JEPHIAS NYAMBIRA
versus
AARON NYONI
and
ROGER FOFO
and
THE DISTRICT ADMINISTRATOR ZVISHAVANE
and
THE PROVINCIAL ADMINISTRATOR MIDLANDS PROVINCE
and
THE NATIONAL COUNCIL OF CHIEF
and
THE MINISTER OF LOCAL GOVERNMENT, URBAN
AND RURAL DEVELOPMENT

HIGH COURT OF ZIMBABWE
DUBE J
HARARE, 21 October 2016 & 2 November 2016

**Urgent Chamber Application**

*T.G. Mukwindidza*, for the applicant
*M. Baera*, for the 1st respondent
2nd respondent no appearance

DUBE J: This is a chieftainship dispute. The first respondent is the substantive Chief Masunda of Zvishavane. The second respondent is son to the first respondent to whom the first respondent delegates most of his duties. The third to sixth respondents are officials responsible for the decision to appoint the first respondent chief.

The backdrop to this application may be summed up as follows. The first respondent was appointed Chief Masunda on 18 June 2014. He is due to be installed as a chief on 26 October 2016. The first respondent has filed an application on a certificate of urgency seeking to stop the installation ceremony. The applicant avers that he was informed by the village head that he had been summoned by the third respondent to start preparations for the installation of the respondent on 26 October 2016. He received confirmation of the installation ceremony on 13 October 2016. The applicant has also commenced proceedings against the respondents in this court challenging the recommendation made by the respondents to appoint first respondent as the substantive Chief Masunda on the basis that it

is against the customs and tradition of the community concerned to take such a course. The matter is awaiting allocation of a trial date. The applicant contends that if the first respondent is installed, it would render the pending proceedings a mere academic exercise resulting in serious prejudice to him. He prays for an order interdicting the installation ceremony of the first respondent as substantive Chief Masunda the pending the litigation.

The respondents are opposed to the application and challenged the urgency of the matter. Mr Baera who represented the first respondent submitted that the matter is not urgent and amounts to an abuse of court process. He drew the court's attention to a similar urgent application the applicant filed on 29 May 2015 which was subsequently withdrawn. He submitted that the relief sought in that application is similar to that sought in this application. He contended that the application does not meet the requirements of urgency. The other respondents also took up the same point and associated themselves with the submissions of Mr Baera.

The law governing urgent applications is trite. There is a plethora of cases that have defined crisply the concept of urgency. The most celebrated cases being, *Madzivanzira* v *Dextprint Investment Pvt Ltd* HH 145-2002 and *Kuvarega* v *Registrar General & Anor* 1998(1) ZLR 188. The approach to urgent matters is that a litigant who is aggrieved by the conduct of another and wishes to have his matter heard on a certificate of urgency should persuade the court that the matter is urgent and cannot wait and requires to be dealt with immediately. That if the matter is enrolled on the ordinary roll, irreparable harm will occur to him. The applicant should exhibit that he treated the matter as urgent, that is to say, that he asserted himself and took corrective action when the need to act arose.

In the earlier application filed in May 2015,the applicant states that he became aware that the first respondent was exercising the power of Chief Masunda through an article in the Mirror Newspaper of Masvingo in May 2015. The first respondent stated that he was unaware of the first respondent's appointment and had just learnt of the appointment date whilst at court for the hearing of this application. The applicant was not resourceful. He never bothered to investigate what the source of the power being exercised by the first respondent was. Had he done so, he would have realised that the applicant had long been appointed chief. The suggestion is that the applicant is being economic with the truth.

The applicant was advised on 13 October 2016 that the first respondent would be installed on 26 October 2016. He filed this application on 18 October 2016. Whilst it can be accepted that the applicant filed his papers the moment he learnt of the imminent ceremony

which he challenges, this court's concern lies with the fulfilment of the requirement to show the probability of irreparable harm occurring. A litigant who places a matter on the urgent roll has the duty to show the existence of a well-grounded apprehension of irreparable harm if his application is not dealt with on an urgent basis. In matters involving the appointment of, chiefs, the point at which substantive rights are conferred is when the appointment of a chief is made. From this stage henceforth, the new Chief is able to perform the duties of a chief. The ceremony that follows after the appointment of a chief is simply that, a celebration. The process of installation has no legal status and consequences. No conferment of rights takes place at this stage. This state of affairs is akin to that of a person who graduates with a degree and who later decides to hold a graduation party to celebrate his achievements. There is no useful purpose in anybody trying to stop the celebration as it does not confer any further academic achievements on the graduand.

There is no wisdom in seeking to interdict the installation ceremony in this case. Such a course does not have the effect of reversing or staying the appointment. No mileage is gained by the applicant by bringing such an application. No prejudice or irreparable harm is occasioned by the installation itself to the person challenging the appointment.

Once Chief Masunda was appointed chief, substantive rights flowed to him. The ceremony to install him will not confer any additional rights to him. What the Minister responsible now seeks to do is to merely officially install him at a ceremony. The applicant is simply annoyed at the suggestion of an installation. Annoyance does not constitute irreparable harm. Even if the ceremony is stopped, the first respondent remains Chief Masunda. The stopping or otherwise of the installation ceremony has no bearing on the pending challenge to the first respondent's appointment. Any person aggrieved by a decision appointing another person a chief is required to challenge the appointment instead. The applicant should redirect his efforts. In this case the horse has already bolted out of the stables. I am not persuaded that the holding of the ceremony which merely constitutes a mere celebration will prejudice the applicant's legal rights in any way should this installation ceremony proceed. The applicant's contention that some harm or prejudice will be suffered if the relief sought is not afforded him instantly does not find favour with the court. The ceremony will not enhance the first respondent's position nor will his argument in the pending matter be affected. This challenge saves no useful purpose. The applicant has no cause of action and hence no irreparable harm will follow if the ceremony is not interdicted. Although the applicant approached the court immediately he became aware of the intended

installation, this application is misdirected. The first respondent's counsel conceded this position.

In the result it is ordered as follows,

The matter is not urgent and is removed from the roll.

*Chitere Chidawanyika & Partners*, applicant's legal practitioners
*Baera & Associates,* 1st respondent's legal practitioners
Civil Divisions, 3rd, 4th & 6th respondents' legal practitioners