointed me as Acting Mwanatete.
- 2.42 Fundedwa Martin Limata was never recognized as Induna and his recognition in that capacity was even revoked in 2010 as per letter at page 21 of the Plaintiff's bundle of documents.
- 2.43 The said Martin Fundedwa Limata in 2014 then sued me in my capacity as Matanda in the High Court under Cause No. 2014/HP/1043 which case he discontinued (See page 24 of the Plaintiff's bundle of documents).

- 2.44 That even at the time this suit was commenced Jeremiah Mitelo Mwanatete was still alive as Mwanatete in Kalumwange.
- 2.45 I am currently the rightful heir to the Mwanatete Title as am connected to the Title by blood. I have come before Court seeking relief that I be granted my birth right of Mwanatete.
- 2.46 This is what I know about this case an this my statement, which I wish the Court to admit as part of my evidence.

Cross Examination PW1

- 2.47 Under cross examination PW1 testified that he lives in Katunda area, that he left Katunda village in 2013.
- 2.48 PW1 testified that there is no Mwanatete Palace in Kahumbu but just a village called Mwanatete.
- 2.49 PW1 further testified that his parents come from Nkoya land in Katunda village where his father lived and died. That his father's name is Brian Mushato Matanda and not Mr. Mapulanga.
- 2.50 PW1 testified that his father and Mr. Shungene were related.
- 2.51 PW1 denied knowing the following individuals; Limata Lyamvula, Kamwila, Katunga Miganja and Lukesha.
- 2.52 PW1 agreed to knowing Mr. Manjanji who was his uncle. That PW1's grandfather's parents came from Kola (Luba-Lunda Kingdom) where Nkoya tribe came from.

- 2.53 PW1 testified in cross examination that the Mwanatete started with Manjanji in 1920.
- 2.54 PW1 testified that Tete (female) formed Tete village and was its leader, village was in Mwandasengo along the Luampa river.
- 2.55 PW1 further testified that Matanda village situated in Katunda, Luampa District, whose leader was Matanda (PW1's grandfather).
- 2.56 PW1 testified that he is current leader of Matanda village and also caretaker of Tete village in Kalumwange Kaoma District, as its leader died in 2017.
- 2.57 PW1 further testified that the area chief for Kaoma District and Luampa is Chief Mutondo.
- 2.58 PW1 confirmed that Tete's son Manjanji took over from his mother as leader and gave himself title of Mwanatete which denotes 'son of Tete'.
- 2.59 PW1 testified that Manjanji was never in prison and he became blind while working in a Court, Manjanji (Mwanatete) died in 1989 in Kalumwange where the village had moved to from Luampa.
- 2.60 PW1 further testified that Manjanji became an induna in charge of Native Court in 1837 but he never relinquished his indunaship of Mwanatete village.

- 2.61 PW1 clarified that Jeremiah Mitelo Mwanatete was Manjanji's first born son but Jeremiah was never a chief.
- 2.62 PW1 testified that there is a Mwanatete village in Kalumwange with a widow and her children. That PW1 is caretaker of the village.
- 2.63 PW1 testified that he is leader of Matanda village and that the Kalumwange and Matanda village are one people.
- 2.64 PW1 testified that one Kasimba is an Induna not a chief.
- 2.65 PW1 further testified that from 1989 when Manjanji left Luampa for Kalumwange there was no Mwanatete from the bloodline.
- 2.66 PW1 testified that Fudweta Martin Limata was just calling himself a Mwanatete though he is not from the Mwanatete lineage.
- 2.67 PW1 conceded that documents at page 21 of the Plaintiff's bundle of documents is a letter purporting to remove Martin Limata as Mwanatete. That Martin Limata was holding himself out as a Mwanatete.
- 2.68 PW1 testified that Martin Limata and Josphine Limata are siblings from Limata Village, where Tauzeni also comes from but PW1 is not aware of the relationship between Tauzeni and Josephine Limata.
- 2.69 PW1 further conceded that the Paramount Chief of Western Province is His Royal Highness Litunga.

- 2.70 PW1 denied that the Litunga is Traditional leader of the entire Western Province AND testified that His Royal Highness the Litunga has no power over all the tribes in Western Province as per Constitution of Zambia.
- 2.71 PW1 denied that all chiefs in Western Province are under His Royal Highness the Litunga. PW1 further testified that His Royal Highness the Litunga has no role to play in installation of chiefs in Western Province.
- 2.72 PW1 denied that His Royal Highness the Litunga did not install Chief Mwene Kahale, Chief Mwene Mutondo and Chief Chiyengele and that the first two are installed by traditions, families and culture.
- 2.73 PW1 testified that Chief Mwene Mutondo is the Senior Chief according to Nkoya tradition.
- 2.74 PW1 testified that the following Chiefs preside over areas:-
- Chief Kahale:
1. Shishamba
 2. Litoya
 3. Luampa
 4. Namulwa
 5. Kahumbu
 6. Part of Mulamatila
- Chief Mwene Mutondo:
1. Lalafuta
 2. Shikombwe

3. Lwabuwa
4. Lukute
5. Kabaheu
6. Lukena
7. Kahumbu

- 2.75 PW1 testified that Kahumbu area is presided over by two Chiefs according to the Chiefdom's will.
- 2.76 When referred to page 9 of the Defendant's bundle of documents, PW1 refused the assertion that Chief Mwene Mutondo has no Jurisdiction in Luampa.
- 2.77 PW1 further denied or refused the contents of pages 15 to 18 of the Defendant's bundle of documents being list of Districts Senior Chiefs and (Silalo) Area Chiefs in Barotseland.
- 2.78 PW1 testified that he witnessed installation of Chief Mwene Mutondo and in 2018 participated in selection of Chief Mwene Mutondo as a representative of the Chief's sons, PW1 conceded that he did not participate as a member of the royal family.
- 2.79 PW1 conceded that as per paragraph 36 of his witness statement (in chief) that his claim to Mwanatete is because Doris Liyowa Mwanatete approached him to be caretaker.
- 2.80 Referred to page 45 of the Plaintiff's bundle of documents being National Registration Card of Doris Liyowa, PW1 conceded that it showed Mwanatete as village and Chief.

- 2.81 PW1 testified under cross examination that Doris Liyowa and the Defendant are not related at all.
- 2.82 PW1 testified that a Caretaker can be a heir to the throne according to the will of the family and what they agree on.
- 2.83 In re-examination, PW1 verified that the Royal Village of Mwanatete shifted from Kahumba to Kalumwange.
- 2.84 PW1 testified that Mr. Mapulanga was a nephew of Shungenu and Matanda, further that Limata Yamvula is a place and not a person place where Nkoya Chief originated from.
- 2.85 PW1 clarified that Manjanji was the first Mwanatete taking over from Tete, he coined the title Mwanatete denoting son of Tete.
- 2.86 PW1 further clarified that his claim to Mwanatete is also because he is born of the Tete and Matanda family (Tete and Matanda were brother and sister).
- 2.87 PW2 was one Anderson Tewesha who testified on oath in Nkoya language and filed Witness Statement dated November 18th, 2022. The contents of the Witness Statement is repeated below verbatim.
- 2.88 I wish to testify regarding the connection between the Mwanatete lineage and that of the Defendant.
- 2.89 The relatives of the Defendant shifted from Longe area and came to Kanatu village that is near the Nayuma stream.

- 2.90 The relatives to the Plaintiff namely; Ntanyela Limata, Kakumbi Limata and Shilula Limata came to Kanatu village Nayuma area where my uncle was village headman at the time they arrived in the area.
- 2.91 As visitors Ntanyela Limata, Kakumbi Limata and Shilula Limata asked for land from my uncle headman Kanatu.
- 2.92 My uncle headman Kanatu received them and appointed a piece of land situated on the opposite side of the Nayuma stream from the Kanatu family.
- 2.93 With time the Kanatu family shifted from the area near the stream to a place that was near the road because the latter location was conducive for the family economics.
- 2.94 At the time Kanatu family had settled near the road Ntanyela Limata, Kakumbi Limata and Shilula Limata went to the Luvaes namely Liwema, Zubo and Mazezi too asked for a place to relocate to in search for a place that was near the road.
- 2.95 Later Shilula Limata the father to the Defendant was picked by Naliele people and sent to Mongu where he was working as a house servant to Lewanika.
- 2.96 In 1969 I applied for a job in the Judiciary as a Local Court Messenger whilst Ntanyela Limata applied for a job as a Local Court President.

- 2.97 I successfully got the job and I was sent to Namushekendi in Mongu for a course as a 'Kapasu'. While Ntanyela Limata went to Kahumbu and was employed as the Local Court President (at page 46 to 47) of the Plaintiff's bundle of documents a copy of my identity card in the Judiciary).
- 2.98 In 1969 the Mwanatete Manjanji who at the time had become blind was moved to Kalumwange by his son Jeremiah Mutelo Mwanatete but his name did not remain at the Local Court.
- 2.99 I have lived in the area from my childhood and I know that the Limatas are a different family from Mwanatete.
- 2.100 Doris Liyowa Mwanatete is part of the Mwanatete family line and the Innocent Munyikwa Lushato is the brother (cousin) (at page 45 a copy of the National Registration Card for the said Doris Liyowa Mwanatete).
- 2.101 Ntanyela Limata was only a Court president at the Local Court, even his pay slip which I would collect from Mongu on a regular basis did not indicate that he was a Mwanatete.

Cross Examination PW2

- 2.102 Under cross examination PW2 testified that he originally comes from Luampa in Kandula, but was born in Kantu village (Luampa District) where his mother comes from.
- 2.103 PW2 testified that he worked in Local Court in various locations away from Kantu village.

- 2.104 PW2 conceded that his knowledge of the happenings in Kantu village is limited to the period before he left for work in 1969.
- 2.105 PW2 testified that Limata is a common name in his area and knew about the name when they came to ask his uncle Kantu for land. That the Limata name came from Longe, river Nayuma where they settled.
- 2.106 PW2 testified that he knew Manjanji, who became blind while working at Kahumbu Local Court in 1969.
- 2.107 PW2 testified that there is no relationship between Doris Liyowa and Josephine Kamwila Limata.
- 2.108 PW2 conceded that by his evidence in chief at paragraph 14 and documents at page 45 of the Plaintiff's bundle of documents shows that Doris Liyowa and Innocent Lushato are siblings by birth.
- 2.109 PW2 testified that he was not there when Manjanji died but Manjanji's son Jeremiah Mitelo Mwanatete got the name.
- 2.110 PW2 further testified that Mwanatete is in Kalumwange whose people are all finished and only Doris Liyowa remains as the last surviving member of the Mwanatete village.
- 2.111 PW2 further testified that no one objected to the selection of the Defendant as Mwanatete in 2020.
- 2.112 PW2 was not re-examined.

2.122 This is what I know about this case and this my statement, which I wish the Court to admit as part of my evidence.

Cross Examination PW3

2.123 PW3 testified in cross examination that he was born in Muleka village (Lukulu District) and left the village in 1969 when he joined Zambia police to work.

2.124 PW3 conceded that the name Luhamba is peculiar to only his family and that he is Nkoya by tribe.

2.125 PW3 further conceded that all the Nkoya people in Western Province migrated from Congo.

2.126 PW3 conceded that the name Limata is common among the Nkoya people.

2.127 PW3 testified that he knew nothing about the origins of the Mwanatete family and did not know who the current Mwanatete is.

2.128 PW3 was not re-examined. The Plaintiff closed his case.

Defence Witness Statement

2.129 DW1 was one Kashiwa Febian Mutaima who testified on oath in Nkoya language, filed a witness Statement dated November 4th, 2022. His evidence in chief is set out below verbatim.

2.130 I am Induna Lyambika, the Ngambela for Luampa area of Mwanatete Chiefdom.

- 2.131 I became the Ngambela for Luampa District in 2017 under the late Chief Mwanatete Martin Fundweta Limata and I am still Ngambela under the Defendant's reign.
- 2.132 I can attest to the fact the selection of Josephine Kamwila Limata as successor was done following the traditional rituals in accordance with the Likolwe – Nkoya traditional practices and procedures.
- 2.133 After the demise of Chief Mwanatete Martin Fundweta Limata on 5th November 2018, it took two years before the Defendant Josephine Kamwila Limata was installed as the Chieftainess Mwanatete by the Litunga.
- 2.134 The selection was done by the Royal Electoral College consisting of the member of the Mwanatete family and the selection was in three phases.
- 2.135 The first was a year after the burial of the late Chief Martin Fundweta Limata, where the Royal Electoral College consisting of the senior members of the Mwanatete family gathered at Kahumbu palace to select suitable candidates of royal blood.
- 2.136 Upon selection of the Defendant as successor at the Kahumbu palace, Mr. Amos Mutaima an old induna of the clan who is ninety (90) years old threw a piece of charcoal onto the selected candidate, Josephine Kamwila Limata who was caught unaware and thereafter the two Indunas of the clan namely; Mr. Amos Mutaima and Mr. Mushakabantu got hold of her and led her to a private place for a

day and night, where she was smeared with white cassava powder as a sign of good omen following the traditional rituals. Thereafter, the Defendant sat on a traditional mat and anointed with special animal oil to show that she was selected according to the traditional norms and customs.

- 2.137 The traditional chiefs, namely; Kanguya of Mulwa area, Siwialiondo of Nalifalamba, Afumba of Liyunyi area, together with Indunas, village headmen, Government and Civic representatives were invited to witness this ceremony and celebration in Luampa.
- 2.138 The second phase was another scrutiny that was held at Naliele Royal Palace before Senior Chief Amukena a year after the selection of the Defendant as successor. I was among the people that took the Defendant to Naliele and the Senior Chief interrogated us on the selection process of the Defendant to ascertain whether or not it was in accordance with the traditional practices and procedure.
- 2.139 The third phase was when we appeared before the Kuta of the Barotse Royal Establishment and the Ngambela at Limulunga and the same process was conducted. The Defendant's selection was scrutinized and upon being satisfied with her selection, the Limulunga Kuta recommended her for installation by the Litunga which took place on 29th November, 2020.
- 2.140 I can attest that the Kahumbu Kuta does not report to Mwene Mutondo who is the area chief of Lukena which is under Kaoma District and has no authority in Chief Mwanatete's area of jurisdiction.

- 2.141 Chief Mwene Mutondo has no authority to appoint an induna, Chief or an acting Chief in an area that is out of his jurisdiction such as Luampa District.
- 2.142 There have been some divisions in the Mwene Mutondo Chiefdom and in their quest to illegally expand their authority, they have been trying to meddle in other Chiefdoms where they have no authority.
- 2.143 At one time, the Mwanashemi (Ngambela) of Mwene Mutondo attempted to hold a meeting with his Indunas in Luampa area but he failed after the District Administration Officer Mr. Moses Chinyama intervened and warned the Mwanashemi that Luampa is not in the Mwene Mutondo area of jurisdiction and therefore, he should seek permission of the Chief Mwanatete before visiting the area.
- 2.144
The Plaintiff is therefore neither an Induna nor is he a Chief in Luampa District. He cannot claim to have been appointed Chief by another Chief from a different jurisdiction.
- 2.145 His actions bring about confusion amongst the Indunas in our Kuta, I remember a time where he proclaimed himself to be Mwanatete and on this day rituals were performed and incantations made calling out the name of the Defendant and there has been a video to this footage effect where the life of the Defendant was threatened.
- 2.146 I can also attest that the Kahumbu Kuta has never received any communique from the Litunga dethroning the Defendant and neither

has the Kuta received any information from the Litunga or the Mwanatete family appointing the Plaintiff as Chief.

2.147 DW1 placed on record his occupation as Ngambela/Prime Minister in Mwanatete's Court.

Cross Examiantion DW1

2.148 Under cross examination, DW1 testified that Martin Katunda Limata became Mwanatete in 1987.

2.149 Asked if page 5 of the Defendant's bundle showed that the Government of the Republic of Zambia was only recognizing Chief Mwanatete in 2023, DW1 refused testifying that the Government knew about Mwanatete before 2003.

2.150 DW1 testified that he was aware that Martin Limata had commenced Court proceedings in 2014 which he later discontinued.

2.151 DW1 testified that Martin Limata was recognized as Chief Mwanatete by Government even in 2014 and all that was left was to put him on the payroll.

2.152 DW1 denied that there was no Chief Mwanatete by 2014 when Martin Limata was still fighting to be recognized as Chief Mwanatete.

2.153 DW1 testified that Martin Limata discontinued the Court case because Government advised him to withdraw the case so that he could be put on payroll.

- 2.154 DW1 confirmed that there was a Chief Mwanatete in 2010 and all official correspondence was going to an Induna Mwanatete.
- 2.155 DW1 confirmed that he is Ngambela or Vice to the Chief Mwanatete at the Palace. That his father is also an Induna at the Palace and this is allowable practice in the Nkoya tradition.
- 2.156 In re-examination, DW1 clarified that Martin Limata Mwanatete's troubles were from persons that wanted the title Mwanatete from Mwene Mutondo, who sent Innocent Lushato to fight against Mwanatete Fudweta Limata. Referring the Court to the correspondence on record.
- 2.157 Referred to page 17 of the Plaintiff's bundle of documents, DW1 testified that the term Induna is Lozi and the white man called them leaders or Chiefs not Induna.
- 2.158 DW2 was one Henry Mupeli who testified on oath in Nkoya language and filed Witness Statement dated November 18th, 2022. DW2's Witness Statement is reproduced verbatim below.
- 2.159 I am village Headman of Lyombombola village within Luampa District and I am the Defendant's grandfather and member of the Mwanatete Chieftaincy after the passing of her brother and predecessor Martin Fudweta Limata who was my nephew.
- 2.160 Martin Fudweta Limata died in around October 2018 and the selection for an heir to the Mwanatete Chieftaincy begun in October 2018.

- 2.161 During this process, I was chosen by my family the Mwanatete family to act as supervisor to ensure that the traditional practices and customs were followed to the letter.
- 2.162 The family selected three eligible candidates from within the Mwanatete family for succession namely; Monde Limata, Limata Limata and Josephine Kamwila Limata.
- 2.163 All the three candidates where informed of this, however, Monde Limata and Limata Limata withdrew their candidature on account that they were still young and opted to give chance to their aunt Josephine Kamwila Limata, the Defendant herein.
- 2.164 The Mwanatete family then proceeded to scrutinize the Defendant's suitability and to succeed the late brother Martin Fundweta Limata as successor.
- 2.165 Having been the only suitable and available candidate, the Mwanatete family settled for the Defendant to succeed as heir to the Mwanatete Chieftaincy in accordance with the Nkoya traditional practice and procedure and I supervised the entire process.
- 2.166 Upon successful selection as successor, traditional rites where performed which involved sounding of drums dancing and informing all the villagers that an heir had been found.
- 2.167 One year past after this event, the Mwanatete Chieftaincy was still vacant despite the selection of the Defendant as heir because she had not yet been installed.

- 2.168 It took a year for the Mwanatete family to take the Defendant to Naliele to be introduced to Senior Chief Amukena who is the only Senior Chief of Luampa, Kaoma and Nkeyema District of Western Province.
- 2.169 The period of one year was one meant to prepare the Defendant for her position as chief, prepare for her installation and also to give room for any member of the Mwanatete family that wished to challenge the decision of choosing the Defendant as heir to the throne.
- 2.170 During the period from October 2019 to October 2020, we did not have any person that came through to challenge the Defendant's legitimacy nor did anyone express willingness to be considered for the Mwanatete Chieftaincy.
- 2.171 In October 2020, the Mwanatete family requested me to lead the delegation that took the Defendant to Senior Chief Amukena in Naliele.
- 2.172 I was accompanied by; the Ngambela Lyambika of Luampa, induna Shungenu, Tria Mapeli, Josephine Palata, Sub Chief Kanguya from Mulwa area, Sub Chief Afumba, Sub Chief Siwiwalyondo, Ngambela Limata. Agness Limata, Induna Sikombwa Mous, Induna Imoowana, David Limata, Wamunyima Mwiya, Limwanya Mupeli, Namakando Mupeli and Patericia Nawa among others.
- 2.173 Together we took the Defendant to Naliele to be introduced to the Senior Chief Amukena as per traditional custom and practice.

- 2.174 The Mwanatete family took the Defendant to the Senior Chief for scrutiny and approval because according to our traditional practices in Western Province, a chief in the three districts of Luampa, Kaoma and Nkeyema cannot be installed by the Litunga without being approved by the Senior Chief in Kaoma as that is protocol and sign of due process. The Senior Chief oversees all other Chiefs on behalf of the Litunga.
- 2.175 With the approval and blessings of the Senior Chief Amukena, we took the Defendant to Lealui on 25th November 2020 for installation by the Litunga.
- 2.176 When we arrived at Limulunga, we reported to the Ngambela who is the prime Minister of Western Province.
- 2.177 The Ngambela assembled the two Kutas at Limulunga namely the Saa Kuta and the Sikalo Kuta. These are the two Kutas of the Litunga.
- 2.178 The delegation comprising of the Mwanatete family and the Luampa Indunas were interrogated by the two Kutas led by the Ngambela with questions of the Defendant's legitimacy and whether or not all traditional practices and procedure were followed.
- 2.179 We had to narrate to the Kuta the Defendant's lineage and the procedure undertaken to arrive at the Defendant as our successful candidate for installation as Chief Mwanatete.
- 2.180 The Kuta was satisfied with our presentation and informed the Litunga of the installation.

- 2.181 The Defendant was installed on 29th November 2020 at a ceremony in Leului in the presence of the Kuta, the entire entourage from Luampa, Chiefs, Indunas and entire public witnessed at Limulunga.
- 2.182 At the Ceremony, the Litunga conferred the Defendant with the Mwanatete Chieftaincy and gave her Chiefly instruments such as the flying whisk, the Mpada/Mande which is a Chiefly Medal and other instruments possessed by a chief.
- 2.183 Thereafter, we returned to Luampa for another ceremony where the Defendant was given her seat as Chieftainess Mwanatete by the Mwanatete family and another big ceremony was held in the presence of the people of Luampa from all villages, representatives from the Barotse Royal Establishment, Government representatives, the Media from ZANIS among others.
- 2.184 I wish to confirm that the selection and installation of the Defendant as Chieftainess Mwanatete was conducted and done in accordance with the traditional practices and procedures of the Nkoya People of Western Province.
- 2.185 Being a senior member of the Mwanatete Family, I have never known the Plaintiff to part of the Mwanatete family and neither is he an Induna or acting Chief.
- 2.186 I can also testify to the fact that Matanda is not a member of the Mwanatete family and no Matanda has ever reigned as Chief Mwanatete.

Cross Examination – DW2

- 2.187 Under cross examination DW2 conceded that for one to ascend to the throne of Mwanatete, they need to be blood related to the Mwanatete line. That one has to be part of the family to inherit the title of Mwanatete.
- 2.188 DW2 conceded that it is a taboo for one to claim the title of Mwanatete if they are not blood family.
- 2.189 DW2 further testified that the family is key in the selection process of Mwanatete and the part the Litunga has is after the family has selected and take the name to the Litunga.
- 2.190 DW2 testified that if the selection by the family is wrong the confirmation by the Litunga cannot correct it.
- 2.191 DW2 testified that he did not know Doris Liyowa Mwanatete and knew nothing about Doris being the only surviving daughter of Mwanatete at the death of Fudwenta Limata.
- 2.192 DW2 confirmed knowing Tryham Mupeli, Limwalya Mupeli and Namakando Mupeli who are his children and their mother is Tebuho Mupeli.
- 2.193 DW2 confirmed that Tebuho Mupeli is the young sister to the Defendant Josephine Limata.
- 2.194 DW2 testified that he is the grandfather of Tebuho Mupeli and Josephine Limata and that he married his granddaughter so that the family is not spread.

- 2.195 DW2 testified that he is related to the Mwanatete by blood, his father Mupeli, born from Mwanatete his father was Kayagogo Mupeli.
- 2.196 Referred to page 1 of the Plaintiff's bundle of documents (family tree) and asked to point Kayagogo Mupeli DW2 testified that he comes from Luhamba (Female) who was his grandmother.
- 2.197 DW2 testified that they are 10 siblings from his mother's side and many from his father's side.
- 2.198 DW2 testified that the Defendant's father comes from DW2's father's side.
- 2.199 DW2 testified that the Mwanatete is Patrilineal and all Mwanatetes are from the Male side, regardless of male/female one can be appointed Mwanatete.
- 2.200 DW2 testified that he knew Silula Limata who was once a Mwanatete having taken over from Manjanji. That the said Silula Liamata was the father of the Defendant.
- 2.201 When asked to point out Silula Limata on page 1 of the Plaintiff's bundle of documents (family tree) DW2 testified that he could not see the name on the document.
- 2.202 DW2 testified in cross examination that the Mwanatete is a Chieftaincy and not Indunaship. That page 5 of the Defendant's bundle of documents contains a falsity as refers to Mwanatete as an Induna.

- 2.203 DW2 testified that he was aware of the Court case between Martin Limata and Innocent Lushato and that Martin Limata is Chief over the case, in which the Limata family won.
- 2.204 DW2 confirmed that the title of Mwanatete strictly follows the Nkoya tradition separate from the Lozi tradition.
- 2.205 DW2 testified that when the Nkoyas are done with their own traditional processes they then approach the Lozis to show them the Mwanatete.
- 2.206 DW2 was not re-examined.
- 2.207 DW3 was one Nyambe Namushi, an Induna in Sikalo Kuta of the Ngambela, who testified on oath in English language and filed witness statement dated November 18th, 2022. His witness statement is reproduced verbatim below.
- 2.208 Josephine Kamwila Limata the Defendant herein was installed as Chieftainess Mwanatete on 29th November 2020 at Limulunga Palace by the hand of His Majesty the Litunga, after meticulous scrutiny and satisfaction of the selection process governing all the ethnic groups in the Western Province described in the document “Policy” Protocols and Rituals of Installation of Chieftainess and Area Indunas.
- 2.209 The selection process of the new Mwanatete involved the ruling family which comprised the electoral college of the Mwanatete clan.

- 2.210 Soon after the death of the Defendant's brother Chief Mwanatete the late, "Martin Fundweta Limata" in 2018, the ruling family had reported the demise to His Majesty the Litunga through Senior Amukena II at Naliele Kuta as Senior Amukena II oversees and has oversight functions over Kaoma, Luampa and Nkeyema Districts.
- 2.211 The report of the demise of Martin Fundweta Limata included the return of the instruments of power, namely the flywhisk, gong and miniature axe. These instruments of power were kept in custody of our Kuta according to traditional practices in order to be passed on to the new Chief to be installed.
- 2.212 The ruling family was advised by the Litunga through our Kuta to select a successor Chief from among the eligible members of the Mwanatete ruling family in accordance with the unique selection process of the Nkoya-Lukolwe people.
- 2.213 Two years elapsed before the Electoral College of the Mwanatete family selected an heir to the throne of chief Mwanatete. The name of Josephine Kamwila Limata was submitted to the Ngambela through the Naliele Kuta of Senior Amukena II.
- 2.214 Upon receipt of Josephine Kamwila Limata's name the Ngambela and Kuta meticulously scrutinized her selection to determine her suitability by examining the family tree and character of the person. Thereafter, upon the Kuta being satisfied, the Defendant's name was submitted to His Majesty the Litunga for assent and installations.
- 2.215 After the assent to install was given by his Majesty the Litunga, the Ngambela informed the Naliele Kuta to escort Josephine Kamwila

Limata accompanied by the family members of the Mwanatete clan and some Indunas from the Naliele Kuta for installation on 29th November 2020 at Namuso the Litunga's Palace in Limulunga, Limulunga District.

2.216 The installation process took place on the royal pavilion called the Namoo and was witnessed by Government and civic representatives and officials, the media, the general public as well as members of the Mwanatete family. The Defendant was inducted by senior Indunas on the Namoo.

2.217 After the proceedings on the Namoo, the Defendant was taken to the Kashandi before His Majesty the Litunga to be bestowed with royal regalia and instruments of power that had remained in custody after the death of her brother in 2018.

2.218 In the Kashandi she was further inducted by the Ngambela and His Majesty the Litunga on her new role as chief for Luampa District.

2.219 I was chosen and requested together with Induna Mubonda to escort the new chief back to Luampa at Kahumba where we presented her to her subjects in the presence of area chiefs, village Indunas, Government and Civic leaders for Luampa District.

2.220 After the conclusion of the induction process the Ngambela formerly informed the Permanent Secretary for Western Province of the new Chieftainess for Luampa District in by a letter dated 10th June 2021.

2.221 Ever since the installation of the Defendant as Chieftainess Mwanatete in November 2020 the Barotse Royal Establishment has

never received any complaint from the royal clan on the selection and installation of the Defendant to the Chieftaincy.

2.222 I wish to clarify that Chiefly positions in Western Province are not made through appointments but by installations by the Litunga after a candidate satisfies the customs and traditional practices and procedure of Western Province.

2.223 Therefore, the letters of his appointment relied upon by the Plaintiff are null and void as a Chief of one area cannot appoint a Chief in another area neither he be allowed to meddle in the affairs of another Chieftaincy.

2.224 Innocent Munyikwa Lushato the Plaintiff herein is neither an induna nor a Chief as he is known to have interfered with other area chiefs in Laumpa such as Siwiwaliondo, Afumba and Kanguya to the extent that the Chiefs sued him for interference in the administration of their areas and was consequently told to desist from such practices.

Cross Examination – DW3

2.225 Under cross examination DW3 confirmed that the selection of Mwanatete is the preserve of the family and the appointment or installation process the preserve of the Litunga.

2.226 DW3 testified that the Litunga has no power to select Mwanatete, the Litunga and Barotse Royal Establishment confirms or appoints on the decision of the family.

2.227 DW3 conceded that the Litunga's confirmation cannot correct an error at selection level.

- 2.228 DW3 conceded that the selection of Mwanatete is according to the Nkoya tradition and custom but can be co-mingled with other traditions and customs.
- 2.229 DW3 testified that he does not know Doris Liyowa Mwanatete nor ever come across the name, even in the due diligence of the selection process.
- 2.230 DW3 confirmed that the Mwanatete is a chieftaincy though he did not know when it was established but that it was in existence in 2003.
- 2.231 DW3 conceded that according to documents at page 5 of the Defendant' bundle of documents, the Mwanatete was being referred to as an Induna by Government even in 2003.
- 2.232 DW3 confirmed that he was aware that Martin Limata, the Defendant's brother had commenced and discontinued a matter against the Plaintiff.
- 2.233 DW3 testified that Mwanatete Martin Limata sued the Plaintiff for interference in the management of the Silalo (area).
- 2.234 Referred to page 26 of the Plaintiff's bundle of documents, DW3 confirmed that the letter says Martin Limata had not been recognized by the President.

- 2.235 Referred to pages 8 to 13 of the Plaintiff's bundle of documents, DW3 confirmed that the list says in 1978 Mwanatete as a traditional Councilor and not a Chief.
- 2.236 Referred to page 21 of the Plaintiff's bundle of documents, DW3 confirmed that the letter refers to Martin Limata as an Induna.
- 2.237 DW3 denied that the recognition of Martin Limata was withdrawn by Chief Mutondo.
- 2.238 DW3 testified that documents at page 8 of the Plaintiff's bundle of documents is wrong as it refers to Mwanatete as an Induna.
- 2.239 DW3 further testified that Office of the President's reference to Mwanatete as an Induna in 2003 was also wrong.
- 2.240 In re-examination, DW3 verified that selection and installation of Chiefs, begin with the tradition and customary practices of a particular tribe. Unique and particular to any of the 38. Thereafter the selected person is taken before the Litunga first to confirm if the person is right person and that the family has followed the tradition and customary practices, only after that is done, a different system for installation is followed which is common to all the other tribes in the province, practiced by the Litunga.
- 2.241 DW3 testified that the Litunga rejects a selected person if he finds that the family did not follow the tradition and custom.
- 2.242 DW4 was one Simalumba Mwilimba an Induna in the Royal Court Saa Kuta testified on oath in Lozi language and filed witness

statement dated November 18th, 2022. His witness statement is reproduce verbatim below.

- 2.243 On or about 25th November 2020, the Defendant was presented before our Kuta at Limulunga by the Kahumbu Kuta of Luampa District and the Mwanatete clan.
- 2.244 The delegation informed us that the Mwanatete Chieftaincy had been vacant for two years but they had now selected a successor whom they have brought for installation by the Litunga as per tradition practice and procedure.
- 2.245 The Saa Kuta sat with the Sikalo Kuta chaired by the Litunga's Ngambela and I was part of the meeting.
- 2.246 This Normal procedure before any Chief assumes the throne in Western Province. The Litunga has to personally install that Chief who also pledges allegiance to the Litunga.
- 2.247 We interrogated the lineage of the presented to us by the entourage and asked if there was no that candidate who could have been eligible.
- 2.248 The lineage presented to us indicated that the Defendant was a direct Descendant of all the previous Chiefs that sat on the Mwanatete throne from her great grandfather to her late brother Martin Fundweta Limata.
- 2.249 We were satisfied of the bloodline and her lineage to the throne and recommended that she be installed as Chief by the Litunga.

- 2.250 Her installation followed on 29th November 2020.
- 2.251 After installation of the chief by the Litunga, there is no person that can remove a seal placed by the Litunga as it is a taboo and a person only ceases to be Chief upon death or in an instance where a Chief is dethroned by the Litunga.
- 2.252 The Plaintiff cannot trace his roots to any of the previous chiefs that sat on the Mwanatete throne.

Cross Examination – DW4

- 2.253 Under cross examination, DW4 confirmed that Doris Limata Mwanatete came to the Kuta. That the Kuta interrogated the Defendant who was brought by her relatives and the Kuta found that she was rightful person to be Mwanatete. That the Kuta interrogated the lineage and family tree she brought.
- 2.254 DW4 confirmed that Saa Kuta does not take part in the selection process.
- 2.255 DW4 confirmed that the selection process is based on each tribe's own tradition and customs, they bring the person to the Kuta.
- 2.256 DW4 confirmed that the selection process is the preserve of the Mwanatete family.
- 2.257 DW4 testified that he has never in his life time witnessed a family bringing a wrong person and family revolts. The Court notes that DW4 is aged 97 years.

2.258 DW4 was not re-examined.

3. LAW AND SUBMISSIONS

- 3.1 The parties filed written submissions. I am grateful to Counsel for the same. I shall not reproduce the submissions suffice to state that I have considered the submissions in this my Judgment even though I may not speak directly to them.
- 3.2 The Plaintiff submits that he has proved that he and not the Defendant is part of the Mwanatete family by the family Tree produced in evidence, at page 1 of his bundle of documents.
- 3.3 The Plaintiff submits that the Mwanatete is a traditional Councilor (Induna) under Chief Kahare of Kaoma District and not Chieftaincy as claimed by the Defendant.
- 3.4 The Plaintiff further submits that the involvement of Chief Amukena II in the scrutiny of the selection process of the Defendant was wrong as Chief Amukena has no jurisdiction in Chief Mutondo's area. Reference was made to the case of **Edward Mbombola Moyo (Suing as Chief Mutondo) vs Prince Makweti Isiteketo (Sued as Senior Chief Amukena) and Attorney General Appeal No. 168/2017¹**.
- 3.5 The Plaintiff submits that selection of Mwanatete is a family issue according to Nkoya customs and tradition. That deviation calls for reversal of any appointment that had been effected. Reference is made to the following authorities;

- **Kenneth Mpengula vs Reverend H. Litana Appeal No. 47/2005.**
- **Simon Kalaba Chisha and Others vs Phillimon Mbola Appeal No. 192/2007.**

3.6 The Plaintiff submits that a member of Mwanatete family, Induna Matanda, he has the blessing of a Nkoya Chief Mwene Mutondo to take up the position of Mwanatete.

3.7 The Defendant submits that the Plaintiff has failed to discharge his evidential burden of proof. Reference was made to the case of **Kekelwa Samuel Kongwa vs David Nkata Appeal No. 103/2023** and has not proved that he is indeed a member of the Mwanatete family and entitled to the throne. The Defendant submits that the Mwanatete is a Chieftaincy and not Indunaship.

3.8 The Defendant submits that she has led evidence proving that her father, uncle and late brother whom she succeeded all held position of Chief Mwanatete thereby also proving her lineage and entitlement to the throne. Reference was made to **Article 266 of the Constitution of Zambia (Amendment) Act and Article 165 (1) of the Constitution of Zambia.**

3.9 The Defendant submits that the exhibited family tree is not correct and refers the Court to the Defendant's bundle of documents family tree for Mwanatete. The Defendant refers the reconciling of the conflict as to the family tree history to holding in the case of **Twimahene Kojo II vs Kwadwo Bondei (175) WKR 1123/P.C 4/1954** where it was held that;

“Where there is a conflict in traditional history, which has been handed down by word by word of mouth, one side or the other must be mistaken, yet both may be honest in their belief. In such a case, demeanor of witnesses is of little guide to the truth. The best was to test the traditional history by reference to the facts in recent years as established by evidence, and by seeing which of the two competing history is more probable.”

- 3.10 The Defendant further submits that selection of Mwanatete is a preserve of the Mwanatete family and dispels the Plaintiff’s assertion that Chief Mwene Mutondo has jurisdiction over Luampa District and influence and authority to appoint a Mwanatete.
- 3.11 The Defendant submits that the Litunga has mandate to recognize Chiefs in Western Province. Relying on the case of His **Royal Highness the Litunga and 3 Others vs Attorney General 2020/CCZ/009**.

4. COURT ANALYSIS AND DECISION

- 4.1 The clear and undisputed facts are as follows;
- (i) The Defendant is the current appointed Chieftainess Mwanatete since 2020;
 - (ii) The Mwanatete line is Patrilineal;
 - (iii) The selection of Mwanatete is the preserve of the Mwanatete family, in accordance with Nkoya customs and tradition; and

- (iv) His Royal Highness the Litunga (Paramount Chief) is duly mandated to appoint/install/recognize persons selected as Chief in the Western Province of Zambia.

4.2 The disputed facts against the Parties are;

- (i) Whether the Plaintiff or Defendant are members of the Mwanatete family;
- (ii) Whether the Defendant was rightly selected and appointed as Chieftainess Mwanatete; and
- (iii) Whether the Mwanatete is an Indunaship or Chieftaincy.

4.3 It is my considered opinion that the questions for determination by this Court are the disputed facts.

4.4 I must state for the record that this Court's mandate does not extend to selecting who should be Chief, this undisputedly lies within the sole preserve of the Mwanatete family or the Royal Electoral College.

This Court's mandate is akin to that in Judicial Review actions, I must determine the question of whether or not the Nkoya customs or traditions were followed leading to the selection of the Defendant as Mwanatete. Further whether the Family Tree/s availed who the selected individual is or was entitled to ascend to the throne of Mwanatete. If any error or failure to follow custom and procedure/tradition is determined this Court must send the process of selection back to Electoral College who must follow the customs and tradition.

- 4.5 To the question are the Parties members of the Mwanatete Royal Family, I note from the record and evidence on record that both the Plaintiff and the Defendant claim to be members of the Mwanatete family.
- 4.6 The Plaintiff by his testimony traces his line to the Mwanatete family through the Matanda (Village or Chiefdom) where he is 'Caretaker' Induna following the death of it's leader in 2017. He also claims to be Caretaker leader of Tete village. The Plaintiff testified that he was asked to be caretaker leader of Tete Village and that Matanda (his grandfather) and Tete (of Mwanatete) were siblings.
- 4.7 DW2 testified that the Defendant is from the Royal Blood line of the Mwanatete. He testified under cross examination that he is the Defendant's grandfather and married the Defendant's sister, for purposes of preserving the Mwanatete blood line or family. DW2 testified that she too hails from Chieftainess Mwanatete Luhamba. He details the lineage as per page 1 of the Defendant's bundle of documents all the way to the Defendant. That the Defendant's father Silula Limata and her brother Fundweta Limata were Mwanatete.
- 4.8 The witnesses on record point to the Defendant being from the Mwanatete family and further the Plaintiff to hail from the Mutanda Family. The Plaintiff himself confirmed that he is caretaker Chief of Mutanda and Mwanatete were or are cousins.

I am convinced that in fact the Defendant is indeed from Mwanatete family or bloodline, Page 1 of the Defendant's bundle of documents points to her father and brother having held the Mwanatete

Chieftaincy. The Plaintiff admits that the Defendant's brother was Mwanatete for over 20 years.

The Plaintiff and the Defendant have filed two different family trees and each does not show the other as a family member. I am inclined to believe the evidence of the Defendant's witnesses particularly so DW1 and DW2, who struck me as truthful and knowledgeable witnesses.

On the part of the Plaintiff no witness corroborates the Plaintiff's testimony or assertion that he is from the Mwanatete family. I note the detail of Page 1 (Family tree) of the Plaintiff's bundle of documents. This document and testimony of the Plaintiff himself point to the fact that the various children of Polesha and Hunina, set up each their own Chiefdoms separate and distinct from each other which are;

- Tete - where name or title Mwanatete comes from Where the Defendant holds Chieftaincy.
- Shungenu -
- Matanda - where the Plaintiff is Caretaker leader (pending the coming of age of heirs).
- Mufweto -

I find it hard to believe that the Plaintiff can be Caretaker Chief or Chief/Leader of two separate clans or Chiefdoms. I find as a matter of fact that the Defendant is indeed from the bloodline or family of Mwanatete. I refer to the authority in the case of **Kausa**

Mwachindalo vs Matthews Musona SCZ No.1 of 2021¹ which held that;

“Where there is a conflict in traditional history, which has been handed down by word by word of mouth, one side or the other must be mistaken, yet both may be honest in their belief. In such a case, demeanor of witnesses is of little guide to the truth. The best was to test the traditional history by reference to the facts in recent years as established by evidence, and by seeing which of the competing history is more probable.”

I am inclined to believe the Defendant’s case or testimony as to the lineage and her late father and brother being the past Mwanatete, proving her hailing from the Mwanatete family.

4.9 To the question as to whether the Mwanatete is a Chieftaincy or Indunaship, I will simply state both Parties throughout their pleadings refer to the Mwanatete as Chief. The Plaintiff goes further to aver that he is caretaker Chief Mwanatete, the Defendant is sued as Chieftainess Mwanatete, whose selection and installation is the core question or challenge by the Plaintiff.

I have taken judicial notice that the Mwanatete is a Chieftaincy. The testimony on Record particularly page 1 of the Defendant’s bundle of documents shows installation by His Royal Highness the Litunga of about 9 Mwanatete. In fact the Plaintiff himself conceded that the last but one Mwanatete (the Defendant’s brother) was installed but never recognized as a chief by the State as he was not on payroll.

I take judicial notice that many chiefs in Zambia are not on the Government payroll but this doesn't nullify the chiefly position.

- 4.10 I shall now address my mind to the question of whether or not the Nkoya – Lukolwe custom and traditional process was followed in the selection and appointment of the Defendant as Chieftainess Mwanatete.

It is trite law in case law, statute and customary law alike that the selection of a successor to office of Chief is the preserve of the royal family in accordance with the particulars tradition and custom. In the case *in casu*, both the Plaintiff and the Defendant concede that selection of Mwanatete is the preserve of the Mwanatete clan or family. Not even the State, any other chief nor his Majesty the Litunga King of Barotseland concerns themselves in the selection of a chief.

It must be placed on record however, that in the Western Province, once the family has concluded the selection process, the individual so selected by the Electoral College, such individual must be presented to His Royal Majesty the Litunga who then installs the individual to the throne. The Constitutional Court of Zambia settled this process or issue in the celebrated case of **Four Kings – His Royal Highness The Litunga and 3 Others vs The Attorney General 2020/CCZ/009²**. The Constitutional Court clarified its decision in the Mulubisha case, stated the following in the Four Kings case;

“the provision of article 165(1) set out above are clear and unambiguous and provide that the chieftaincy and

traditional institutions will exist in accordance with the culture, customs and traditions of the people to whom they apply. In other words, matters such as ascension to the throne and related matters continue to be regulated by the culture, customs and traditions of the people to whom they apply. Therefore the role which the Petitioners play in the recognition and installation of chief as well as the discipline and dethronement of Subordinate Chiefs in their respective areas according to the culture, customs and traditions of the respective people has not been taken away but has been in fact fortified by the provision of article 165(1) of the constitution.

There is therefore no merit in any contention that the Mulubisha judgment by declaring certain sections of the Chiefs act as being unconstitutional had the effect of stripping the Litunga and other paramount Chiefs of the power and authority they exercise in the installation and discipline of the chiefs in accordance with the customs, culture and traditions of the people in their respective areas. (emphasis my own)

- 4.11 DW2 states categorically that the Mwanatete family sat to select a Mwanatete following the demise of Chief Mwanatete Martin Limata. His full testimony in Chief is repeated verbatim in this Judgment.

I note that the Plaintiff takes issue with what he terms as interference or participation of senior Chief Amukena who lacks jurisdiction in Luampa and over the affairs of Mwanatete. I have perused and studied the testimony of the Defendant's witnesses and

nothing there suggests that Senior Chief Amukena was involved in the selection process of the successor Mwanatete. It is my considered understanding that the Defendant's witnesses' testimony is to effect that the Mwanatete family presented the Defendant as selected Mwanatete to the Senior Chief Amukena for purposes of his arranging facilitating for the installation of selected chief Mwanatete which is the preserve of His Royal Majesty the Litunga. This facilitation entails that Senior Chief Amukena had to confirm with the Mwanatete family that they had followed the Nkoya tradition and custom. The Kuta verification or due diligence is vital to ensure the person selected is duly entitled.

The evidence on record shows that the Mwanatete family had identified 3 individuals for the position of Mwanatete and as the Electoral College sat two of these withdrew their 'candidature' leaving only the Defendant who was selected. A period of about a year passed before installation and during that time no objection was placed by anyone on the Mwanatete family, no evidence of the Plaintiff placing objection is on record.

- 4.12 I find that the Nkoya custom and tradition set process for the selection and installation of the Defendant as Chieftainess Mwanatete was duly followed.

5 CONCLUSION

- 5.1 From the foregoing I find that the Plaintiff has failed to prove any of his claims as against the Defendant.
- 5.2 I find that the Defendant is and was eligible for selection and appointment or the installation as Chieftainess Mwanatete as proof to her claim to lineage of the Mwanatete.
- 5.3 I further find that the Electoral College followed the customs and traditions of the Nkoya people, in selecting the Defendant as Mwanatete.
- 5.4 The Plaintiff's claims are dismissed with costs to be taxed in default of agreement.
- 5.5 Leave to appeal is granted.

DELIVERED AT LUSAKA ON THE 15TH DAY OF JANUARY, 2026



**THE HON. LADY JUSTICE S. CHOCHO
HIG COURT JUDGE**

