

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 209 OF 2005

HOLDEN AT LUSAKA

(Civil Jurisdiction)

IN THE MATTER OF: Article 127 of the Constitution of Zambia

AND

**IN THE MATTER OF: Section 3 of the Chief's Act Chapter 287 of the
Laws of Zambia**

AND

**IN THE MATTER OF: A dispute in selection of Chief Mweemba of the
Tonga People of Sinazongwe District of
Southern Province of Zambia**

BETWEEN:

EDSON SHAMU

-

APPELLANT

AND

ISAAC SYABOONDE SYACHAMWEKA

-

RESPONDENT

Coram: Lewanika, DCJ., Chibesakunda and Musahabati., JJS.

On 28th June, 2007 and 2nd August, 2007.

For the Appellant: S.S. Zulu, SC. of Zulu and Company

For the Respondent: G. Chikampa - Legal Aid Counsel

J U D G M E N T

Mushabati, JS., delivered the judgment of the Court

Legislation referred to

Supreme Court Act, Cap. 25 - S. 25 (1) C).

This is an appeal against the High Court Judgment dismissing the appellant's petition challenging the appointment of the respondent as Chief Mweemba of the Tonga people. He sought to have the respondent's appointment declared null and void.

When we heard of this appeal on 28th June, 2007, we allowed it and ordered a retrial. We said then that we would give our reasons later and we now do so.

The brief facts of this case were that the respondent was appointed Chief Mweemba after an election was conducted. The appellant was one of the contestants. After the respondent was elected he was installed to the throne of Senior Chief Mweemba of the Tonga people and he was later recognised as such by the President of the Republic of Zambia under Statutory Instrument No. 23 of 1999. The appellant challenged the eligibility of the respondent to hold the post of Senior Chief Mweemba on account that he did not belong to the royal family tree of the Mweemba Chieftainship.

The parties adduced viva voce evidence in support of their respective cases. The lower court dismissed the petition and in so doing it said, among other things, ***unfortunately, D.W.4 testified of the effect that if the petitioner were selected there would be "a civil war"***, hence this appeal now before us.

This is clear to us that the learned trial court ventured into considering extraneous issues ignoring the real questions that were before him i.e whether the respondent was eligible to become Chief Mweemba, and secondly, whether he was properly chosen and installed in accordance with the Tonga customary law obtaining in that particular area, in short, whether the customary procedures for installing a chief were followed or not?

The appellant appealed against the judgment and filed six grounds of appeal. Both counsel filed written heads of argument. On account of the view, we take in its appeal, we deem it unnecessary for us to discuss both the grounds of appeal and its merits.

The bulky part of the lower court's judgment is made of recitals of the pleadings and evidence by the parties. The learned trial judge did not make any findings of facts based on the oral and documentary evidence before the court. Such findings were to be based mostly on the credibility and demeanour of witnesses. We, as an Appellate court are not privileged to access the credibility or demeanour of those witnesses because we have had no opportunity of seeing the witnesses. It is for this reason that we find it hard to appreciate the trial judge's judgment, which fact was also acknowledged by the learned counsel for the appellant, S.S. Zulu, SC.

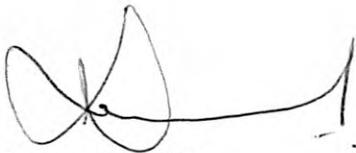
Had the learned trial judge made specific findings of fact, we were going to be placed in a better position to consider or relate such findings to the evidence on record, as adduced by the witnesses. In the absence of such

findings we cannot make our own findings. Looking at the evidence on record, it is our well considered view that we cannot re-write this judgment in order to come up with our own specific findings of fact because these could have properly been made by the trial judge.

It is therefore, for the foregoing reasons that we decided to order a retrial before another judge. A retrial is hereby ordered in terms of **Section 25 (1)**

(C) of the Supreme Court Act, Cap. 25 of the Laws of Zambia.

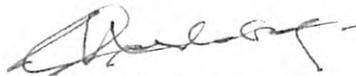
Costs shall abide the out-come of the proceedings in the court below.



D.M. Lewanika
DEPUTY CHIEF JUSTICE



L.P. Chibesakunda
SUPREME COURT JUDGE



C.S. Mushabati
SUPREME COURT JUDGE