

KIDWELL MACHAKA
versus
MINISTER OF LOCAL GOVERNMENT, URBAN
AND RURAL DEVELOPMENT
and
THE SECRETARY OF THE MINISTRY OF
LOCAL GOVERNMENT, URBAN AND
RURAL DEVELOPMENT
and
PETER PASIPAMIRE

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 25 January 2012

MATHONSI J: This is an urgent application in which the applicant seeks to interdict the first and second respondents from forwarding the name of the third respondent for appointment as substantive Chief Ngezi.

The basis of the application is that in compliance with s 3 of the Traditional Leaders Act [*Cap* 29:17] a nomination process was embarked on to select a candidate for appointment as Chief Ngezi. That process came up with the name of the applicant as the candidate for appointment by the President. The minutes that have been placed before me, clearly demonstrate that.

Notwithstanding the selection of the applicant as a candidate for appointment, the first and second respondents have commissioned a commission to investigate the selection of the applicant. This has halted the process under circumstances, suggesting interference with the process of selection.

The process of nominating a candidate is the province of the clan and s 3 of the Act, does not envisage a situation where government officials interfere with that process and dictate what should be done, whether in the form of commissions, or otherwise. See *Mbedzi v Mbedzi & Ors* HB 145/11.

It is in view of the activities of the commission set up by the first and second respondents which applicants says, have reversed the will of the appropriate members of the community that a summons has been issued out of this court as Case No HC 797/12. In that action the applicant seeks a declarator that he is the rightful candidate to be appointed Chief Ngezi.

He has therefore approached the court seeking to interdict the first and second respondents from processing the third respondent's papers until such time that the respective rights of the parties have been determined by the court.

Ms Hove for the first and second respondents has argued that the actions of the applicant are premature regard being had to the fact that the commission is still to submit its findings. I do not agree. What is clear from the papers is that the commission has rejected the selection process and the outcome of the meetings held by the clan. That commission therefore is unlikely to do anything favourable to the applicant. There is therefore a reasonable apprehension that the interests of the applicant may be prejudiced by the secondment of the third respondent for appointment by the president ahead of the applicant.

For that reason I am satisfied that the applicant has made a good case for the relief sought.

In the result I grant the provisional order in terms of the amended draft order.

Jarvis Palframan, applicant's legal practitioners

Attorney General's Office, respondents' legal practitioners