

CHIRUMHANZU CHIEFTAINSHIP DYNASTY
(TRADITIONAL LEADERS STEERING COMMITTEE)
versus
MIDLANDS PROVINCIAL ASSEMBLY OF CHIEFS

HIGH COURT OF ZIMBABWE
WAMAMBO J
MASVINGO, 9 JULY & 9 SEPTEMBER, 2020

Unopposed Application

WAMAMBO J: This matter came before me on the Unopposed Roll. I requested for heads of argument after raising issues with regard to the applicant's *locus standi* in the matter. The supplementary heads of argument were indeed filed.

The applicant seeks an Order in the following terms:-

- 1. The application compelling respondent to release information be and is hereby granted.*
- 2. The respondent and all those claiming rights through her be and are hereby ordered to furnish the name of the recommended candidate selected for appointment as Acting Chief Chirumhanzu and the reasons thereof in writing be supplied to the applicant within 7 days of this order having been granted and saved upon them.*
- 3. Respondent be and is hereby ordered to pay costs of suit on an attorney-client scale in the event that it is opposed to this application.*

The founding affidavit brings out the following:-

In January 2019 Gerald Mudzengi who was Chief Chirumanzu died. On 6 April 2019 applicant and other relevant families held a meeting to nominate the Acting Chief to be recommended for appointment by the President. The nominee was Julius Chimbi Chigegwe. The

Provincial Development Coordinator Office, Gweru and Secretary for Ministry of Local Government and Urban Development directed that another meeting including the representatives of the Provincial Chiefs Assembly should be held. Such meeting was held on 11 June, 2019. At this meeting the name of Julius Chimbi Chigegwe was forwarded after it was seconded by six out of the eight families eligible for the Chieftainship. Respondent's representatives did not announce the name of the candidate to be recommended to the President. Efforts including letters of request from legal practitioners to obtain the name of the recommended candidate for appointing to the Acting Chief position were all in vain.

The applicant is of the forceful view that the name of the candidate recommended for the Acting Chief position should be published and communicated to it.

To bolster the position that applicant has *locus standi* to launch this application its Constitution was filed along with heads of argument.

The heads of argument reflect as follows:-

Applicant has a legal right to institute these proceedings as Section 3 of its Constitution empowers it to sue or be sued.

That applicant represents the Chirumhanzu Chieftainship Clan and has capacity to take legal action in issues concerning the rights and interests of its members.

The applicant requires information in terms of Section 62(1) of the Constitution.

In terms of Section 85(1) (e) of the Constitution applicant has the right to make the application to enforce fundamental human rights and freedoms.

In terms of Order 2 A Rule 7(b) of the High Court Rules, 1971, applicant qualifies as an association.

I have given due consideration to the submissions and the supporting documents filed by the applicant and find that indeed applicant are clothed with *locus standi* to institute the instant application.

The relief applicant seeks however needs close scrutiny.

Section 283 of the Constitution provides that an Act of Parliament must provide among thing the appointment, suspension, succession, removal of Chiefs, creation and resuscitation of Chieftainship.

The Traditional Leaders Act [Chapter 29:17] provides in section 4 as follows:-

“4.(1) *Subject to subsection (2), in the event of the office of a chief becoming vacant through the death of the chief, or his removal or suspension from office in terms of this Act, the President may appoint an acting chief to preside in his stead for such period or periods as the President may fix.*

(2) *An appointment in terms of subsection (1) shall cease to have effect—*

- (a) *on the date the President, in terms of subsection (1) of section three, appoints a chief for the community concerned; or*
- (b) *on the cancellation of the suspension of the chief of the community concerned in terms of subsection (3) of section seven; or*
- (c) *when the President cancels the appointment.”*

A number of cases decided in the High Court are relevant among them: *Milton Munodawafa v District Administrator, Masvingo and Others* HH 571-15, *Tafireyi David Gweshe v The President of the Republic of Zimbabwe* HH 542-16 and *Zvarikura Shumba and Others v Reuben Mupasi Marinda & Others* HH 79-18, *Jefureti Manganda Madondo v The Minister of Local Government, Public Works and National Housing NO and Others* HH 526-14 and *Elias Gambakwe & Others v Herbert Chimene & Others* HH 465-15.

Section 283 of the Constitution reads as follows:-

“283 Appointment and removal of traditional leaders

An Act of Parliament must provide for the following, in accordance with the prevailing culture, customs, traditions and practices of the communities concerned-

- (a) *the appointment, suspension, succession and removal of traditional leaders;*
- (b) *the creation and resuscitation of chieftainships; and*
- (c) *the resolution of disputes concerning the appointment, suspension, succession and removal of traditional leaders; but -*
 - (i) -----
 - (ii) *disputes concerning the appointment, suspension and removal of traditional leaders must be resolved by the President on the*

recommendation of the provincial assembly of Chiefs through the Minister responsible for traditional leaders;

- (iii) -----
- (iv) -----”

I find Section 283 (c) (ii) relevant to this matter. The issue in this case concerns a dispute on the appointment of a traditional leader. The question of what name has been forwarded to the President amounts to a dispute in the circumstances in that implicit in the application is that applicant have their own named candidate they prefer for the post of Acting Chief. A dictionary definition of dispute is : disagreement or argument”.

In interpreting Section 283 (c)(ii) of the Constitution, UCHENA J (as he then was) in the *Elias Gambakwe & Others v Herbert Chimene & Others* (supra) at page 5 found as follows:-

“Miss Hove for the second to fourth respondents submitted that the word “concerning” which precedes the disputes to be resolved which includes appointment of Chiefs means “about” and involving. This she argued means the disputes to be resolved include those which arise before the appointment of a Chief or Acting Chief. I agree. The use of the word “concerning” which means something about or involving the appointment of Chiefs include disputes which arise before a Chief is appointed as long as they have something to do with a Chief’s appointment.”

Perhaps it is high time the Act of Parliament referred to in Section 283 of the Constitution was promulgated. This would give ventilation to the Constitution in more detail. This detail sharpened by the various suits brought before the courts will resolve issues more effectively. The Act would necessarily categorically state the processes, procedures and considerations in the issues raised in section 283 of the Constitution.

As things stand I find that section 283(c) (ii) provides that disputes such as in the instant case should be resolved by the President on the recommendation of the Provincial Assembly of Chiefs through the Minister responsible for traditional leaders not through the courts.

In the circumstances I make an order as follows:-

The application is dismissed.

Ruvengo, Maboke and Company, applicant’s legal practitioners