

No

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

2015/HP/1393

17 MAR 2017

BETWEEN:

PHILLIP CHITAMBO NYIRENDA

PLAINTIFF

AND

VINCENT BANDA

DEFENDANT

Before Honorable Mrs. Justice M. Mapani-Kawimbe on 17th March, 2017

For the Plaintiff : Dr. J. Mulwila SC, assisted by Ms. N.

Mbuyi, Messrs Ituna Partners

For the Defendant : Mr. S. S. Zulu SC, Messrs Zulu & Co

J U D G M E N T

Case Authorities Referred To:

1. Chief Mpepo v Senior Chief Mwamba SCZ Judgment No. 25 of 2008
2. Senior Chief Milambo v Benson Kasongo Shapi and Philemon Mbola Appeal No. 192 of 2007
3. Kenneth Mpengula v Reverend Hudson Litana and Others Appeal No. 47 of 2005

Legislation Referred To:

1. Constitution of Zambia (Amendment) Act No. 2 of 2016

The Plaintiff issued Writ of Summons seeking the following reliefs:

- (i) *An Order that the Plaintiff is the legal selected Chief Kazembe.*
- (ii) *An Order for possession of the Chieftainship which the Defendant has wrongfully possessed.*
- (iii) *An Order of injunction to restrain the Defendant, by himself, by his servants, agents, employees or otherwise from continuing and repeating any acts as Chief Kazembe.*
- (iv) *Damages for trespass caused by the Defendant.*
- (v) *Costs.*
- (vi) *Any other relief the Court may deem fit.*

The Statement of Claim discloses that the Plaintiff was selected Chief Kazembe in Lundazi District, Eastern Province by the Kazembe Royal family. He was subsequently appointed Chief on 10th September, 2005, following his retirement from the Civil Service on 7th December, 2005.

The Plaintiff states that after his selection as Chief, the Royal family handed him the traditional instruments of power as a symbol of his appointment on 23rd October, 2005. Further, at a meeting held on 11th January, 2006, Senior Chief Mwase acknowledged his selection in the presence of Chief Chikomeni, the District Commissioner, Lundazi and other Government officials in Lundazi.

The Plaintiff avers that on 7th June, 2006, his selection as Chief Kazembe was acknowledged by the Permanent Secretary, Eastern Province. He was further acknowledged by the Council Secretary, Lundazi on 18th January, 2006. The Plaintiff contends that the Defendant who is not a member of the Kazembe Royal family was illegally selected and enthroned Chief Kazembe on 28th April 2014 by unknown persons. Thus, he brings this action to Court to challenge the Defendant's appointment as Chief Kazembe.

The Defendant settled a Defence and Counterclaim on 1st October, 2015. He denies that the Plaintiff is entitled to be enthroned Chief Kazembe and counterclaims that he is a member of the Kazembe Royal family, of the Chewa people, of Lundazi District, Eastern Province. He avers that succession to the Kazembe throne is matrilineal and that the Mbumba are responsible for selecting a successor amongst nephews, nieces and grandchildren of a deceased Chief.

The Defendant further avers that the Kazembe Royal family pays homage to His Majesty Kalonga Gawa Undi of the Chewa Royal Establishment in Mkaika. The Defendant adds that His Majesty

Kalonga Gawa Undi is bestowed with authority of recognizing Chewa chiefs who have been selected by the Mbumba according to the Chewa custom and tradition.

The Defendant states that before Chieftainess Lina Kazembe (Chisusu) was recognized by His Majesty Kalonga Gawa Undi, some paternal members of the Kazembe Royal family were selected as caretakers of the throne, contrary to Chewa custom and tradition.

The Defendant admits that on 29th June, 2008, the Plaintiff was selected Chief by the Kazembe Royal family. However, His Majesty Kalonga Gawa Undi nullified his selection because he was the son of caretaker Chief Stephen Chitambo Nyirenda. According to Chewa succession, a son of a Chief is disqualified from being enthroned Chief Kazembe.

The Defendant further states that Ms. Lina Phiri (Chisusu) who was selected Acting Chief Kazembe received a Government subsidy from November, 2008 until her death on 28th March, 2013. He adds that being the maternal grandson of Lina Phiri (Chisusu) and his mother Alice (deceased) being Lina Phiri's first born

daughter entitles him to be appointed Chief Kazembe. As a result, the Mbumba met on 28th March, 2013, and selected him Chief Kazembe.

The Defendant avers that on 26th April, 2015, he was installed Chief Kazembe by His Majesty Kalonga Gawa Undi at Mkaika in Katete. On 21st July, 2015, the Acting District Commissioner Lundazi handed him the instruments of power.

In his counterclaim, the Defendant seeks the following reliefs:-

- (1) *A declaration that the Plaintiff is not entitled to succeed to the Kazembe chieftainship of the Chewa people on the ground that succession is matrilineal according to Chewa custom and tradition and not patrilineal.*
- (2) *A declaration that the Defendant is the one who is entitled to succeed his late grandmother Lina Phiri as Chief Kazembe.*
- (3) *A declaration that the recognition and installation as Chief Kazembe of the Defendant by His Majesty Kalonga Gawa Undi is valid and in accordance with Chewa custom and tradition of succession.*
- (4) *An order of interim injunction to restrain the Plaintiff from holding himself out as Chief Kazembe or causing confusion in the chieftdom or in any way interfering with the Defendant's Chiefly functions pending trial of this action or until further order.*
- (5) *Damages.*
- (6) *Costs.*

At trial the Plaintiff called five witnesses. The Plaintiff, **Phillip Chitambo Nyirenda** testified as **PW1**. He told the Court that his father was the late Stephen Chitambo Nyirenda who was married to Tafwauli Phiri, his mother. It was his evidence that on 10th September, 2005 he was selected Chief Kazembe by the Kazembe Royal family and was notified of his appointment when he was still serving as a civil servant in the Ministry of Justice, Local Courts Department.

PW1 testified that on 22nd October, 2005, the late Senior Chief Mwase, Henry Phiri, acknowledged his selection as Chief Kazembe at a small ceremony. On 23rd October, 2005, the Senior Chief Mwase told the village headmen of PW1's selection as Chief Kazembe. The Royal family subsequently handed PW1 the traditional instruments of power, namely a lion's skin, leopard, spear, chair and short gun.

It was PW1's further evidence that the Kazembe Royal family is made up of members from the four villages of Chitete, Kabimba, Mukazingoma and Bungulu, and they collectively constitute the electoral college. According to PW1, at a meeting held on 28th June,

2006 between Senior Chief Mwase, the indunas and the Kazembe Royal family, it was established that the Kazembe throne is patrilineal.

PW1 testified that on 30th July, 2006 his selection was communicated to His Majesty Kalonga Gawa Undi at Mkaika Katete. After receiving his name, he was asked to pay Kalonga Gawa Undi a cow and two goats. Further, the date of his installation was set on 10th August, 2006 but it never took place.

PW1 stated that on 10th October, 2007 the Council Secretary Lundazi, handed him instruments of power, namely a flag, date stamp and Chief's gown. He then received government subsidies in March 2008, in arrears, and afterwards received subsidies on a monthly basis. His palace was connected to a solar panel.

PW1 testified that on 29th June, 2008 the members of the Royal family appeared before His Majesty Kalonga Gawa Undi, because some members of family had challenged his selection. They argued that he was not qualified to be enthroned Chief Kazembe because he was a child of a former Chief. According to PW1 his

aunt Lina Phiri was appointed caretaker Chief and he assisted her in performing her duties.

PW1 further testified that at a meeting held on 3rd July, 2012, at Senior Induna, Mr. Chikuta Mbewe's home, Lina Phiri handed him back the throne. However, Mr. Mbewe told Lina Phiri to hand the throne to her son Alick Mumba or her brother Willman Phiri. According to PW1, Lina Phiri refused to hand the throne to either of them insisting that the throne belonged to PW1.

PW1 testified that on 31st October, 2013 the Royal family appeared before the former Senior Chief Mwase, Mr. Jonathan Mtonga, where PW1 explained the circumstances of his selection as Chief. In April, 2014, Mr. Mtonga took the Royal family members to Katete to meet His Majesty Kalonga Gawa Undi but failed to do so.

It was PW1's testimony that on 28th April 2014, a meeting was held at Mr. Chrisphord Ngulube's house. Most of the members of the Royal family were chased from the meeting by Mr. Mtonga and the few members that remained were instructed by him to select the Defendant as Chief Kazembe.

PW1 told the Court that he petitioned the Defendant's selection that very day and that the women who were asked to select the Defendant refused his nomination. PW1 stated that at a meeting held on 29th June, 2014 in Katete, the members of the Royal family refused to acknowledge the Defendant as Chief Kazembe. The members of the Royal family were greatly distraught by the Defendant's installation and decided to commence this action in Court.

It was PW1's testimony that his mother Tafwauli Phiri and her sister Lina Phiri are not members of the Kazembe Royal family given that his mother was only married to a Chief. PW1 told the Court that according to the Chief Kazembe genealogy there had been eight Chiefs, namely:

1. Kazembe I -Kabimba
2. Kazembe II -Nguwa
3. Kazembe III - Chitambo
4. Kazembe IV- Chitete (Chieftainess)
5. Kazembe V - Mukazingoma Chisalanga (his biological grandfather)

6. Kazembe VI - Kabimba Bungulu
7. Kazembe VII - Stephen Chitambo Nyirenda (his biological father)
8. Kazembe VIII - Henry Phiri

It was PW1's evidence that Kazembe I, II, III were the sons of Mwila and Muyunga Zozie, while Kazembe IV was the daughter of Luvunga the only sister of Kazembe I, II, and III. PW1 further stated that Kazembe IV had two sons namely, Mkazingoma and Kabimba Bungulu who succeeded her as Kazembe V and VI respectively.

PW1 told the Court that after his grandfather Kazembe V died, Kazembe VI Kabimba Bungulu inherited the throne. He relinquished the throne to his father Kazembe VII. According to PW1, Kazembe VIII Henry Phiri took over as a caretaker Chief for two and a half years because of the succession wrangles that had engulfed the Kazembe Royal family. These wrangles were mostly between the children of Chiefs Kazembe V and VI.

PW1 further testified that Kazembe VII his father married Tafwauli Phiri who was a daughter of Mailess Nyirenda. It was his evidence that Mailess' children were Lina Phiri, Willman Phiri, Tafwauli Phiri, Loniah Phiri, Losinasi Phiri, Simon Phiri, Justina Phiri, Aaron Phiri, and Cecilia Phiri. He also testified that Mailess Nyirenda's mother was Maria Juba whose children were Belita, Jela, Mailess, Njilawaya as shown at page 78 of his Bundle.

PW1 averred that the Royal family tree in his bundle represented the correct Chief Kazembe genealogy as opposed to the one the Defendant's bundle. He stated that the discrepancies in the Defendant's Royal family tree showed a lack of knowledge of the Kazembe dynasty. It was his evidence that the Defendant, his maternal nephew, is not entitled to be enthroned Chief Kazembe.

In cross-examination, PW1 stated that the Kazembe Chieftaincy is based on the Tumbuka tradition and custom. Further, that the Chieftaincy was only subordinate to His Majesty Kalonga Gawa Undi until 2005. He did not know whether His Majesty Kalonga Gawa Undi was the Paramount Chief for all Chewa people although he accepted his authority. He maintained that

succession to Chief Kazembe is patrilineal and not matrilineal as advocated by His Majesty Kalonga Gawa Undi.

PW1 testified that he did not know anything about the matrilineal system of succession stating that in a patrilineal system sons or daughters of a Chief could succeed a Chief. It was also PW1's evidence that Chiefs Kazembe I, II, III inherited their throne from their father, while Kazembe IV inherited the throne from her uncle Kazembe III.

PW1 told the Court that he was entitled to inherit the Kazembe throne through Chief Kazembe V his grandfather and not his father Chief Kazembe VII, in the patrilineal system. He therefore, did not understand why His Majesty Kalonga Gawa Undi did not install him Chief. It was also PW1's evidence that the Kazembe chiefs were selected by members of the Royal family. PW1 denied that he caused confusion in the Chieftom during the reign of Lina Phiri.

In re-examination, PW1 maintained that succession to Chief Kazembe is patrilineal because Chiefs Kazembe V and VI had no sisters. Further, that he was entitled to inherit the throne from

Chief Kazembe V. PW1 stated that His Majesty Kalonga Gawa Undi did not disqualify him from becoming Chief because the prerogative of installing Chief Kazembe rests with Chief Mwase. PW1 concluded with a prayer to the Court to declare him Chief Kazembe granted that he had been selected in accordance with their tradition and custom by the Kazembe Royal family.

PW2 was **Sebastian Phiri** who testified that his father was Bungulu Phiri Chief Kazembe VI. He traced the origin of the Kazembe genealogy starting that Mwila the Kazembe matriarch, who had four children, namely Kabimba, Nguwa, Chitambo (all male) and Luvunga (their only sister). He told the Court that Luvunga was the mother of Chief Kazembe IV Chitete, who inherited the throne from Chief Kazembe III, after his death. Chitete had two children namely, Mukazingoma and Kabimba Bungulu and when she grew old she handed over the throne to Mukazingoma. Mukazingoma later handed the throne to his younger brother Kabimba Bungulu. Thereafter, Stephen Nyirenda inherited the throne until his death when Henry Phiri succeeded him.

According to PW2, after Henry Phiri's death, the Royal family selected PW1 as Chief Kazembe and informed Senior Chief Mwase. The Senior Chief told them that he would present PW1's name to His Majesty Kalonga Gawa Undi and a meeting was subsequently arranged for the Kazembe Royal family to meet His Majesty Kalonga Gawa Undi at his palace. PW2 testified that they never met him but were told that they had to present cows and a goat before PW1's installation.

PW2 testified that the Kazembe Royal family handed PW1 the traditional instruments of power, namely, a gun, lion and leopard skin, a walking stick and a tail. Thereafter, PW1 started executing his Chiefly duties. The Royal family was summoned by His Majesty Kalonga Gawa Undi sometime in 2008 where he told them that he had received a number of petitions against PW1's selection. According to PW2, His Majesty Kalonga Gawa Undi told them that he did not approve PW1's selection as Chief Kazembe and asked them to select another member of the family for his consideration. As a compromise, the Royal family settled for Lina Phiri who later relinquished the throne to PW1.

PW2 repeated PW1's evidence on the events that unfolded at the meeting held at Mr. Chrisphord Ngulube's house and how Mr. Jonathan Mtonga influenced the selection of the Defendant. PW2 stated that Lina Phiri, her siblings and their families are not part of the Kazembe Royal family, adding that PW1's mother Tafwauli was merely married to Kazembe VII.

In cross-examination, PW2 told the Court that the Kazembe Chieftdom followed both the Chewa and Tumbuka traditions and customs. He stated that the Kazembe Chieftdom falls under the jurisdiction of both Senior Chief Mwase and His Majesty Kalonga Gawa Undi through a recent relationship. PW2 stated that PW1 was selected by the Kazembe Royal family as Chief but was not accepted by His Majesty Kalonga Gawa Undi because of his patrilineal lineage. He testified that because Chiefs Kazembe V and VI had no sisters, their children could inherit the throne including PW1. As a result, the Kazembe Chieftdom had discarded the matrilineal system.

PW2 testified that he was not aware that Kalonga Gawa Undi had installed the Defendant as Chief Kazembe because the

responsibility lay with Senior Chief Mwase. Both the Senior Chief and His Majesty Kalonga Gawa Undi, according to PW2 were bound by the Royal family's choice of Chief.

In re-examination, PW2 reiterated that His Majesty Kalonga Gawa Undi was not responsible for selecting Chief Kazembe. He also stated that the Kazembe dynasty followed the Tumbuka tradition and custom.

Justina Phiri testified as **PW3**. She stated that the Defendant's mother Alice Mumba was her niece. She was the first born daughter of her sister Lina Phiri. PW3 testified that her mother's name was Mailess Nyirenda, while her grandmother was Maria Mumba who was married to Holotani. She further testified that her grandmother had four sisters namely, Belita, Jela, Mailess and Njilawaya. PW3 did not know Luvunga and insisted that her family was not part of the Kazembe Royal family. Her sister Lina Phiri was only selected to act as Chieftainess Kazembe for a short while and later returned the throne to PW1.

In cross-examination, PW3 testified that her elder sister Tafwauli was married to Stephen Nyirenda, PW1's father. She did not know whether the Kazembe throne is patrilineal or matrilineal.

The witness was not re-examined.

PW4 was **Eliva Banda**. He told the Court that PW1 is his cousin and he was one of the persons who selected him as Chief Kazembe. He stated that the dispute on PW1's selection was inspired by his brother Stateson Zulu who is a member of the Royal family. According to PW4 Stateson Zulu petitioned His Majesty Kalonga Gawa Undi because he wanted to be selected Chief. He was not selected due to his bad behavior.

PW4's evidence was no different from PW1 on the genealogy of Chief Kazembe dynasty and the late Senior Chief Mwase's acknowledgment of PW1's selection as Chief Kazembe. PW4 testified that Senior Chief Mwase is responsible for recognizing Chewa chiefs and that the Royal family had adopted the Tumbuka tradition.

PW4 testified that when the Royal family went to Mkaika to meet His Majesty Kalonga Gawa Undi, they were told to arrange for

PW1's installation, by presenting a cow and goat to the Paramount Chief. According to PW4 His Majesty Kalonga Gawa Undi accepted the animals but refused to install PW1 because he was a son of a former Chief. PW4 stated that the family settled for Lina Phiri who was recognized by His Majesty Kalonga Gawa Undi as Chieftainess Kazembe. After a short reign, Lina Phiri handed back the throne to PW1 who was never installed as Chief by His Majesty Kalonga Gawa Undi.

In cross-examination, PW4 told the Court that the Royal family decided to follow the Tumbuka tradition because there were no women in the family. It was his evidence that the Defendant was not installed Chief Kazembe by His Majesty Kalonga Gawa Undi because the responsibility rests with Senior Chief Mwase upon the Royal family's recommendation. PW4 told the Court that by giving PW1 the palace and the traditional instruments of power, the Royal family had accepted PW1 as Chief Kazembe.

The witness was not re-examined.

Holotani Phiri testified as **PW5**. It was his evidence that the Defendant is his nephew and a descendant of Mailess his grandmother. Mailesi had no connection to the Kazembe Royal family. It was also PW5's evidence that he was not aware of the succession wrangle on Chief Kazembe because he is not a member of the Royal family. Further, that Lina Phiri, Mailess' daughter, only acted as Chief Kazembe on behalf of PW1 for a short while.

PW5's evidence was no different from that of PW3's evidence on Maria Juba and her children. PW5 also regurgitated the evidence of PW1, PW2 and PW4 on the meeting that was held at Mkaika and the selection of PW1 as Chief Kazembe. He added that PW1 was never installed Chief.

In cross-examination, PW5 stated that he did not the Chewa system of succession but insisted that Mailess was not a member of the Royal family. He did not know that the first three Chiefs Kazembe had a sister. All he knew was that PW1 was born from the Royal family and challenged the family tree in the Defendant's bundle, which connected him to the Kazembe Royal family.

In re-examination, PW5 maintained that his family was not part of the Kazembe Royal family.

Vincent Banda the Defendant testified as **DW1**. It was his evidence that he was a member of the Royal family and traced his lineage through Mailess, who was also known as Luvunga, the daughter of Mwila. He testified that the first three Kazembe Chiefs Kabimba, Nguwa and Chitambo inherited the throne from their mother Mwila, while Chitete Kazembe IV, ascended to the throne through her mother Luvunga. DW1 also testified that after Chitete, her son Chisalanda Mkazingoma took over as Kazembe V and handed over the throne to his brother Kabimba Bungulu, Chief Kazembe VI.

DW1 testified that the Kazembe Chieftaincy followed the Chewa tradition since the 17th century and that the Kazembe Chiefs paid homage to His Majesty Kalonga Gawa Undi. It was DW1's evidence that the Kazembe Chieftaincy is Chewa and follows a matrilineal system of succession. DW1 testified that all the Kazembe Chiefs in the Kazembe genealogy inherited the throne through their matrilineal lineage and not the patrilineal side.

According to DW1, in the Chewa custom of succession a son cannot succeed a father. He contended that Stephen Chitambo Nyirenda, Kazembe VII, should have never inherited the throne given his patrilineal lineage. DW1 stated that Henry Phiri Kazembe VIII was eligible to ascend to the Kazembe throne because his mother was Steven Nyirenda Chitambo's sister. He further contended that PW1 did not qualify to be enthroned Chief because his father was a Chief and his father's selection had offended the Chewa tradition and custom on succession.

DW1 testified that PW1's mother Tafwauli Phiri is his maternal great aunt. Tafwauli and Lina Phiri his grandmother, were Mailess Nyirenda's children. He further stated that Mailess was also known as Luvunga or Kadimba. He added that his mother Alice Mumba was Lina Phiri's first daughter and was entitled to inherit the throne.

DW1 further testified that according to the Chewa tradition, the electoral college on the selection of Chief Kazembe consisted of the Mbumba (female members of the Royal family) and not the four villages of the Kazembe Chieftdom as contended by PW1. He added

that from the year 2003 – 2008 there was no acting Chief Kazembe due to the succession wrangles that had besieged the Chieftdom.

DW1 added that on 28th June, 2006, His Majesty Kalonga Gawa Undi appointed an Inquiry into the Kazembe Chieftaincy. Some of its members were Senior Chief Lukua from Malawi and Chief Mbangombe from Katete. According to DW1 the Inquiry met all the persons who were claiming to be members of the Royal family and subsequently compiled a report for His Majesty Kalonga Gawa Undi.

DW1 testified that at a meeting held on 30th July, 2006, Senior Chief Mwase invited all the interested claimants of the Kazembe Royal family to a meeting held in Mkaika, Katete. At that meeting the Inquiry's findings stated at pages 32 and 33 of the Plaintiff's bundle, were shared with all present. The Inquiry confirmed that the Kazembe Chieftainship was matrilineal and not patrilineal.

DW1 further testified that His Majesty Kalonga Gawa Undi convened another meeting on 29th June, 2008 at Mkaika, where the Royal family was asked to submit a name of a Chief. According to

DW1, the family submitted PW1's name which was rejected by His Majesty Kalonga Gawa Undi because of his connection to the patrilineal side of the Royal family.

It was DW1's evidence that when a name of a Chief is proposed it is submitted to His Majesty Kalonga Gawa Undi, who takes his own consultation and studies the family tree. This is done to ascertain that a person qualifies to be a Chief. In reference to pages 40, 41 and 42 of the Plaintiff's bundle, DW1 told the Court that he belonged to the Royal family because he was Alice Mumba's son, the daughter of Lina Phiri who was the daughter of Mailless (Luvunga) born from Mwila.

It was DW1's testimony that on 26th April, 2014, the members of the Royal family met at Mr. Chrisford Ngulube's house in Lundazi. The meeting was chaired by the Senior Induna for Senior Chief Mwase, Mr. Jonathan Mtonga, who asked the Mbumba to select a Chief. DW1 stated that he was selected by the Mbumba at their meeting to succeed his deceased grandmother Lina Phiri. DW1 testified that on 26th April, 2015, His Majesty Kalonga Gawa Undi installed him Chief in the presence of the provincial

Government officials, Chiefs from Malawi, Mozambique and Zambia. After his installation, DW1 testified that he was handed instruments of power by the Acting District Commissioner.

DW1 prayed to the Court to declare him as the rightful Chief Kazembe and heir to the throne, after having been installed by His Majesty Kalonga Gawa Undi, the Paramount Chief of the Chewa people. He also prayed to the Court to declare that PW1 is not eligible to be enthroned Chief Kazembe.

In cross-examination, DW1 stated that the family tree in his Bundle was prepared by the Kazembe Royal family members. He stated that the names of Mailess' children were Lina, Willman, Tafwauli, Loniya, Losinasi, Simon, Justina, Aaron and Cecilia Phiri. He further stated that he was Mailess' eldest great grandson.

He testified that he knew Mailess who died in 1995 while he was in Grade 11 at Chizongwe Secondary School. He told the Court that he never met Luvunga because she died before he was born. Further, that Mailess, Lina Phiri and Willman Phiri told him about

Luvunga. He testified that he was surprised that PW3 denied that Mailess her mother was the daughter of Luvunga.

DW1 conceded that the Kazembe throne which begun with Lina Phiri as Kazembe I in his bundle, was misleading because it was produced by the Inquiry after it had received information from the Royal family members on the Chief Kazembe genealogy. In addition, DW1 stated that His Majesty Kalonga Gawa Undi directed that the Royal family should be traced from Mailess to Lina Phiri and her siblings, and their children.

DW1 testified that Mwila was a Chieftainess and her children succeeded her in the Chewa matrilineal system. DW1 maintained that the electoral college was made up of the Mbumba and that the men in the Royal family were only allowed to observe proceedings during the selection of a chief. In his case, DW1 stated that the electoral college that selected him comprised of Loniah, Justina, Tafwauli and Losinase Phiri.

DW1 reiterated that PW1 was disqualified from inheriting the throne because of his patrilineal lineage. Further, that His Majesty

Kalonga Gawa Undi never selected him as Chief but only intervened to restore order in the Chief Kazembe succession. It was DW1's evidence that after his installation, PW1 has not surrendered the traditional instruments of power, which are due to him.

DW1 denied that Lina Phiri was only told to act for a few months by His Majesty Kalonga Gawa Undi and to hand back the throne to PW1. He added that Kalonga Gawa Undi censured PW1 for causing confusion in the Kazembe Chiefdom.

In re-examination, DW1 testified that the Chief Kazembe genealogy was fittingly described at page 97 of the Plaintiff's bundle and tallied with the findings of the Inquiry. He also testified that when the Royal family members met His Majesty Kalonga Gawa Undi on 30th July, 2006, they did not inform him that PW1's father was once Chief Kazembe. He further stated that Chitete, Kazembe IV's, sons were entitled to succeed her because they were born from a woman.

DW2 was **Lonia Phiri** who testified that her mother was Mailess Nyirenda. She stated that her biological sisters are Tafwauli

Phiri, Justina Phiri, Loniya Phiri, Losinase Phiri, Cecilia Phiri and the deceased Lina Phiri. It was her evidence that succession to the Kazembe throne is matrilineal and that her grandmother Maliya was a chieftainess. She told the Court that her sister Tafwauli Phiri was married to PW1's father who was a Chief. As a result PW1 could not inherit the throne. DW2 stated that the rightful heir to the Kazembe throne was DW1 and that he was selected by the Mbumba namely, Tafwauli, Loniya, Justina and Losinase Phiri and herself at Mr. Chrisphord Ngulube's home.

In cross-examination, DW2 testified that her grandmother was Maliya and she knew Belita, Jela and Njilawaya who were her grandmother's biological sisters. She told the Court that during the selection of DW1, her brother Willmam Phiri was in attendance but did not participate in the selection of DW1. She stated that PW3 lied when she testified that her family was not part of the Royal family adding that her mother was born from Maliya who was a Chieftainess. It was also her evidence that PW1's mother and father were both born from the Royal family.

In re-examination, DW2 maintained that she and her siblings were members of the Royal family. Further, that even if her brothers attended the Mbumba meetings, they did so as observers.

Alick Mumba testified as **DW3**. His evidence was that he is a member of the Kazembe Royal family being Lina Phiri's fourth child. His grandmother was Mailess Nyirenda who was also known as Maliya, Luvunga or Kadimba. DW3 testified that the Kazembe Chieftaincy is based on a matrilineal system and in that system the electoral college comprises the Mbumbas or female members of the Royal family.

DW3 repeated the earlier evidence adduced in Court on the Chief Kazembe genealogy, emphasizing that Stephen Chitambo Nyirenda Kazembe VII, a patrilineal descendant of the Royal family, should have never been enthroned Chief Kazembe. According to DW3 his selection offended Chewa tradition and custom which is matrilineal. In that system only children, nephews, nieces and grandchildren from the maternal side are eligible to inherit the throne.

DW3 testified that Henry Phiri, Kazembe VIII, his cousin whose mother Manase, was Stephen Nyirenda Chitambo's sister was entitled to inherit the throne. It was also his evidence that after Henry Phiri, Lina Phiri was selected Chieftainess by her sisters the Mbumba, namely, Tafwauli, Lonia, Losinase, Justina and Cecilia Phiri. The Mbumba later selected DW1 as Chief Kazembe.

DW3 stated that he attended the meeting at Senior Chief Mwase Nthembwe's home on 29th October, 2013, where all the families claiming an interest in the Kazembe Royal family were educated on the Chewa system of succession. According to DW3, the Senior Chief Mwase explained the hierarchical Chewa traditional authority and how it ascended from eleven Chiefs to Senior Chief Mwase right up to His Majesty Kalonga Gawa Undi.

DW3 testified that the family members were also told that succession Chief Kazembe is through the Mbumba who constitute the electoral college. According to DW3, the Senior Chief further explained that the electoral college consisted of all the sisters of the deceased Chieftainess Lina Phiri, their daughters and granddaughters. Further, that in a matrilineal system only

Children, nieces, nephews and grandchildren of a Chief could inherit the throne.

DW3 further testified that after the guidance given by Senior Chief Mwase all the persons present at the meeting were screened to ascertain their ties to the Royal family. After determining their status, the Senior Chief Mwase asked the Mbumbas to select a Chief based on the guidelines.

It was DW3's evidence that the Mbumba, namely Tafwauli, Lonia, Losinase and Justina Phiri selected DW1 whose name was submitted to His Majesty Kalonga Gawa Undi. On 29th June, 2014 at Mkaika, His Majesty Kalonga Gawa Undi accepted DW1's name and installed him Chief Kazembe on 26th April, 2015.

In cross-examination, DW3 stated that Chitete, Alufeyo and Mailess were siblings but he did not know Belita and Jela. He told the Court that his mother's sister Losinase is also known as Njilawaya. Further, that he did not know Maliya Juba but he knew Maliya who was also known as Luvunga or Kadimba.

DW3 testified that the family tree at page 1 of the Defendant's bundle did not accurately represent the Chief Kazembe dynasty adding that the correct family tree was in the Plaintiff's bundle. He told the Court that his mother Lina Phiri was not the first Chief Kazembe as they were others before her. DW1 stated that the men who sit in the Mbumba meetings do so as observers and have no say on the selection of Chief Kazembe.

DW3 told the Court that PW1 has ties to both the matrilineal and patrilineal side of the Royal family. He also told the Court that because PW1's mother was married to a Chief, in a matrilineal system, PW1 was disqualified from inheriting the Kazembe throne. DW3 testified that his mother Lina Phiri was installed Chieftainess Kazembe with full benefits on 30th November 2008, and her position was affirmed by Kalonga Gawa Undi at the meeting held on 29th June 2014. DW3 testified that he did not know if Lina Phiri surrendered her throne to PW1.

In re-examination, DW3 maintained that PW1 was not entitled to be enthroned Chief Kazembe because his father was a Chief.

Learned State Counsels filed written submissions on behalf of the parties, for which I am highly indebted. I shall not reproduce them suffice to state that I will take them into account in the judgment.

I have seriously considered the pleadings, evidence adduced and written submissions of the parties filed herein. There is no dispute that the matriarch of the Kazembe Chieftaincy was Mwila who was married to Munyanga Zozie. The Chief Kazembe genealogy is traced by both parties from Mwila, listing the Chiefs that succeeded her as follows:

1. Kabimba – Kazembe I
2. Nguwa – Kazembe II
3. Chitambo – Kazebe III
4. Chitete – Kazembe IV
5. Mkazingoma – Kazembe V
6. Bungulu – Kazembe VI
7. Stephen Nyirenda – Kazembe VII
8. Henry Phiri – Kazembe VIII

Following the death of Kazembe VIII, the Kazembe Chiefdom has been embroiled in controversy with the Plaintiff and Defendant

both asserting their rights to be enthroned Chief Kazembe. Therefore, the issues in contestation between the parties can be described thus:

- (i) *Whether the Kazembe Chieftainship is Chewa or Tumbuka and if it follows a patrilineal or matrilineal system of succession?*
 - (iii) *What historical role does His Majesty Kalonga Gawa Undi play in enthroning Chief Kazembe?*
 - (iv) *Whether the electoral college of Chief Kazembe is composed of the four villages of the Kazembe Chieftainship or the female members of the Royal family known as the Mbumba?*
 - (v) *Who between the Plaintiff and Defendant is entitled to ascend to the throne of Chief Kazembe?*
- (i) *Whether the Kazembe Chieftainship is Chewa or Tumbuka and if it follows a patrilineal or matrilineal system of succession?***

PW1 testified that the Kazembe Chieftaincy is based on the Tumbuka tradition and does not follow the Chewa tradition on succession. PW1 also testified that Chiefs Kazembe I, II, III inherited their throne from their father, while Kazembe IV, their niece inherited the throne from her uncle Kazembe III.

PW2's testimony was that the Kazembe throne's relationship to his His Majesty Kalonga Gawa Undi, was recent and that the Kazembe Chiefdom was only subject to Senior Chief Mwase of Lundazi. PW2 and PW4 both testified that because Chiefs Kazembe V and VI had no sisters, it was impossible to follow the matrilineal system of succession. As a result the Kazembe Chiefdom resorted to the Tumbuka tradition and custom. PW3 did not know whether the Kazembe throne is patrilineal or matrilineal.

On the other hand DW1, DW2 and DW3 contended that the Kazembe Chiefdom is Chewa and follows the strict Chewa matrimonial system of succession. Further, the Inquiry set up by His Majesty Kalonga Gawa Undi on the Kazembe Chieftaincy on 28th June, 2006, affirmed that the Kazembe throne is matrilineal.

DW3 testified that Senior Chief Mwase Nthembwe told the members of the Royal family at a meeting held on 29th October, 2013, that the Kazembe throne is matrilineal and is bound by the Chewa customs and tradition.

I take judicial notice that the history of the Chewa people of Eastern Province is barely documented. As a result, it has been quite difficult if not impossible to accept the parties competing assertions on the Kazembe Chieftaincy. To overcome my dilemma, I have had to resort to the **“Outline History of Lundazi District”**, in the Plaintiff’s bundle which in my view presents authoritative text on the customs and traditions of the Chewa people.

In the **Outline History of Lundazi District** at page 80 in the Plaintiff’s bundle, quoting relevance, the author states that:

“The first major incursion seems to have taken place about 1750 and shortly after; it was part of the movement of the Chewa people from the Luapula-Lualaba Basin, by way of Southern Tanganyika, to the triangular plateau enclosed by Lake Nyasa, the Zambezi and the Luangwa. An offshoot of the Southerly movement down the west shore of Lake Nyasa was led by Mwase Nthembwe and Mwase wa Minga, now respectively Chiefs Mwase Lundazi and Mwanya, to occupy both the plateau and the valley south of the Lundazi river to about the present boundary between Lundazi and Fort Jameson Districts. The indigenous Tumbuka do not appear to have offered any serious resistance and to have been largely absorbed into the tribal organization of the conquerors. The Lundazi Chewa Chiefs maintained a close connection with Mwase Kasungu in Nyasaland, but only a very shadowy allegiance, if indeed any, to the larger body of Chewa who moved further south under Undi”. (underlining my own)

The **Outline History of Lundazi District** at page 85 in the Plaintiff’s bundle, shows a Copy of Tribal Map which was drafted in

1910 by P.E. Hall Esq., Native Commissioner, in which Mwase Lundazi is placed in Chewa territory. Further, the **Outline History of Lundazi District** at page 87 of the Plaintiff's bundle, states thus:

"The Lower Lundazi should, I think, be called Chewa on the whole, Kazembe (Chitete) is Chewa by descent, and a sort of Chi-Chewa is generally spoken. Chewa blood slightly predominates, I think, but there is a good deal of Kunda and Viza and Senga, and a little Tumbuka. Some natives consider all the Luangwa people from the north edge of Kambwiri to the south edge of Chikwa to be practically VaKunda". (underlining my own)

In consequence, I find that it rapidly falls on me to settle the issue whether the Kazembe Chieftainship is Chewa or Tumbuka. It is clear that Chief Mwase Nthembwe, who the Plaintiffs' witnesses claim to owe allegiance occupied part of Lundazi District, where he and his subjects found the indigenous Tumbuka. It is also reported in the **Outline History** that the Tumbuka offered little resistance to their domination by Chiefs Mwase Nthembwe and Mwase wa Minga. By implication, this meant that the Chief Mwase's were foreigners who occupied Tumbuka land.

According to the Tribal Map in the Outline History, Mwase Lundazi is visibly traced to the Chewe tribe and not the Tumbuka. In addition, Kazembe (Chitete) is described to be of Chewa descent.

From the evidence adduced by the parties on the Chief Kazembe genealogy in the Plaintiff's bundle, there is general agreement amongst the witnesses that Chiteta was Kazembe IV and a recognized Chieftainess Kazembe. This being the case, I am led to the inescapable conclusion that the Kazembe Chieftaincy is Chewa and not Tumbuka as advocated by PW1 and his witnesses. Thus, the parties are bound by their Chewa heritage.

In my view, the evidence tendered by PW1, PW2 and PW4 on their ancestry being Tumbuka is misleading and a great distortion of history. It is most discontending that PW1, PW2 and PW3 contended that their matrilineal heritage disintegrated because Chiefs Kazembe V and VI had no sisters, when the Chiefs had a sister named Manase whose son later became Chief Kazembe VIII. Surely one cannot not argue that the matrilineal line extinguished when Manase could have provided a successor. I therefore, do not accept the Plaintiff's contention that the Kazembe Chieftaincy is Tumbuka.

I wish to add that I am fortified that Chief Kazembe follows matrilineal succession given that Chiefs Kazembe I – VI and VIII, all

inherited the throne through their matrilineal heritage as shown in the Plaintiff's bundle. It is only Chief Kazembe VII who inherited the throne from his father, leading to a departure from the Chewa tradition and custom. Since the issue is not on trial, I need not say more except to reiterate that the Kazembe Chiefdom is Chewa and bound by the matrilineal system of succession, which is deeply footed in the Chewa customs and traditions.

(ii) What historical role does His Majesty Kalonga Gawa Undi play in enthroning Chief Kazembe?

PW1's evidence was that after he was selected by the Royal family members as Chief Kazembe, Senior Chief Mwase communicated his name to His Majesty Kalonga Gawa Undi so that he could be installed Chief. He also testified that although the District Commissioner handed him the instruments of power, His Majesty Kalonga Gawa Undi never installed him Chief. PW2 confirmed that after the Royal family members informed Senior Chief Mwase of PW1's selection, he told him that he would present PW1's name to His Majesty Kalonga Gawa Undi.

PW2 also testified that the Kazembe Chieftdom falls under the jurisdiction of Senior Chief Mwase and the relation to His Majesty Kalonga Gawa Undi is recent. PW4's evidence was no different from PW1 and PW2's evidence on Chief Mwase's reaction to PW1's selection.

In rebuttal, DW1 testified that the Kazembe Chieftdom is Chewa and has owed allegiance to His Majesty Kalonga Gawa Undi since the 17th Century. I quickly want to point out that DW1's evidence is supported by the **Outline History of the Lundazi District**.

I take judicial notice that His Majesty Kalonga Gawa Undi is the head of the Chewa people. That being the case, I do not need to take a difficult discourse in affirming His Majesty's Kalonga Gawa Undi's paramancity on the Chewa people for the reasons given this judgment. By his own admission PW1 is aware that His Majesty Kalonga Gawa Undi is responsible for enthroning Chief Kazembe. In any case, Senior Chief Mwase told the members of the Royal family that he is subordinate to His Majesty Kalonga Gawa Undi. Thus, his role in my view was misapprehended by the Plaintiffs'

witnesses even after the position was conveyed to them. In addition, Article 165(2) of the Constitution, bestows the responsibility on enthroning Chiefs with traditional leadership. This being the case, His Majesty Kalonga Gawa Undi's role cannot be challenged given that it is universally accepted that he is the head of the Chewa people.

(iii) Whether the electoral college of Chief Kazembe is composed of the four villages of the Kazembe Chiefdom or the female members of the Royal family known as the Mbumba?

The evidence led by PW1 was that the members of the electoral college are drawn from the four villages of Chitete, Kabimba, Mukazingoma and Bungulu in the Kazembe Chiefdom. PW1, PW2, and PW4 all gave evidence that on 10th September, 2005, PW1 was selected as Chief Kazembe IX and he was presented to Senior Chief Mwase. The Kazembe Royal family handed PW1 the instruments of traditional power. His selection was communicated to the relevant Government authorities.

PW1 testified that on 29th June, 2008, His Majesty Kalonga Gawa Undi told the Royal family that PW1 was not was not qualified to be enthroned Chief because he was a son of a former Chief. He then imposed DW1 on the throne.

In rebuttal, DW1 testified that the electoral college comprising the Mbumba, who are the only body empowered to select Chief Kazembe chose him. DW1 refuted PW1's claim that His Majesty Kalonga Gawa Undi imposed him as Chief, adding that he only intervened to restore order in the succession of Chief Kazembe.

From the evidence adduced by the DW1, His Majesty Kalonga Gawa Undi constituted an Inquiry whose terms of reference were twofold. Firstly to establish the matrilineal lineage of the Kazembe Chieftaincy from all the interested members of the Kazembe family; and secondly to establish who was entitled to the throne of Chief Kazembe IXth.

On 28th June, 2006, the Inquiry met all the members of the Kazembe family. A further meeting was held on 30th July, 2006, chaired by His Majesty Kalonga Gawa Undi in Katete as shown at page 30 of the Plaintiff's bundle. The relevant portion from the minutes is reproduced herebelow:-

"CHIEF MBANG'OMBE'S REMARKS

Chief Mbang'ombe informed the gathering that vide to the RESOLUTION of the meeting of 23rd June, 2006, the appointed entourage of Chiefs traveled to Kazembe. They had their meeting on 28th June, 2006 where all the Kazembe family were present. He went on to report that a draft family tree was prepared which revealed that most of the members present were from the patrilineal side contrary to the Chewa Royal family succession policy. Hon. Chief Mbang'ombe narrated the family tree. It was unanimously supported by Hon. Senior Chief Lukwa, Mwase, Zumwanda and Mwangala of Chadiza respectively.

SUBMISSION BY MR EDWIN PHIRI

Mr Phiri was requested to give a narration of the Kazembe Royal family establishment. He submitted as for Chief Mbang'ombe submitio.

SUBMISSION BY MR STATESON PHIRI

Mr Stateson Phiri was requested to make his narration of the Kazembe family tree. With difficulties he gave out a narrative of the Kazembe Royal family Tree and it was noted.

IDENTIFICATION OF THE ROYAL MEMBERS

His Royal Highness Kalonga Gawa Undi categorized the Kazembe entourage into three (3) groups as follows:

- (i) Group i Royal family from the patrilineal side*
- (ii) Group ii Royal family from matrilineal side*
- (iii) Group iii relatives to the Royal family.*

After a lengthy debate, it was decided that the following be identified as members of the Kazembe Matrimonial Royal family establishment:

- (i) Lina Phiri*
- (ii) Willyman Phiri*
- (iii) Tafwauli Phiri*

- (iv) *Losinasi Phiri*
- (v) *Justina Phiri*
- (vi) *Simon Phiri*
- (vii) *Aaron Phiri*
- (viii) *Cecilia Phiri*
- (ix) *Loniya Phiri*

His Royal Highness Kalonga Gawa Undi requested the above people to submit the names of the selected heir to the throne of Chief Kazembe the IXth.

SUBMISSION OF THE HEIR THE KAZEMBE THRONE TO HIS ROYAL HIGHNESS KALONGA GAWA UNDI 11TH

Ms Lina Phiri, the eldest in Kazembe matrimonial Royal family establishment submitted that Mr Phillip Chitambo Nyirenda was selected heir to the Kazembe 7th throne. Mr Phillip Chitambo Nyirenda was a son to Tafwauli Phiri daughter to Mailess of the Kazembe Royal family tree.

His Royal Highness Kalonga Gawa Undi 11th received the nomination and set August 10th 2006 as date to ordain Mr. Phillip Chitambo Nyirenda as Kazembe IXth..."

After carefully analyzing the minutes, I find that the meeting was important in two respects. Firstly it established that the members of the Kazembe Royal family that attended the meeting of 28th June, 2006, were mostly from the patrilineal side. Thus, they were not entitled to be enthroned Chief Kazembe. Secondly, the meeting established the Kazembe matrilineal Royal family which is the Phiri family, the descendants of Mailess.

In the minutes of the meeting held on 29th June, 2008, at Mkaika, at pages 40 to 42 in the Plaintiff's bundle, His Majesty Kalonga Gawa Undi is recorded to have stated thus:

KALONGA GAWA UNDI'S OPENING REMARKS

Kalonga Gawa Undi welcomed everyone to the meeting. He emphasized that in keeping with the Chewa succession tradition, Chiefs are elected from the matrilineal line. He also cited examples of people who constitute the matrilineal family tree. He further advised that the selection of a Chief was the preserve of the members of the Kazembe matrilineal Royal family members. He, however, requested all the Kazembe patrilineal Royal family members to leave the meeting to allow chance to those that constituted the Electoral College to select the Chief. Kalonga Gawa Undi informed the Royal family members that the Electoral College for selection of Chief Kazembe had since been established and comprised the following members:

- i. Lina Phiri
- ii. William Phiri
- iii. Loniya Phiri
- iv. Losinasi Phiri
- v. Justina Phiri
- vi. Simon Phiri
- vii. Aaron Phiri
- viii. Cecilia Phiri

Kalonga Gawa Undi directed the above constituted Electoral College to go for a private meeting and come up with a nominee to the Kazembe throne. He advised the members to be factual and not to select names of those whose fathers were previously Chiefs. He added that such submission would foster squabbles in the Royal family for the fact that their fathers were previously Chiefs.

He also emphasized that in keeping with the Chewa tradition of succession, Chiefs were to be selected from purely matrilineal line. Two (2) private meetings were held but the Electoral College settled for Phillip Chitambo Nyirenda.

Kalonga Gawa Undi inquired as to who the father to Phillip Chitambo Nyirenda was?

In responding to this query, Ms Lina Phiri informed Gawa Undi that Phillip Chitambo Nyirenda was the son to Stephen Nyirenda and Tafwauli Phiri her young sister, the daughter to Mailesi who was the daughter to Luvunga the sister to Kabimba Kazembe 1.

Hon. Senior Chief Lukwa said that during their meeting with the Kazembe Royal family on 28th June, 2006 at Kazembe, they established that the only matrilineal line existed starting from Lina Phiri with her brothers and sisters going up to Mailesi on the family tree.

Kalonga Gawa Undi advised the members of the Electoral College to adhere to his earlier advice. He gave them a last chance to sit and submit the name of the nominated heir to the throne.

Gawa Undi received the nomination for his consideration. He advised that he would, after considering the name, call the Royal family for a meeting for recognition as nominee to be successor to Chief Kazembe..."

In my view the significance of that meeting is that it re-affirmed the members of the electoral college. It also affirmed that PW1's selection as Chief Kazembe was rejected by His Majesty Kalonga Gawa Undi because he was a son of a Chief. It is my view that in keeping with the Chewa matrilineal system of succession, the Kazembe Royal family then selected Lina Phiri as Chief, after tracing her descent from Mailess to Luvunga and finally Mwila.

According to minutes of a meeting held on 28th April, 2014 at Senior Chief Mwase Nthembe palace in the Defendant's bundle, the following was stated, quoting relevance only:

"The Senior Induna reminded the meeting that the Chewa Tradition and Culture follows totally MATRILINEAL type of succession and does not allow PATRILINEAL system. Therefore the ELECTORAL COLLEGE consists of the sisters of the deceased chief and grandchildren. It does not allow children of the deceased chief or brothers or outsiders in the selection of a chief. Induna Chrisford further explained that no matter how much you love someone as long as he/she is not a NEPHEW OR GRANDCHILD, cannot inherit the CHIEFTAINSHIP..."

SENIOR CHIEF MWASE – LUNDAZI XII REMARKS

Prior to the claims of Phillip C Nyirenda against Hon. Chikuta Mbewe, the Senior Chief advised that selecting a new Chief is entirely in the hands of the Royal family and Kalonga Gawa Undi and his Indunas do not appoint or select chiefs....He further explained that the Kazembe Royal Family had MISLED PHILLIP C. NYIRENDA to lose his employment..This was due to IGNORANCE of the family and had nothing to do on the Law of Succession....

TIME FOR SELECTION OF NEW CHIEF

Senior Induna Chrisford E. Ngulube screened the Electoral College and rejected all men except Mr Aaron Banda as overseer. Therefore, the Electoral College comprised of:

- 1. Tafwali Phiri*
- 2. Loniya Phiri*
- 3. Justina Phiri*
- 4. Losenasi Phiri*
- 5. Aaron Banda (Observer)*

The Senior Chief Mwase ordered the electoral college to go and select the name of the successor in line with our Chewa customary law. The electoral college successfully nominated Vincent Banda, the grandson of the late Chieftainess Kazembe (Lina Phiri) from her eldest daughter. The name was submitted to Senior Chief Mwase-Lundazi without any queries. After having received the name, the name matched with the original Kazembe Family tree..."

From the foregoing extracts of the minutes, I find that the Mbumba were repeatedly stated as the electoral college for the selection of Chief Kazembe, and not the members of the four

villages of the Kazembe Chiefdom as contended by PW1. In the case of **Chief Mpepo v Senior Chief Mwamba**¹ the Supreme Court stated thus:

“... We have no difficulty in accepting the argument ... that a Chief is selected or appointed by the people of the community. The Chief is to superintend over in accordance with the customs and traditions of that community. It is not the duty of the Court, as the Learned trial Judge seemed to imply to choose or impose a Chief on a community...” (underlining my own)

Being guided by the **Chief Mpepo** case, I find that it is not my place to choose or impose Chief Kazembe but rather to restate the choice of Chief of the Kazembe Chiefdom community who is DW1. I am bound to respect their wishes on their choice of DW1 as Chief Kazembe, according to their custom and tradition.

(v) Who between the Plaintiff and Defendant is entitled to ascend to the throne of Chief Kazembe?

PW1 and PW3 testified that PW1 is entitled to be installed Chief Kazembe. PW1 further testified that his right to the Kazembe throne was granted to him by Chief Kazembe V. PW1 contended that DW1 is not entitled to be enthroned Chief Kazembe because he

is not a member of the Kazembe Royal family. DW1, DW2 and DW3 disputed PW1's assertion insisting that DW1 traces his Royal connection from his grandmother, Lina Phiri to Mailess his great grandmother, the daughter of Luvunga.

The issue therefore is who between the contesting parties is entitled to inherit the throne of Kazembe IXth. I have already touched on the issue in this judgment and will therefore be brief. I am satisfied that according to the Chewa system of succession which is matrilineal, PW1 is not entitled to be enthroned Chief Kazembe. I therefore, declare without hesitation that he is disqualified from the throne of Kazembe IXth.

I am satisfied on the evidence adduced by DW1 the grandson of Lina Phiri who traces his ties to the Royal family through matrilineal lineage, is entitled to inherit the throne of Kazembe IXth. I accordingly declare that he is duly appointed Kazembe IXth.

Let me state that I find no fault in the Defendant's family tree which DW1 avers was drafted at a meeting held by the Inquiry in consultation with the members of the Kazembe Royal family. I find

this explanation plausible and affirms the matrilineal heritage of the Kazembe throne from the eldest female member of the Phiri family, that is Lina Phiri. It also affirms the existence of a matrilineal line from Luvunga to Mailess down to Lina Phiri, her siblings and their children and grandchildren. The cases of **Senior Chief Milambo v Benson Shapi and Phillimon Mbola**² and **Kenneth Kenneth Mpengula v Reverend Hudson Litana**³ are thus distinguishable from the facts of this case.

In the result, the Plaintiff has failed to prove any of his claims against the Defendant. For the avoidance of doubt, I hold that the Defendant is the rightfully installed Chief Kazembe IXth. Albeit, the Defendant's claim for damages against the Plaintiff has not been proved and is therefore unsuccessful.

Costs are awarded to the Defendant to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 17th day of March, 2017

M. Mapani

M. Mapani-Kawimbe
HIGH COURT JUDGE