

The State (On the application of Fabiano Piyano) and Lundu Nkhuku as Paramount Lundu & Others Judicial Review Case No. 23 of 2023

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Judicial Review Case No. 23 of 2023
Date of Judgment:	July 10, 2025
Bar:	Mr. Ambokile Salimu, Counsel for the Claimant Mr. Kondwani Kunitengo, Counsel for the Defendants

Head Notes

Administrative Law - Procedural Fairness - Failure to grant a hearing to a person affected by an administrative decision - An administrative decision that adversely affects a person's rights without affording a prior hearing is a breach of section 43 of the Constitution.

Administrative Law -Judicial Review - Lawfulness of administrative action - The Court will review an administrative decision where there is a breach of lawful procedure.

Constitutional Law --Bill of Rights - Right to lawful and procedurally fair administrative action - An affected party is entitled to be furnished with reasons for an administrative action.

Summary

The Claimant, who had been formally installed as Group Village Headman Gaga, sought judicial review in the High Court of Malawi, Principal Registry, against a decision by the First Defendant, Paramount Lundu, that stopped him from exercising his chieftaincy duties. The Claimant's installation followed the death of the previous Group Village Headman and was conducted by the Second Defendant, Senior Chief Chapananga, after the family had chosen the Claimant as a replacement. Following a complaint by the Third Defendant, Paramount Lundu issued a decision stopping the Claimant from performing his duties. The Claimant contended that Paramount Lundu's decision was procedurally unfair as he was not granted a hearing prior to the decision being made. The First Defendant did not file any papers or attend court to defend the action. The Second and Third Defendants argued that the chieftaincy passes from an uncle to a nephew, and therefore the Third Defendant was the rightful heir.

The Court was tasked to determine whether Paramount Lundu's administrative action was lawful and procedurally fair, in light of the Claimant's right to be heard.

The application was allowed and the Claimant's appointment as Group Village Headman Gaga was confirmed. The Court found that Paramount Lundu's action in stopping the Claimant's chieftaincy without a hearing was a clear breach of section 43 of the Constitution. The Court reasoned that since the installation was conducted by

Senior Chief Chapananga, it was reasonable to assume the Senior Chief had ascertained the Claimant's rightful heirship, and therefore, Paramount Lundu's decision lacked procedural fairness. The Court ordered each party to bear its own costs.

Legislation Construed

- Constitution of the Republic of Malawi (1994) (s 43)

Judgment

1. Upon the death of Aaron Gideon who was Group Village Headman Gaga, Senior Chief Chapananga wrote the Claimant's family to choose a replacement by a letter exhibited as AB 1 dated 9th August 2021. The family chose the Claimant and he was duly installed as Group Village Headman Gaga on 28th December 2021 by Senior Chief Chapananga himself.

2. The 3rd Defendant lodged a complaint which the 2nd Defendant escalated to the 1st Defendant. The 1st Defendant, Paramount Lundu, passed a decision stopping the Claimant from exercising the chieftaincy per exhibit AB 2. The 1st Defendant did not file any papers and he did not attend Court.

3. The 2nd and 3rd Defendants deponed that the Chewa chieftaincy is passed from an uncle to a nephew and not from a father to a son. That the Claimant is not entitled to the chieftaincy but the 3rd Defendant as determined by Paramount Lundu.

4. The Claimant maintains that he is from the matrilineal side and he was not heard by Paramount Lundu. He seeks an order declaring him a Group Village Headman Gaga.

5. The application is further supported by a sworn statement of Counsel Salimu. He states that the 3rd Defendant's family (Gideon's) held the chieftaincy till 2021 when elders decided that the chieftaincy be handed back to the Elube family (Gaga's), where the Claimant belongs.

6. Having considered the evidence on record and in the absence of an explanation from Paramount Lundu, this Court finds that the Claimant was not duly heard by Paramount Lundu before he was stopped from exercising his chieftaincy duties.

7. This is a clear breach of section 43 of the Republican Constitution of Malawi (1994) which provides as follows:

Every person shall have the right to—

- a) lawful and procedurally fair administrative action, which is justifiable in relation to reasons given where his or her rights, freedoms, legitimate expectations or interests are affected or threatened; and
- b) be furnished with reasons, in writing, for administrative action where his or her rights, freedoms, legitimate expectations or interests are affected.

8. The action of Paramount Lundu followed a lawful installation by Senior Chief Chapananga. This Court finds it reasonable to assume that Senior Chief Chapananga ascertained that the Claimant was the rightful heir, before formalising his appointment. This Court therefore confirms him as Group Village Headman Gaga.

9. Each party shall bear their own costs.

Made in Open Court this 10th July 2025.