

Divason Gawani v Petro Magubu & T/A Laston Njema

Summary

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

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