

# Divason Gawani v Petro Magubu & T/A Laston Njema

<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	Honourable Justice Allan Hans Muhome
<b>Cause Number:</b>	Civil Cause Number 348 of 2020
<b>Date of Judgment:</b>	June 29, 2025
<b>Bar:</b>	P. Sayenda and Kasinja for the Defendants C. Machika, Counsel for Respondent

## Summary

The Claimant commenced an action seeking an injunction to prevent the 2nd Defendant from installing the 1st Defendant as Village Headman Chibade and to have himself installed instead. The Defendants applied to have the matter dismissed, arguing that the action, which challenged an administrative decision, ought to have been commenced by way of judicial review proceedings rather than an ordinary action by way of summons. The 1st Defendant had lodged a complaint with the 2nd Defendant regarding a chieftaincy dispute, which was then referred to the District Commissioner for Mulanje. A panel of three group village heads was empaneled and determined that the 1st Defendant was entitled to the chieftaincy, leading to his installation by the 2nd Defendant.

The Defendants relied on precedents that establish that an ordinary action should be struck out by summary process if it should have been a judicial review. The Claimant, while admitting the action arose from a decision under the Chiefs Act, argued that he was challenging the correctness of the decision, not the decision-making process itself, and therefore an ordinary action was appropriate. The Court observed that the action directly challenged the 2nd Defendant's decision to install the 1st Defendant and agreed with the Defendants that such a challenge must be commenced by way of judicial review. The application was dismissed with costs. The Court held that the correct procedure for challenging such a decision is judicial review and that the ordinary action was an abuse of process

## Legislation Construed

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N/A

## Judgment

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1. The Claimant commenced this action seeking an injunction to stop the 2nd Defendant from installing the 1st Defendant as Village Headman Chibade and that the Claimant himself be installed instead.

2. The Defendants have filed this application pursuant to Order 1 r. 5(5)(c) of the Courts (High Court) (Civil Procedure) Rules 2017 and or inherent jurisdiction of the Court. The Rule encourages active case management by 'deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the

others.’ The application is supported by the sworn statement of the 1st Defendant.

3. The 1st Defendant deponed that when disputes arose in relation to the Chibade Village headman ship, he lodged a complaint with the 2nd Defendant. The 2nd Defendant referred the dispute to the District Commissioner (DC) for Mulanje who, in turn, empanelled three group village heads to determine the dispute. After due inquiry, the panel determined that the 1st Defendant was entitled to the chieftaincy per exhibit PM. The 2nd Defendant duly installed the 1st Defendant in keeping with the said determination.

4. The Defendants argue that this matter should be dismissed on the ground that the action ought to have been commenced through judicial review proceedings and not by way of summons. They relied on the decision of Hon. Chirwa J in *Chibwana v Lyton* Civil Cause Number 161 of 2014. In that matter, it was stated that where a person commences an ordinary action where he should have applied for judicial review, the action will be struck out by summary process. This reasoning was adopted by Justice Potani (as he then was) in *Phiri and Others v Paramount Lundu and Others* Civil Cause Number 224 of 2017. Similar sentiments were made by Chimasula J in *Korea v Designated Board* 1995 MLR 650. Counsel argued further that there are two exceptions, both of which are inapplicable. Firstly, that where a private claim is lodged together with a public matter, the matter may be commenced through ordinary action or secondly, where parties do not object to the ordinary action then it proceeds accordingly: see the speech of Lord Diplock in *O’Reilly v Mackman* [1982] 3 All ER 1121 at 1134.

5. Counsel for the Claimant filed a sworn statement in opposition admitting that this action arises from the decision of a panel of Chiefs acting under the Chiefs Act but that the Claimant is not challenging the decision making process and the suitability of the chiefs but the correctness of the decision that the 1st Defendant is the rightful person to be chief in the area when he is in fact a chief in another area where he stays.

6. This Court has examined the action and observes that it is challenging the decision of the 2nd Defendant to install the 1st Defendant as Village Headman Chibade. Such an action as submitted by Counsel Kalanda ought to be commenced by way of judicial review and not by way of an ordinary action. It is therefore dismissed with costs.

Made in Chambers this 26th February, 2025.