IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 113/2015**

HOLDEN AT NDOLA **SCZ/8/287/2014**

(Civil Jurisdiction)

BETWEEN:

IDON KONI	**APPELLANT**
AND	
IGNATIUS KASHOKA	**1ST RESPONDENT**
GEORGE CHIPEPO *(Sued as Chief Chipepo)*	**2ND RESPONDENT**
JOHN LISHOMA	**1ST INTERVENOR**
BRIG. GEN. ALAN DANIEL KALEBUKA (RTD)	**2ND INTERVENOR**

CORAM: **Mwanamwambwa D.C.J., Wood** and **Kajimanga, JJS**

On 6th March, 2018 and 13th March 2018

For the Appellant: *Mr. G. Nyirongo of Messrs. Nyirongo & Co.*

For the Respondents: *No Appearance.*

For the Intervenors: *No Appearance*

JUDGMENT

Mwanamwambwa, DCJ., delivered the Judgment of the Court.

Cases Referred to:

1. ***Sechele v The Attorney-General and Another*** ***2002 (2) BLR 94 (HC)***
2. ***Wilson Masauso Zulu v Avondale Housing Project Limited*** ***(1982) Z.R. 172 (S.C.)***

This is an appeal against a judgment of the High Court, dismissing the Appellant's action against the 1st and the 2nd Respondents.

The background to this matter is that the Appellant sued the two Respondents in the Court below. He was claiming, *inter alia*: an order that he be installed as Chief Ngabwe by Chief Chipepo; a declaration that the 1st Defendant (now 1st Respondent) is not entitled to succeed as Chief Ngabwe as he does not belong to the Royal Family and was not elected by the Royal College; and an order that the selection of the 1st Defendant as Chief Ngabwe is void *ab initio*.

The Appellant contended that the selection process had been characterised by confusion and fraud.

In her Judgment, the learned trial Judge found that there was no evidence to show that the selection of the 1st Respondent, as Chief Ngabwe, had been characterised by confusion and fraud. She found that the 1st Respondent was properly, correctly and legally installed, by Senior Chief Chipepo Mukuni Ng'ombe, as Chief Ngabwe. Therefore, she dismissed the action.

Being unhappy with the trial Court's Judgment, the Appellant appealed. He advanced one ground of appeal, namely that:

> ***The trial court erred in law and in fact when it found that the 1st Respondent was properly, correctly and legally installed by Senior Chief Chipepo Mukuni Ng'ombe as Chief Ngabwe, when in fact not.***

At the time we were writing this Judgment, only the Appellant had filed his heads of argument.

Counsel for the Appellant submitted that the finding stated in the ground of appeal was contrary to the evidence on record. He referred us to **Page 341 lines 6 - 9** of the Record of Appeal, where DW3, in cross-examination, told the learned Court below that "***In December, 2008 Senior Chief Mukuni and Chipepo came to install a chief but it failed. This was Idon Koni to be installed***". According to Counsel, this testimony is consistent with the Appellant's own evidence, at **Page 316 lines 5 - 10** of the Record of Appeal, that on 17th December 2008, Chief Chipepo inaugurated him as Chief Ngabwe.

He also contended that the elections of 13th June 2009, which the 1st Respondent won, were characterised by confusion. He drew our attention to the testimony of DW1 at **Page 324 lines 1 - 3**, where the witness stated that "***at 11:30 hours, I saw a truck full of paramilitary because they anticipated problems, and the other security personnel came in plain clothes***".

In addition, he argued that the court was never furnished with the names and clan details of the forty-two members of the Royal Family purported to have attended the elections.

Counsel also submitted that the minutes taken by the Council Representative at the installation of the 1st Respondent as Chief Ngabwe leave much to be desired. That DW4, the Council Secretary for Kapiri Mposhi District, told the Court below that "*according to the minutes, the 42 members are not known because the names were not indicated*". This testimony is at **Page 348 lines 4 - 5** of the Record of Appeal. Further, that at **lines 25 - 29** of **page 348**, the witness testified that he could not tell the electoral college which elected the 1st Respondent as Chief Ngabwe because he did not have the names of the [people who constituted the] electoral college.

Lines 19 - 20 of the same page were also brought to our attention, in relation to DW4's testimony that ***"according to the minutes, there was a lot of confusion at the selection".***

Counsel for the Appellant submitted that the election of a Chief cannot be said to be proper, correct and legal where there has been rampant confusion and the electoral college is not known. In support of this submission, Counsel cited a Judgment of the High Court of Botswana in the case of ***Sechele v The Attorney-General and Another***, [1] where that Court held that:

> ***"Notwithstanding the provisions of s. 25, the court had jurisdiction to hear and determine any matter affecting the designation of a person as a chief if made mala fide or where there was fraud or where the action was ultra vires or where the rules of natural justice were not observed when the designation was made."***

Counsel submitted that the ***Sechele Case*** cannot bind us, but that its holding quoted above applies to the case *in casu*. He invited us to interfere with the 1st Respondent's installation as Chief Ngabwe because it was not done according to custom and tradition.

When this appeal came up for hearing, neither the Respondents, Intervenors nor their Counsel appeared, and their heads of argument were not on the record. However, the Court's Service Book showed that Counsel for the 1st Respondent and Consel for the Intervenors had been duly served with the Cause List more than thirty (30) days earlier. Therefore, we proceeded to hear the Appellant, who opted to rely entirely on his heads of argument, as filed into Court.

We have perused the judgment appealed against. We have also intently considered the evidence on record and the authorities cited, and have taken into account the submissions made by Counsel for the Appellant.

In our view, the testimony of DW3, referred to by Counsel for the Appellant relates to a finding of fact made by the Court below. At **page J13 lines 3 - 7** of the Judgment appealed against, the Court below found, from the evidence before it, that contrary to his claim, the Appellant was never installed as Chief Ngabwe. In fact, we are surprised that Counsel for the Appellant sees consistency between the testimony of DW3 and that of the Appellant, when the

opposite appears to be the case. DW3 was very clear when he said, as quoted by Counsel, that the installation of the Appellant failed.

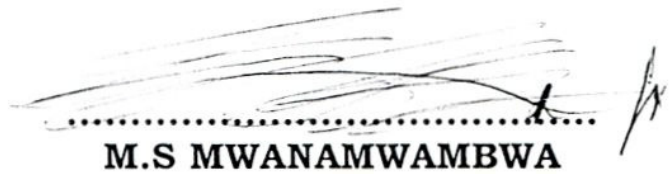
Our position has always been that this Court will only reverse findings of fact made by a trial court if it is satisfied that the findings in question were either perverse or made in the absence of relevant evidence or upon a misapprehension of the facts: See ***Wilson Masauso Zulu v Avondale Housing Project Limited***. [2] In this case, we are not satisfied that the learned trial Judge's finding was perverse or made in the absence of relevant evidence.

It was submitted that the selection of the 1st Respondent was characterised by fraud and confusion. Counsel for the Appellant referred us to the testimony of DW1 that he saw a truck full of paramilitary officers because they anticipated problems. We have perused the proceedings. Again, we find ourselves agreeing with the learned trial Judge that there is no evidence to show that there was confusion or disorder at the selection; at least not the kind of confusion that the Appellant has attempted to portray.

In the position that we have taken, we took into account the ***Sechele Case*** which, as Counsel correctly pointed out, does not

bind this Court. We agree with the learned Judge in the Court below that the Appellant failed to prove that the election of the 1st Respondent was characterised by fraud, or breach of the rules of natural justice.

On the basis of the foregoing, we dismiss this appeal for lack of merit. We award costs to the Respondents, to be taxed in default of agreement.



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M.S MWANAMWAMBWA
DEPUTY CHIEF JUSTICE

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A. M WOOD
SUPREME COURT JUDGE

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C. KAJIMANGA
SUPREME COURT JUDGE